



Government Accountability Committee

March 29, 2017
8:00 AM-11:00 AM
Morris Hall

Meeting Packet
REVISED

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Accountability Committee

Start Date and Time: Wednesday, March 29, 2017 08:00 am
End Date and Time: Wednesday, March 29, 2017 11:00 am
Location: Morris Hall (17 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 193 Towing and Storage Fees by Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
CS/HB 383 Pub. Rec./Former Firefighters Personal Identifying Information by Oversight, Transparency & Administration Subcommittee, Willhite
CS/HB 397 Pub. Rec./Victim of Alleged Sexual Harassment/Identifying Information by Oversight, Transparency & Administration Subcommittee, Raschein
CS/HB 493 Enhanced Safety for School Crossings by Transportation & Infrastructure Subcommittee, Toledo
HB 521 Vote-by-Mail Ballots by Davis
CS/HB 599 Public Works Projects by Oversight, Transparency & Administration Subcommittee, Williamson
HB 671 Reemployment Assistance Fraud by La Rosa
HB 6031 Elections by Geller
HB 7087 OGSR/Protective Injunctions for Certain Types of Violence by Oversight, Transparency & Administration Subcommittee, Davis


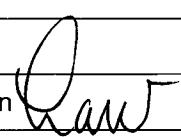
Consideration of the following proposed committee bill(s):

PCB GAC 17-03 -- Elections
PCB GAC 17-04 -- Florida Retirement System

NOTICE FINALIZED on 03/27/2017 4:19PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 193 Towing and Storage Fees
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Cortes, B. and others
TIED BILLS: IDEN./SIM. BILLS: SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	15 Y, 0 N, As CS	Darden	Miller
2) Transportation & Infrastructure Subcommittee	10 Y, 3 N	Johnson	Vickers
3) Government Accountability Committee		Darden 	Williamson 

SUMMARY ANALYSIS

County and municipal governments may contract with wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites within their jurisdiction. Counties and municipalities may establish a wrecker operator system to apportion towing services across multiple wrecker operators. Wrecker operators who participate in the wrecker operator system are known as authorized wrecker operators.

Counties and municipalities are authorized to establish maximum rates for the towing and storage of vehicles pursuant to an ordinance or rule adopted pursuant to s. 125.0103, F.S., or s. 166.043, F.S.

Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The administrative fee is collected by the towing company on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the vehicle is released to the registered owner or lienholder.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill does not prohibit a county or municipality from levying a local business tax on authorized wrecker operators and does not impact the ability of a county or municipality to impose a "reasonable fee or charge" on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

The bill also prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose fees, other than reasonable costs, on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹ After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”³

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.⁴ If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- his or her full name;
- driver license number;
- that he or she is not a member of the wrecker operator system;
- that the vehicle is not being towed for the owner’s or operator’s insurance company or lienholder;
- whether he or she has an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- the maximum charges for towing and storage.⁵

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.⁶

It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.⁷ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁸ In either instance, the unauthorized wrecker operator’s wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.⁹

Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.¹⁰

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt

¹ Section 323.002(1)(c), F.S.

² *Id.*

³ Section 323.002(1)(a)-(b), F.S.

⁴ Section 323.002(2)(b), F.S.

⁵ Section 323.002(2)(c), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 323.002(2)(d), F.S.

⁹ Section 323.002(2)(c) and (d), F.S.

¹⁰ Section 323.002(2)(a), F.S.

maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.¹¹

Vehicle Holds and Wrecker Operator Storage Facilities

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.¹² A hold may be applied where the officer has probable cause to believe the vehicle:

- should be seized under the Florida Contraband Forfeiture Act or Ch. 379, F.S.;
- was used as the means of committing a crime;
- is evidence that tends to show a crime has been committed; or
- was involved in a traffic accident resulting in death or personal injury.¹³

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 or 322.34, F.S., and when the officer is complying with a court order.¹⁴ The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.¹⁵

The investigating agency must inform the wrecker operator within the five day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁶ The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle will be held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.¹⁷

Authority for Local Governments to Charge Fees

Counties and municipalities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.¹⁸ However, local governments possess the authority to impose user fees or assessments by local ordinance as such authority is within the constitutional and statutory home rule powers of local governments.¹⁹ The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.²⁰ On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."²¹ Usually a fee is applied for the use of a service and is tied directly to the cost of maintaining the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied.

Administrative Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies.

¹¹ Sections 125.0103(1)(c) and 166.043(1)(c), F.S.

¹² Section 323.001(1), F.S.

¹³ Section 323.001(4)(a)-(e), F.S.

¹⁴ Section 323.001(4)(f)-(g), F.S.

¹⁵ Section 323.001(5), F.S.

¹⁶ Section 323.001(2), F.S.

¹⁷ Section 323.001(2)(a)-(b), F.S.

¹⁸ Art. VII, s. 1(a), Fla. Const.

¹⁹ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

²⁰ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

²¹ *Id.* at 758-59.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²² The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty (\$500.00), hearing costs (\$50.00), and towing and storage fees (\$125.00 plus \$25.00 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees.
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500.00).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The same process and rate structure is employed by the City of Bradenton.²³

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an “impoundment administrative fee” on all vehicles seized incident to an arrest. The fee is \$500 if the impoundment stems from a felony arrest and \$250 if the impoundment stems from a misdemeanor.²⁴

The City of Winter Springs imposes an administrative fee for impoundment arising from twelve offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.²⁵ The registered owner may request a hearing, either accruing additional storage fees pending the hearing or posting a bond equal to the amount of the administrative fee (\$550.00). If the registered owner waives the right to hearing, the administrative fee is reduced to \$250.00. These fees are payable to the city but are collected by towing companies.²⁶

By contract, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker operator requires the operator to pay the city \$10,151 per month for “the opportunity to provide” wrecker services, as well as \$500 for each impounded vehicle sold by the wrecker service.²⁷

Effect of Proposed Changes

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The prohibition would not impact the ability of the county or municipality to levy a business tax under ss. 205.0315, 205.033, or 205.0535, F.S. It also would not impact the ability of the county to impose a “reasonable fee or charge” by ordinance on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner’s vehicle to be towed to and impounded at a facility owned by the county or municipality.

The bill also prohibits a county or municipality from adopting or enforcing an ordinance that imposes any charge, cost, expense, fine, fee, or penalty, other than reasonable costs related to towing and storage, on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator. This prohibition does not apply to a reasonable fee or charge for towing and storage expenses if a county or municipal law enforcement officer has caused the owner’s vehicle to be towed to and impounded at a facility owned by the county or a municipality.

²² Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last accessed Jan. 31, 2017).

²³ Bradenton, FL Code of Ordinances, ch. 54, art. IV (2016).

²⁴ Sweetwater, FL Code of Ordinances, ch. 42-1, s. 42.1(c) (2017).

²⁵ City of Winter Springs, Ordinance No. 2016-01 (effective October 23, 2016).

²⁶ Winter Springs, FL Notice of Right to Hearing Form. A copy of this form is attached as Appendix A.

²⁷ Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing. A copy of the relevant portions of the contract is attached as Appendix B.

The bill does not impact any fees associated with an investigating agency's hold of a vehicle under s. 323.001, F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 125.01047, F.S., prohibiting counties from enacting ordinances imposing specific fees and charges on authorized wrecker operators.

Section 2 creates s. 166.04465, F.S., prohibiting municipalities from enacting ordinances imposing specific fees and charges on authorized wrecker operators.

Section 3 amends s. 323.002, F.S., prohibiting counties and municipalities from imposing fees and charges on the registered owner or lienholder of a vehicle removed and impounded pursuant to Ch. 323, F.S.

Section 4 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill could have a fiscal impact on local governments if they are using towing fees as a revenue source.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenses for towing companies that are located in municipalities currently charging a fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose fees, other than reasonable costs, on the registered owner or lienholder of a vehicle removed and impounded under ch. 323, F.S. The amendment also removes a list of situations where the prohibition on a local government imposing a fee on authorized wrecker operator would apply.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

APPENDIX A



NOTICE OF RIGHT TO HEARING

Case#: []
Dated this [] day of [], 20 []

HAND DELIVERED TO:

NAME: [] DOB []
ADDRESS: []
D/L # [] Sex: [] Race: []

SECTION 1:

The following property was taken on the [] day of [], 20 [], on or about [] hours by members of the Winter Springs Police in the vicinity of [] because the undersigned police officer has probable cause to believe that the vehicle:

- Was used to facilitate the commission or attempted commission of an act of prostitution, assignation or lewdness as defined in §796.07, F.S. or the exposure of sexual organs as set forth in section 800.03 F.S.
Was knowingly used in the commission of any misdemeanor act of possession or attempted possession of any controlled substance as defined in section 893.02 F.S.
Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of Chapter 893 F.S.
Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 316.061 F.S.
Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 322.34 F.S.
Was operated by a person driving under the influence defined in section 316.193 F.S. when such violation is a misdemeanor.
Was used in the commission of the offense of driving without a valid license or permit in violation of 322.03 F.S.
Was being operated on a public street and is not covered by liability insurance as required by Chapter 324 F.S.
Was used in the commission of the misdemeanor offense of criminal mischief in violation section 806.13 F.S.
Was used to dump litter in any manner prohibited by section 403.413(4) F.S. exceeding 15 lbs. or 27 cu. ft. in volume not exceeding 500 lbs. or 100 cu. ft. and not for commercial purposes.
Was being operated by a person presenting proof of insurance in violation of section 316.646(4) F.S. knowingly not in force.
Was parked in a way impeding traffic, creating a hazard, obstructing a street or city utility or left unattended because the driver was taken into custody by law enforcement.

Such property is being held pending civil proceedings under Winter Springs Code, Section 12 and is described as: YEAR [] MAKE [] MODEL [] COLOR [] TAG [] VIN/HIN [] STATE []

Other []

And is currently being held at:

Tri-County Towing
1155 Belle Ave.
Winter Springs, FL 32708
(407) 695-4400

Winter Springs Police Department
300 N. Moss Rd.
Winter Springs, FL 32708
(407) 327-1000

Received By (Operator/Owner) Signed

Received By (Operator/Owner) Print

Delivered By (Officer/Clerk) Signed

Delivered By (Officer/Clerk) Print

SECTION 2:

Pursuant to City Code, Section 12-100 the owner has the right to request a hearing in the following manner:

Within seven (7) business days of receipt of this notice, the owner, co-owner or lienholder may request a hearing by delivering to the Police Department, at 300 N. Moss Rd., Seminole County, Winter Springs, Florida 32708, a written request for a hearing.

Such request for a hearing shall include a valid telephone number and correct address where the owner, co-owner, or lienholder may be contacted.

The written notice must be received by the Police Department within the allotted time or the right to a hearing shall be deemed to be waived.

SECTION 3:

In order to retrieve the above described vehicle, the owner has the below options:

Owner, Co-Owner, or Lienholder Requesting a Hearing:

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by posting a bond (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$550.00 submitted to the towing company. The Owner, Co-Owner, or Lienholder may then take possession of the vehicle from the towing company after payment of towing and storage charges payable to the towing company.

The Owner, Co-Owner, or Lienholder may leave the vehicle impounded and request a hearing directly from the police department Support Services Bureau.

Owner, Co-Owner, or Lienholder Waiving a Hearing and Submitting Civil Penalty:

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by submitting a civil penalty (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$250.00 and submitted to the towing company during business hours.

The Owner, Co-Owner, or Lienholder then may receive the vehicle from the towing company after payment of towing and storage charges payable to the the towing company.

An executed written waiver shall bind both the owner and co-owner except as otherwise provided herein.

APPENDIX B

AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES

THIS AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES, made and entered into this 5 day of MAY, 2010 by and between the CITY OF SARASOTA, FLORIDA, a municipal corporation, hereinafter referred to as "CITY," and J & G WFR, INC. DBA DIRECT TOWING, a Florida corporation, hereinafter referred to as "DIRECT".

WITNESSETH:

WHEREAS, CITY has publicly announced an invitation to Bid to obtain annual wrecker towing and storage services on an as needed basis pursuant to Invitation to Bid No. 10-08MK; and

WHEREAS, DIRECT has submitted a responsive bid which has been accepted by CITY to provide the CITY with the annual wrecker towing and storage services on an as needed basis; and

WHEREAS, CITY and DIRECT desire to formalize the terms and conditions of DIRECT's performance of such services as set forth herein; and

WHEREAS, the City Manager, pursuant to Sarasota City Code Section 2-5 (3) v. is authorized to administratively approve and execute this Agreement on behalf of CITY so long as the total compensation paid to DIRECT during the entire term of this Agreement, as may be extended, does not exceed Two Hundred Thousand Dollars (\$200,000.00).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. Definitions: The following terms shall have the meanings herein ascribed to them:

A. *City Manager* shall mean the City manager of the City of Sarasota, Florida, or his designee.

B. *Police Chief* shall mean the Chief of Police of the City of Sarasota, Florida, or his designee.

C. *Project* shall mean the Scope of Services to be performed by DIRECT in furtherance of this Agreement. The Scope of Services shall include all labor, materials, tools, equipment, insurance and the like required to perform vehicle and vessel towing and storage services within the boundaries of the towing area on an as needed basis for CITY. A more detailed description of the Scope of Services is set forth in the City of Sarasota Police Department Vehicle and Vessel Towing and Storage Services section found on pages 13 through 20, inclusive, of Invitation to Bid No. 10-08MK. A copy of Invitation to Bid No. 10-08MK, as well as the Bid Form submitted by DIRECT in response thereto, are on file in the offices of

the Financial Administration Purchasing Division of CITY. Invitation to Bid No. 10-08MK, as well as DIRECT's Bid Form submitted in response thereto are deemed incorporated by reference into this Agreement. DIRECT covenants to strictly comply with all of the terms and conditions of Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. In the event of any conflict between the terms set forth in the main body of this Agreement and Invitation to Bid No. 10-08MK, the terms and conditions set forth in the main body of this Agreement shall control.

2. Scope of Services: DIRECT shall diligently and timely provide all labor, material and equipment required for the Scope of Services for the Project in strict conformance with Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto and in strict conformance with all the terms and conditions of this Agreement. The parties hereby agree to be bound by the terms and conditions set forth in Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. The Police Chief will notify DIRECT when an assignment within the Project Scope of Services may be available. DIRECT covenants to provide the Project Scope of Services within the time limits set forth in Invitation to Bid No. 10-08MK.

3. Payment: In consideration for CITY providing DIRECT the opportunity to provide the Scope of Services, DIRECT agrees to pay CITY a fee in the amount of Ten Thousand One Hundred Fifty One and 00/100 Dollars (\$10,151.00) per month. Said payment shall be submitted to the CITY prior to the 10th day of each month. This monthly payment shall be due and payable by DIRECT to CITY in advance for each month during the term of this Agreement. Furthermore, in consideration of the CITY not placing, attempting to foreclose or foreclosing a vehicle impoundment lien upon a vehicle impounded pursuant to Section 33-271 of the Sarasota City Code, DIRECT agrees to waive any and all storage charges to which the CITY would be obligated to pay as a result of the operation of any provision of Chapter 323, Florida Statutes, on any vehicles impounded by the City and stored by DIRECT. As further

consideration, DIRECT shall pay CITY Five Hundred Dollars (\$500.00) for each sale by DIRECT of a vehicle that was sold subsequent to a seizure initiated by the police department of CITY. Said payment shall be made to CITY within thirty (30) days of DIRECT'S sale of a vehicle which had been seized.

4. Term: This Agreement shall be effective upon complete execution by each of the parties hereto. The initial term of this Agreement shall expire one year thereafter. This Agreement may be extended upon mutual agreement of the parties for up to two additional one year periods under the same terms and conditions pursuant to an amendment to this Agreement.

5. Public Records: DIRECT acknowledges that it shall be responsible to totally and fully comply with the Florida Public Records Law as set forth in Chapter 119, Florida Statutes, and all other relevant laws, rules and regulations regarding public records.

6. Termination Without Default: The City Manager shall have the right at any time upon fifteen (15) days written notice to DIRECT to terminate the services of DIRECT hereunder for any reason whatsoever. If the City Manager terminates this Agreement pursuant to this Section 6, DIRECT shall be entitled to a pro-rated refund of the monthly payment required by Section 3 above. The amount of the refund shall be pro-rated based upon the number of days remaining in the calendar month starting with the day after the effective date of termination.

7. Termination With Default: DIRECT acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to CITY entering into this Agreement. Should DIRECT fail to perform any of the conditions, covenants and requirements on its part to be kept, the City Manager shall give written notice thereof to DIRECT specifying those acts or things which must occur in order to cure said default, including the time within which such cure shall occur. DIRECT shall have seventy two (72) hours measured from the date and time of the written notice within which to cure the default.

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A bill to be entitled
 An act relating to towing and storage fees; creating
 ss. 125.01047 and 166.04465, F.S.; prohibiting
 counties and municipalities from enacting certain
 ordinances or rules to impose a fee or charge on
 wrecker operators or vehicle storage companies;
 providing exceptions; amending s. 323.002, F.S.;
 prohibiting counties and municipalities from imposing
 additional charges, costs, expenses, fines, fees, or
 penalties on a registered owner or lienholder of a
 vehicle; providing an exception; providing an
 effective date.

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

Section 1. Section 125.01047, Florida Statutes, is created
 to read:

125.01047 Rules and ordinances relating to towing or
 storage services.-

(1) A county may not enact an ordinance or rule that would
 impose a fee or charge on an authorized wrecker operator, as
 defined in s. 323.002(1), or a vehicle storage company for
 towing, storing, or impounding a vehicle by the wrecker operator
 or vehicle storage company.

(2) The prohibition set forth in subsection (1) does not

26 affect a county's authority to:

27 (a) Levy a reasonable business tax under s. 205.0315, s.
 28 205.033, or s. 205.0535.

29 (b) Impose a reasonable fee or charge, not to exceed the
 30 maximum rates approved by ordinance or rule under s. 125.0103 or
 31 s. 166.043, on the legal owner of a vehicle if a county law
 32 enforcement officer has caused the owner's vehicle to be towed
 33 to and impounded at a facility owned by the county.

34 Section 2. Section 166.04465, Florida Statutes, is created
 35 to read:

36 166.04465 Rules and ordinances relating to towing or
 37 storage services.-

38 (1) A municipality may not enact an ordinance or rule that
 39 would impose a fee or charge on an authorized wrecker operator,
 40 as defined in s. 323.002(1), or a vehicle storage company for
 41 towing, storing, or impounding a vehicle by the wrecker operator
 42 or vehicle storage company.

43 (2) The prohibition set forth in subsection (1) does not
 44 affect a municipality's authority to:

45 (a) Levy a reasonable business tax under s. 205.0315, s.
 46 205.043, or s. 205.0535.

47 (b) Impose a reasonable fee or charge, not to exceed the
 48 maximum rates approved by ordinance or rule under s. 125.0103 or
 49 s. 166.043, on the legal owner of a vehicle if a municipal law
 50 enforcement officer has caused the owner's vehicle to be towed

51 to and impounded at a facility owned by the municipality.

52 Section 3. Subsection (5) is added to section 323.002,
53 Florida Statutes, to read:

54 323.002 County and municipal wrecker operator systems;
55 penalties for operation outside of system.—

56 (5) (a) Except as provided in paragraph (b), a county or
57 municipality may not adopt or maintain in effect an ordinance or
58 rule that imposes a charge, cost, expense, fine, fee, or
59 penalty, other than the reasonable costs of towing and storage
60 incurred by an authorized wrecker operator, on the registered
61 owner or lienholder of a vehicle removed and impounded by an
62 authorized wrecker operator under this chapter.

63 (b) A county or municipality may impose a reasonable fee
64 or charge for towing and storage expenses, not to exceed the
65 maximum rates approved by ordinance or rule under s. 125.0103 or
66 s. 166.043, on the legal owner of a vehicle if a county or
67 municipal law enforcement officer has caused the owner's vehicle
68 to be towed to and impounded at a facility owned by the county
69 or municipality.

70 Section 4. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 383 Pub. Rec./Former Firefighters Personal Identifying Information
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Willhite and others
TIED BILLS: IDEN./SIM. BILLS: SB 1108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Toliver	Harrington
2) Government Accountability Committee		Toliver <i>HT</i>	Williamson <i>[Signature]</i>

SUMMARY ANALYSIS

Current law provides that the home addresses, telephone numbers, dates of birth, and photographs of certified firefighters are exempt from public record requirements. In addition, the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements. While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information for former firefighters.

The bill expands the public record exemption to include the personal identification and location information of former firefighters and their spouses and children. The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

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. The bill expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Firefighters

Chapter 633, F.S., governs state law on fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal,⁸ operating through the Division of State Fire Marshal (division) within the Department of Financial Services (DFS),⁹ and tasked with regulating "fire service providers." The division is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters.¹⁰ In order to serve as a firefighter, the individual must have a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the division.¹¹ A FCOC is issued by the division to an individual who:

- Satisfactorily completes the Minimum Standards Course or equivalent training;
- Passes the Minimum Standards Course examination; and

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ Section 633.104(1), F.S.

⁹ Section 633.104, F.S.

¹⁰ Section 633.408(1), F.S.

¹¹ Section 633.102(9), F.S.

- Meets certain character and fitness requirements.¹²

Public Record Exemption for Firefighters

Current law provides that the home addresses, telephone numbers,¹³ dates of birth, and photographs of certified firefighters are exempt¹⁴ from public record requirements.¹⁵ In addition, the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements.¹⁶ While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information of *former* firefighters.

Effect of the Bill

The bill expands the public record exemption for certain firefighter information to include the home addresses, telephone numbers, dates of birth, and photographs of *former* firefighters. Additionally, the bill expands the public record exemption to include the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of former firefighters as well as the names and locations of schools and day care facilities attended by their children.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to expand the public record exemption to include former firefighters and their spouses and children because the release of such identifying and location information may place former firefighters and their family members in danger as former firefighters have often responded to serious emergency situations ranging from domestic violence to homicide.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for agency personnel.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

¹² Section 633.408(4), F.S.

¹³ The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. *See* s. 119.071(4)(d)1., F.S.

¹⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att’y Gen. (1985).

¹⁵ Section 119.071(4)(d)2.b., F.S.

¹⁶ *Id.*

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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. The bill expands an existing public record exemption; 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. The bill expands an existing public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for the identification and location information of firefighters and their spouses and children to include former firefighters and their spouses and children. The expansion of the public record exemption seeks to prevent former firefighters and their families from being the victims of physical or emotional harm.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably with a committee substitute. The amendment clarified that the personal information of the firefighters specified in the exemption is also exempt from s. 24(a), Art. I of the State Constitution.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; expanding an exemption from public
 4 records requirements for the personal identifying and
 5 location information of certain firefighters and their
 6 spouses and children to include the personal
 7 identifying and location information of former
 8 firefighters and their spouses and children; providing
 9 for future legislative review and repeal of the
 10 exemption; providing a statement of public necessity;
 11 providing an effective date.

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

14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:

17 119.071 General exemptions from inspection or copying of
 18 public records.—

19 (4) AGENCY PERSONNEL INFORMATION.—

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

25 2.a.(I) The home addresses, telephone numbers, social

26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the
 30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).

41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.

46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.

50 (IV) The home addresses, telephone numbers, dates of

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

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

76 reenactment by the Legislature.

77 c. The home addresses, dates of birth, and telephone
 78 numbers of current or former justices of the Supreme Court,
 79 district court of appeal judges, circuit court judges, and
 80 county court judges; the home addresses, telephone numbers,
 81 dates of birth, and places of employment of the spouses and
 82 children of current or former justices and judges; and the names
 83 and locations of schools and day care facilities attended by the
 84 children of current or former justices and judges are exempt
 85 from s. 119.07(1).

86 d.(I) The home addresses, telephone numbers, social
 87 security numbers, dates of birth, and photographs of current or
 88 former state attorneys, assistant state attorneys, statewide
 89 prosecutors, or assistant statewide prosecutors; the home
 90 addresses, telephone numbers, social security numbers,
 91 photographs, dates of birth, and places of employment of the
 92 spouses and children of current or former state attorneys,
 93 assistant state attorneys, statewide prosecutors, or assistant
 94 statewide prosecutors; and the names and locations of schools
 95 and day care facilities attended by the children of current or
 96 former state attorneys, assistant state attorneys, statewide
 97 prosecutors, or assistant statewide prosecutors are exempt from
 98 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

99 (II) The names of the spouses and children of current or
 100 former state attorneys, assistant state attorneys, statewide

101 prosecutors, or assistant statewide prosecutors are exempt from
 102 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

103 (III) Sub-sub-subparagraph (II) is subject to the Open
 104 Government Sunset Review Act in accordance with s. 119.15, and
 105 shall stand repealed on October 2, 2018, unless reviewed and
 106 saved from repeal through reenactment by the Legislature.

107 e. The home addresses, dates of birth, and telephone
 108 numbers of general magistrates, special magistrates, judges of
 109 compensation claims, administrative law judges of the Division
 110 of Administrative Hearings, and child support enforcement
 111 hearing officers; the home addresses, telephone numbers, dates
 112 of birth, and places of employment of the spouses and children
 113 of general magistrates, special magistrates, judges of
 114 compensation claims, administrative law judges of the Division
 115 of Administrative Hearings, and child support enforcement
 116 hearing officers; and the names and locations of schools and day
 117 care facilities attended by the children of general magistrates,
 118 special magistrates, judges of compensation claims,
 119 administrative law judges of the Division of Administrative
 120 Hearings, and child support enforcement hearing officers are
 121 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 122 Constitution if the general magistrate, special magistrate,
 123 judge of compensation claims, administrative law judge of the
 124 Division of Administrative Hearings, or child support hearing
 125 officer provides a written statement that the general

126 magistrate, special magistrate, judge of compensation claims,
 127 administrative law judge of the Division of Administrative
 128 Hearings, or child support hearing officer has made reasonable
 129 efforts to protect such information from being accessible
 130 through other means available to the public.

131 f. The home addresses, telephone numbers, dates of birth,
 132 and photographs of current or former human resource, labor
 133 relations, or employee relations directors, assistant directors,
 134 managers, or assistant managers of any local government agency
 135 or water management district whose duties include hiring and
 136 firing employees, labor contract negotiation, administration, or
 137 other personnel-related duties; the names, home addresses,
 138 telephone numbers, dates of birth, and places of employment of
 139 the spouses and children of such personnel; and the names and
 140 locations of schools and day care facilities attended by the
 141 children of such personnel are exempt from s. 119.07(1) and s.
 142 24(a), Art. I of the State Constitution.

143 g. The home addresses, telephone numbers, dates of birth,
 144 and photographs of current or former code enforcement officers;
 145 the names, home addresses, telephone numbers, dates of birth,
 146 and places of employment of the spouses and children of such
 147 personnel; and the names and locations of schools and day care
 148 facilities attended by the children of such personnel are exempt
 149 from s. 119.07(1) and s. 24(a), Art. I of the State
 150 Constitution.

151 h. The home addresses, telephone numbers, places of
 152 employment, dates of birth, and photographs of current or former
 153 guardians ad litem, as defined in s. 39.820; the names, home
 154 addresses, telephone numbers, dates of birth, and places of
 155 employment of the spouses and children of such persons; and the
 156 names and locations of schools and day care facilities attended
 157 by the children of such persons are exempt from s. 119.07(1) and
 158 s. 24(a), Art. I of the State Constitution, if the guardian ad
 159 litem provides a written statement that the guardian ad litem
 160 has made reasonable efforts to protect such information from
 161 being accessible through other means available to the public.

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

176 day care facilities attended by the children of such personnel
 177 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 178 Constitution.

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

189 (II) The names of the spouses and children of the
 190 specified agency personnel identified in sub-sub-subparagraph
 191 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 192 State Constitution. This sub-sub-subparagraph is subject to the
 193 Open Government Sunset Review Act in accordance with s. 119.15
 194 and shall stand repealed on October 2, 2019, unless reviewed and
 195 saved from repeal through reenactment by the Legislature.

196 k. The home addresses, telephone numbers, and photographs
 197 of current or former investigators or inspectors of the
 198 Department of Business and Professional Regulation; the names,
 199 home addresses, telephone numbers, and places of employment of
 200 the spouses and children of such current or former investigators

201 and inspectors; and the names and locations of schools and day
 202 care facilities attended by the children of such current or
 203 former investigators and inspectors are exempt from s. 119.07(1)
 204 and s. 24(a), Art. I of the State Constitution if the
 205 investigator or inspector has made reasonable efforts to protect
 206 such information from being accessible through other means
 207 available to the public. This sub-subparagraph is subject to the
 208 Open Government Sunset Review Act in accordance with s. 119.15
 209 and shall stand repealed on October 2, 2017, unless reviewed and
 210 saved from repeal through reenactment by the Legislature.

211 1. The home addresses and telephone numbers of county tax
 212 collectors; the names, home addresses, telephone numbers, and
 213 places of employment of the spouses and children of such tax
 214 collectors; and the names and locations of schools and day care
 215 facilities attended by the children of such tax collectors are
 216 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 217 Constitution if the county tax collector has made reasonable
 218 efforts to protect such information from being accessible
 219 through other means available to the public. This sub-
 220 subparagraph is subject to the Open Government Sunset Review Act
 221 in accordance with s. 119.15 and shall stand repealed on October
 222 2, 2017, unless reviewed and saved from repeal through
 223 reenactment by the Legislature.

224 m. The home addresses, telephone numbers, dates of birth,
 225 and photographs of current or former personnel of the Department

226 of Health whose duties include, or result in, the determination
 227 or adjudication of eligibility for social security disability
 228 benefits, the investigation or prosecution of complaints filed
 229 against health care practitioners, or the inspection of health
 230 care practitioners or health care facilities licensed by the
 231 Department of Health; the names, home addresses, telephone
 232 numbers, dates of birth, and places of employment of the spouses
 233 and children of such personnel; and the names and locations of
 234 schools and day care facilities attended by the children of such
 235 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 236 the State Constitution if the personnel have made reasonable
 237 efforts to protect such information from being accessible
 238 through other means available to the public. This sub-
 239 subparagraph is subject to the Open Government Sunset Review Act
 240 in accordance with s. 119.15 and shall stand repealed on October
 241 2, 2019, unless reviewed and saved from repeal through
 242 reenactment by the Legislature.

243 n. The home addresses, telephone numbers, dates of birth,
 244 and photographs of current or former impaired practitioner
 245 consultants who are retained by an agency or current or former
 246 employees of an impaired practitioner consultant whose duties
 247 result in a determination of a person's skill and safety to
 248 practice a licensed profession; the names, home addresses,
 249 telephone numbers, dates of birth, and places of employment of
 250 the spouses and children of such consultants or their employees;

251 and the names and locations of schools and day care facilities
 252 attended by the children of such consultants or employees are
 253 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 254 Constitution if a consultant or employee has made reasonable
 255 efforts to protect such information from being accessible
 256 through other means available to the public. This sub-
 257 subparagraph is subject to the Open Government Sunset Review Act
 258 in accordance with s. 119.15 and shall stand repealed on October
 259 2, 2020, unless reviewed and saved from repeal through
 260 reenactment by the Legislature.

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

276 through reenactment by the Legislature.

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

294 3. An agency that is the custodian of the information
 295 specified in subparagraph 2. and that is not the employer of the
 296 officer, employee, justice, judge, or other person specified in
 297 subparagraph 2. shall maintain the exempt status of that
 298 information only if the officer, employee, justice, judge, other
 299 person, or employing agency of the designated employee submits a
 300 written request for maintenance of the exemption to the

301 | custodial agency.

302 | 4. The exemptions in this paragraph apply to information
 303 | held by an agency before, on, or after the effective date of the
 304 | exemption.

305 | 5. Except as otherwise expressly provided in this
 306 | paragraph, this paragraph is subject to the Open Government
 307 | Sunset Review Act in accordance with s. 119.15, and shall stand
 308 | repealed on October 2, 2017, unless reviewed and saved from
 309 | repeal through reenactment by the Legislature.

310 | Section 2. The Legislature finds that it is a public
 311 | necessity to expand the exemption from public records
 312 | requirements that applies to the home addresses, telephone
 313 | numbers, dates of birth, and photographs of firefighters
 314 | certified under s. 633.408; the home addresses, telephone
 315 | numbers, photographs, dates of birth, and places of employment
 316 | of the spouses and children of such firefighters; and the names
 317 | and locations of schools and day care facilities attended by the
 318 | children of such firefighters to include former firefighters and
 319 | their spouses and children. The personal identifying and
 320 | location information of other former first responders, such as
 321 | former law enforcement officers, and their family members is
 322 | currently exempt from public records requirements. Firefighters
 323 | often respond to serious emergency situations ranging from
 324 | domestic violence to homicide, and the release of personal
 325 | identifying and location information may place former

326 firefighters and their family members in danger of serious
327 physical or emotional harm by hostile individuals. The
328 Legislature further finds that the harm that may result from the
329 release of such identifying and location information outweighs
330 any public benefit that may be derived from the disclosure of
331 such information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 397 Pub. Rec./Victim of Alleged Sexual Harassment/Identifying Information
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Raschein and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N, As CS	Moore	Harrington
2) Government Accountability Committee		Moore <i>AM</i>	Williamson <i>Law</i>

SUMMARY ANALYSIS

Current law provides public record exemptions for various types of information related to agency investigations. Information that is exempt or confidential and exempt from public record requirements includes information related to complaints of discrimination, information related to complaints of misconduct, and information revealing the identity of a victim of certain crimes.

The bill amends s. 119.071, F.S., to provide that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from public record requirements. The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.³

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Exemptions for Certain Information Related to Agency Investigations

Currently, s. 119.071(2), F.S., provides public record exemptions for various types of information related to agency investigations. Information that is exempt or confidential and exempt⁵ from public record requirements includes information related to complaints of discrimination,⁶ information related to complaints of misconduct,⁷ and information revealing the identity of a victim of certain crimes.⁸ There is not currently an exemption for information that could reveal the identity of an alleged victim of sexual harassment.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

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

⁶ Section 119.071(2)(g), F.S.

⁷ Section 119.071(2)(k), F.S.

⁸ Sections 119.071(2)(h)1. and 119.071(2)(j), F.S.

Effect of Proposed Changes

The bill amends s. 119.071, F.S., to provide that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from public record requirements.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect personal identifying information of alleged victims because disclosure of the information could place them at risk of further harassment and retaliation. In addition, the potential for disclosure of identifying information could discourage alleged victims from reporting instances of alleged harassment.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; 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. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information of an alleged victim in an allegation of sexual harassment because disclosure of such information could place alleged victims at risk of further harassment and retaliation and could create a disincentive for alleged victims to report instances of alleged harassment. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 23, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the list of information that is protected by the public record exemption and replaced it with the term "personal identifying information."

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for personal identifying
 5 information of the alleged victim in an allegation of
 6 sexual harassment; providing for future legislative
 7 review and repeal of the exemption; providing a
 8 statement of public necessity; providing an effective
 9 date.

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

12
 13 Section 1. Paragraph (m) is added to subsection (2) of
 14 section 119.071, Florida Statutes, to read:

15 119.071 General exemptions from inspection or copying of
 16 public records.—

17 (2) AGENCY INVESTIGATIONS.—

18 (m) Personal identifying information of the alleged victim
 19 in an allegation of sexual harassment is confidential and exempt
 20 from s. 119.07(1) and s. 24(a), Art. I of the State
 21 Constitution. This paragraph is subject to the Open Government
 22 Sunset Review Act in accordance with s. 119.15 and shall stand
 23 repealed on October 2, 2022, unless reviewed and saved from
 24 repeal through reenactment by the Legislature.

25 Section 2. The Legislature finds that it is a public

26 necessity that personal identifying information of the alleged
27 victim in an allegation of sexual harassment be made
28 confidential and exempt from s. 119.07(1), Florida Statutes, and
29 s. 24(a), Article I of the State Constitution. The disclosure of
30 such information could harm alleged victims by placing them at
31 risk of further harassment and retaliation. Additionally, the
32 potential for disclosure of such information could create a
33 disincentive for alleged victims to report instances of alleged
34 harassment. The Legislature finds that the potential harm that
35 may result from the release of such information outweighs any
36 public benefit that may be derived from the disclosure of such
37 information.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Government Accountability
 2 Committee
 3 Representative Raschein offered the following:

Amendment (with title amendment)

Remove line 21 and insert:

7 Constitution. Such information may be disclosed to another
 8 governmental entity in the furtherance of its official duties
 9 and responsibilities. This paragraph is subject to the Open
 10 Government

11 -----
 12
 13 T I T L E A M E N D M E N T

14 Remove line 6 and insert:

15 sexual harassment; authorizing release of such information
 16 in certain instances; providing for future legislative

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 493 Enhanced Safety for School Crossings
SPONSOR(S): Transportation & Infrastructure Subcommittee; Toledo and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee	10 Y, 0 N	Proctor	Davis
3) Government Accountability Committee		Johnson	Williamson

SUMMARY ANALYSIS

Current law requires the Department of Transportation (DOT) to adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways surrounding all public and private schools. A school zone located on a state-maintained primary or secondary road is maintained by DOT. Counties are responsible for maintaining school zones located outside of any municipality and on a county road. Municipalities are responsible for maintaining school zones located in a municipality. A school zone maintained by a county or municipality is periodically inspected to determine whether or not the school zone is being properly maintained.

The bill requires DOT to evaluate the viability and cost of establishing a uniform system for the designation of safe school crossing locations on arterial or collector roads within a one-mile radius of all schools. The bill requires DOT to report its findings to the Governor and Legislature before January 1, 2018.

The bill may have a negative, but likely insignificant fiscal impact to DOT for conducting the study.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 316.1895, F.S., provides for the establishment of school speed zones. The Department of Transportation (DOT) must adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways surrounding all schools, public and private.¹ DOT compiles, publishes, and transmits a manual containing all specifications and requirements with respect to the system of devices established for such streets and highways to the governing body of each county and municipality, and DOT and each county and municipality install and maintain such traffic and pedestrian control devices in conformity with the uniform system.²

Upon request from the appropriate local government, DOT installs and maintains traffic and pedestrian control devices on state-maintained roads for all prekindergarten early-intervention schools that receive federal funding through the Headstart program.³

A school zone located on a state-maintained primary or secondary road is maintained⁴ by DOT. However, nothing in law prohibits DOT from entering into agreements with counties or municipalities whereby the local governmental entity would maintain specified school zones on state-maintained primary or secondary roads.⁵

Counties are responsible for maintaining school zones located outside of any municipality and on a county road.⁶ Municipalities are responsible for maintaining school zones located in a municipality.⁷ A school zone maintained by a county or municipality is periodically inspected to determine whether or not the school zone is being properly maintained.⁸

A school zone speed limit may not be less than 15 miles per hour except by local regulation. No school zone speed limit may be more than 20 miles per hour in an urbanized area.⁹ Such speed limit may be in force only during those times 30 minutes before, during, and 30 minutes after the periods of time when pupils are arriving at a regularly scheduled breakfast program or a regularly scheduled school session and leaving a regularly scheduled school session.¹⁰

A person may not drive a vehicle on a roadway designated as a school zone at a speed greater than that posted in the school zone. A violation of the speed limits in school zones is cited as a moving violation, punishable as provided in Ch. 318, F.S.¹¹

¹ Section 316.1895(1)(a), F.S.

² Section 316.1895(1)(b), F.S.

³ Section 316.1895(2), F.S.

⁴ Section 316.1895(3)(d), F.S., provides that the term "maintained" with respect to any school zone means the care and maintenance of all school zone signs, markers, traffic control devices, and pedestrian control devices.

⁵ Section 316.1895(3)(a), F.S.

⁶ Section 316.1895(3)(b), F.S.

⁷ Section 316.1895(3)(c), F.S.

⁸ Section 316.1895(4)(a) and (b), F.S.

⁹ Section 334.03(35), F.S., provides that the term "urbanized area" means a geographic region comprising as a minimum the area inside an urban place of 50,000 or more persons, as designated by the United States Bureau of the Census, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Urban areas with a population of fewer than 50,000 persons which are located within the expanded boundary of an urbanized area are not separately recognized.

¹⁰ Section 316.1895(5), F.S.

¹¹ Section 316.1895(10), F.S.

Proposed Changes

The bill requires DOT to evaluate the viability and cost of a uniform system of specific, high-visibility pavement markings and signage for use on arterial roads¹² or collector roads¹³ within a one-mile radius of all schools, public and private, to designate safe school crossing locations. In its evaluation, DOT may consider implementation of new technology or innovations that enhance pedestrian and crosswalk visibility. Before January 1, 2018, DOT must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives providing the findings of its study and any recommendations for legislation relating to safe school crossing locations.

B. SECTION DIRECTORY:

Section 1 requires DOT to evaluate the viability and cost of a uniform system of specific, high-visibility pavement markers to designate as safe school crossing locations.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOT may incur expenditures associated with conducting the school crossing evaluation and preparing the report. These costs are indeterminate, but likely insignificant, and can be absorbed within existing department resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹² Section 334.03(1), F.S., defines "arterial road" as a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, every United States numbered highway is an arterial road.

¹³ Section 334.03(4), F.S., defines "collector road" as a route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Transportation & Infrastructure Subcommittee adopted a Proposed Committee Substitute (PCS) to HB 493. The committee substitute differs from the bill as originally filed since it requires DOT to study the issue of safe school crossing locations. The bill as originally filed required DOT to establish safe school crossing locations, and provided requirements for such locations. The PCS also added the Governor to the list of entities that will receive DOT's report on the viability of designating safe school crossing locations.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

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A bill to be entitled
 An act relating to enhanced safety for school
 crossings; requiring the Department of Transportation
 to evaluate the viability and cost of a uniform system
 of high-visibility markings and signage for
 designation of safe school crossings, subject to
 certain requirements; authorizing the department to
 consider in its evaluation implementation of new
 technology or innovations that enhance pedestrian and
 crosswalk visibility; requiring a report; providing an
 effective date.

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

Section 1. Safe school crossing locations; evaluation by
Department of Transportation.—The Department of Transportation
shall evaluate the viability and cost of a uniform system of
specific, high-visibility pavement markings and signage for use
on arterial roads or collector roads, as defined in s. 334.03,
Florida Statutes, within a 1-mile radius of all schools, public
and private, to designate safe school crossing locations. In its
evaluation, the department may consider implementation of new
technology or innovations that enhance pedestrian and crosswalk
visibility. Before January 1, 2018, the department shall submit
a report to the Governor, the President of the Senate, and the

CS/HB 493

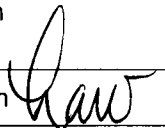
2017

26 | Speaker of the House of Representatives providing the findings
27 | of its study and any recommendations for legislation relating to
28 | safe school crossing locations.

29 | Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 521 Vote-by-Mail Ballots
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	15 Y, 0 N	Toliver	Harrington
2) Government Accountability Committee		Toliver FT	Williamson 

SUMMARY ANALYSIS

Florida law allows an elector to cast his or her ballot by mail. Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute. Once the elector has completed his or her vote-by-mail ballot, the elector may choose to mail, deliver, or have delivered the completed ballot to the supervisor of elections (supervisor).

Early voting allows voters to vote in advance of an upcoming election in specified locations. The supervisor must allow a voter to vote early in his or her main office or in any established branch offices. In addition to those mandatory early voting sites, a supervisor may designate certain additional locations as early voting sites.

The bill allows an elector to personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of Elections within the Department of State must to adopt rules for the receipt of these vote-by-mail ballots.

The bill may have an insignificant fiscal impact on the state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vote-by-mail Ballots

Florida law allows an elector to cast his or her ballot by mail.¹ Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute.² In brief, an elector may request a vote-by-mail ballot from his or her supervisor of elections (supervisor).³ Thereafter, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,⁴ and a secrecy envelope for returning the ballot.⁵ Once the elector has completed the ballot and inserted and sealed the ballot within the secrecy envelope, the elector may choose to "[m]ail, deliver, or have delivered the completed mailing envelope" to the supervisor.⁶

Early Voting

Early voting allows voters to vote in advance of an upcoming election in specified locations.⁷ The supervisor must allow a voter to vote early in his or her main office or in any established branch offices.⁸ In addition to those mandatory early voting sites, a supervisor, at his or her discretion, may designate any of the following locations as early voting sites: city hall; permanent public library facility; fairground; civic center; courthouse; county commission building; stadium; convention center; and government-owned senior center.⁹

In addition, a supervisor may designate one early voting site per election in an area of the county that does not have any of the sites listed.¹⁰ Each county is required to operate at least as many early voting sites as it did in the 2012 general election.¹¹

Each county must begin early voting by the 10th day before an election that contains state or federal races and cannot end early voting prior to the third day before that election.¹² However, at the supervisor's discretion, early voting may be offered up to 15 days before an election and continue until the second day before that election.¹³ Each early voting site must be open at least eight hours per day and may continue operating for up to a maximum of 12 hours per day.¹⁴

Effect of the Bill

The bill allows an elector to personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of Elections (Division) within the Department of State is required to adopt rules for the receipt of these vote-by-mail ballots.

¹ Section 101.62, F.S.

² See ss. 101.6105, 101.6106, 101.6107, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, and 101.698, F.S.

³ Section 101.62, F.S.

⁴ Section 101.65, F.S.

⁵ Section 101.64(1), F.S. Prior to vote-by-mail ballot being sent to the voter, the envelope must be addressed to the supervisor.

⁶ Section 101.65, F.S.

⁷ Section 101.657(1)(a), F.S.

⁸ *Id.* Branch offices of the supervisor must be a permanent facility and must have been designated and used as such for at least one year prior to the election.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 101.657(1)(d), F.S.

¹³ *Id.*

¹⁴ *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 101.64, F.S., relating to the delivery of vote-by-mail ballots.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on the Division because it requires the Division to adopt rules governing the receipt of the ballots at early voting sites. In addition, the bill may have an insignificant negative fiscal impact on local governments because early voting sites will be required to accept vote-by-mail ballots.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Division to adopt uniform rules for the receipt of vote-by-mail ballots at early voting sites.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to vote-by-mail ballots; amending s.
 3 101.64, F.S.; authorizing an absent elector to
 4 personally deliver his or her completed vote-by-mail
 5 ballot to an early voting site during specified hours;
 6 requiring the Division of Elections to adopt rules;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (5) is added to section 101.64,
 12 Florida Statutes, to read:

13 101.64 Delivery of vote-by-mail ballots; envelopes; form;
 14 early voting sites.—

15 (5) An absent elector may vote by personally delivering
 16 his or her completed vote-by-mail ballot to an early voting site
 17 during the early voting period hours established under s.
 18 101.657. The Division of Elections of the Department of State
 19 shall adopt uniform rules for the receipt of the ballots.


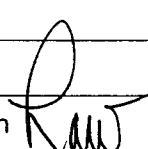
20 Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 599 Public Works Projects

SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Williamson and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
2) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N	Darden	Miller
3) Government Accountability Committee		Moore 	Williamson 

SUMMARY ANALYSIS

Contracts for construction services that are projected to cost more than a specified threshold must be competitively awarded. Specifically, state contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid. Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the estimated cost exceeds \$300,000. The solicitation of competitive bids or proposals must be publicly advertised in the Florida Administrative Register.

The bill creates s. 255.0992, F.S., relating to public works projects. The bill defines the terms "political subdivision" and "public works project." It prohibits the state or a political subdivision, except when required by state or federal law, from requiring a contractor, subcontractor, or material supplier or carrier engaged in a public works project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is otherwise qualified to do the work described. This provision does not apply to vendors that have been convicted of a public entity crime or have been found to have committed discrimination.

The bill's prohibitions apply only to public works projects of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation.

The bill does not apply to contracts executed by the Department of Transportation under ch. 337, F.S.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Labor and Wage Laws

The National Labor Relations Act of 1935¹ and the Labor Management Relations Act of 1947² constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.³ A state may set the rate higher than the federal minimum, but not lower.⁴ The act also requires employers to pay time and a half to their employees for overtime hours worked,⁵ and establishes standards for recordkeeping⁶ and child labor.⁷ Over 135 million workers are covered under the act,⁸ most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered “exempt” from the FLSA overtime requirements.⁹

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.¹⁰ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”¹¹ The Executive Order hourly minimum wage in effect from January 1, 2017, through December 31, 2017, is \$10.20.¹²

The Davis-Bacon Act¹³ applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and

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

² 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

³ 29 U.S.C. s. 206.

⁴ 29 U.S.C. s. 218(a).

⁵ 29 U.S.C. s. 207(a)(1).

⁶ 29 U.S.C. s. 211.

⁷ 29 U.S.C. s. 212.

⁸ United States Department of Labor, *Wage and Hour Division: Resources for Workers*, <http://www.dol.gov/whd/workers.htm> (last visited Feb. 24, 2017).

⁹ 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited Feb. 24, 2017).

¹⁰ Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited Mar. 11, 2017).

¹¹ *Id.*

¹² 81 Fed. Reg. 64513 (Sept. 20, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-20/pdf/2016-22515.pdf> (last visited Mar. 11, 2017).

¹³ Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

decorating) of public buildings or public works.¹⁴ Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.¹⁵ The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.¹⁶ Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon “related Acts.”¹⁷ The “related Acts” include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.¹⁸

State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.¹⁹ It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.²⁰

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”²¹ Employers must pay employees no less than the minimum wage for all hours worked in Florida.²² The current state minimum wage is \$8.10 per hour,²³ which is higher than the federal rate.²⁴

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.²⁵

¹⁴ United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited Feb. 24, 2017).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf> (last visited Feb. 24, 2017). Examples of “related Acts” are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

¹⁸ *Id.*

¹⁹ Art. I, s. 6, FLA. CONST.

²⁰ See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

²¹ Art. X, s. 24(a), FLA. CONST.

²² Art. X, s. 24(c), FLA. CONST.

²³ Department of Economic Opportunity, *Display Posters and Required Notices*, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited Feb. 24, 2017).

²⁴ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Feb. 24, 2017).

²⁵ Section 255.29, F.S.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.²⁶ A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.²⁷

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.²⁸

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications²⁹ to those of non-residents.³⁰ If a construction contract is funded by local funds, the contract may, but is not required to, contain such a provision.³¹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.³²

For a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor's maintaining an office or place of business within a particular local jurisdiction;
- The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.³³

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a "living wage,"³⁴ while others have adopted ordinances requiring apprenticeship programs.³⁵

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.³⁶ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.³⁷ The purpose of certification is to ensure professional and financial competence

²⁶ See s. 255.0525, F.S.; see also chapters 60D-5.002 and 60D-5.0073, F.A.C.

²⁷ Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

²⁸ For counties, municipalities, and political subdivisions, similar publishing provisions apply. See Section 255.0525(2), F.S.

²⁹ Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

³⁰ Section 255.099(1), F.S.

³¹ *Id.*

³² Section 255.099(1)(b), F.S.

³³ Section 255.099(2), F.S.

³⁴ See, e.g., Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

³⁵ See Charlie Frago, *St. Pete council approves mandatory apprentice program for city projects*, Tampa Bay Times (May 7, 2015), available at <http://www.tampabay.com/news/localgovernment/st-pete-council-approves-mandatory-apprentice-program-for-city-projects/2228783> (last visited Mar. 11, 2017).

³⁶ Section 337.14(1), F.S. and ch. 14-22, F.A.C.

³⁷ Section 337.14(2), F.S.

relating to the performance of construction contracts by evaluating bidders “with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification.”³⁸

Effect of Proposed Changes

The bill creates s. 255.0992, F.S., relating to public works projects. It defines the following terms:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

The bill provides that except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law. The bill specifies that this provision does not apply to vendors listed in ss. 287.133³⁹ and 287.134, F.S.⁴⁰

The bill does not apply to contracts executed by DOT under ch. 337, F.S.

B. SECTION DIRECTORY:

Section 1. creates s. 255.0992, F.S., relating to public works projects.

Section 2. provides an effective date of July 1, 2017.

³⁸ Section 337.14(1), F.S.

³⁹ Section 287.133, F.S., prohibits a vendor that has been convicted of a public entity crime from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state, any of its departments or agencies, or any political subdivision.

⁴⁰ Section 287.134, F.S., prohibits an entity that has been found by a court to have committed discrimination based on race, gender, national origin, disability, or religion from being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with the state or any department or agency of the state.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

2. Expenditures:

The bill does not appear to impact state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Oversight, Transparency & Administration Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Revised the definition of “public works project” so that it only includes activities of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation; and
- Clarified that although the state or a political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid or being awarded the contract if such individual is qualified and able to perform the work, this provision does not apply to vendors listed in ss. 287.133 and 287.134, F.S.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

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A bill to be entitled
 An act relating to public works projects; creating s.
 255.0992, F.S.; providing definitions; prohibiting the
 state and political subdivisions that contract for
 public works projects from imposing restrictive
 conditions on certain contractors, subcontractors, or
 material suppliers or carriers; prohibiting the state
 and political subdivisions from restricting qualified
 bidders from submitting bids or being awarded
 contracts; providing applicability; providing an
 effective date.

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

Section 1. Section 255.0992, Florida Statutes, is created
 to read:

255.0992 Public works projects; prohibited governmental
 actions.-

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

(a) "Political subdivision" means a separate agency or
 unit of local government created or established by law or
 ordinance and the officers thereof. The term includes, but is
 not limited to, a county; a city, town, or other municipality;
 or a department, commission, authority, school district, taxing
 district, water management district, board, public corporation,

26 institution of higher education, or other public agency or body
 27 thereof authorized to expend public funds for construction,
 28 maintenance, repair, or improvement of public works.

29 (b) "Public works project" means an activity of which 50
 30 percent or more of the cost will be paid from state-appropriated
 31 funds that were appropriated at the time of the competitive
 32 solicitation and which consists of the construction,
 33 maintenance, repair, renovation, remodeling, or improvement of a
 34 building, road, street, sewer, storm drain, water system, site
 35 development, irrigation system, reclamation project, gas or
 36 electrical distribution system, gas or electrical substation, or
 37 other facility, project, or portion thereof that is owned in
 38 whole or in part by any political subdivision.

39 (2) (a) Except as required by federal or state law, the
 40 state or any political subdivision that contracts for a public
 41 works project may not require that a contractor, subcontractor,
 42 or material supplier or carrier engaged in such project:

43 1. Pay employees a predetermined amount of wages or
 44 prescribe any wage rate;

45 2. Provide employees a specified type, amount, or rate of
 46 employee benefits;

47 3. Control, limit, or expand staffing; or

48 4. Recruit, train, or hire employees from a designated,
 49 restricted, or single source.

50 (b) The state or any political subdivision that contracts

51 for a public works project may not prohibit any contractor,
52 subcontractor, or material supplier or carrier able to perform
53 such work who is qualified, licensed, or certified as required
54 by state law to perform such work from submitting a bid on the
55 public works project or being awarded any contract, subcontract,
56 material order, or carrying order. This paragraph does not apply
57 to vendors listed under ss. 287.133 and 287.134.

58 (3) This section does not apply to contracts executed
59 under chapter 337.

60 Section 2. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Government Accountability
2 Committee
3 Representative Williamson offered the following:

Amendment (with title amendment)

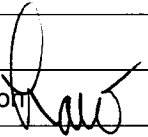
6 Remove lines 55-56 and insert:
7 public works project. This paragraph does not apply

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

11 Remove lines 9-10 and insert:
12 bidders from submitting bids; providing applicability;
13 providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Reemployment Assistance Fraud
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N	Whittaker	Harrington
2) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Johnson	Vickers
3) Government Accountability Committee		Whittaker	Williamson 

SUMMARY ANALYSIS

Florida's unemployment insurance program was created by the Legislature in 1937, and rebranded as the "reemployment assistance" program in 2012. The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws. The Department of Highway Safety and Motor Vehicles (DHSMV) holds motor vehicle records containing personal information about drivers and motor vehicle owners, including identification cards. A driver license issued by DHSMV must contain a color photograph and signature of the licensee. DHSMV must maintain a record of the digital image and signature of the licensee. Reproductions from the file are exempt from public disclosure and may only be issued for specified purposes. Current law allows DHSMV to release the images and signatures to certain governmental entities; however, DEO is not listed as an entity that may receive the information.

The bill permits DHSMV to provide the image file and signature of licensees to DEO pursuant to an interagency agreement to facilitate the validation of reemployment assistance claims and the identification of fraudulent or false claims for benefits.

The bill may have a negative fiscal impact on DHSMV due to costs associated with reprogramming its database to allow DEO access to driver records. It does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Reemployment Assistance

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.² States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act or the Social Security Act requirements.³

Florida's unemployment insurance program was created by the Legislature in 1937,⁴ and rebranded as the "reemployment assistance" program in 2012.⁵ The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws, primarily through its Division of Workforce Services.

An unemployed individual must apply to DEO for benefits using Florida's Online Reemployment Assistance System. The application process requires the claimant to provide his or her social security number and a secondary form of identification.⁶ In order to receive benefits, an applicant must also meet certain monetary and nonmonetary eligibility requirements.⁷

Fraudulent Claims

When an unemployed individual files a claim for reemployment assistance, DEO validates the claimant's identity based on daily cross matches with external entities obtained through interagency agreements.⁸ To further validate the claimant's identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).⁹

Motor Vehicle Records

DHSMV holds motor vehicle records containing personal information about drivers and motor vehicle owners. The term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by DHSMV.¹⁰

¹ United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited March 9, 2017).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, *Unemployment Insurance Program Description and Legislative History*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html> (last visited March 9, 2017).

³ *Id.*

⁴ Chapter 18402, L.O.F.

⁵ Chapter 2012-30, L.O.F.

⁶ Rule 73B-11.013(6), F.A.C.

⁷ Section 443.091, F.S.

⁸ 2016 DEO Agency Bill Analysis for HB 1017 (on file with the Oversight, Transparency & Administration Subcommittee).

⁹ DEO has an agreement with DHSMV through an interagency agreement (Memorandum of Understanding), which allows it to obtain limited information agreed upon in the Memorandum of Understanding. 2017 DHSMV Bill Analysis for HB 671 (March 6, 2017) at p. 2 (on file with the Oversight, Transparency & Administration Subcommittee).

¹⁰ Section 119.0712(2)(a), F.S.

Digital Imaged Licenses

A driver license must contain, in pertinent part, a color photograph or digital image of the licensee and the signature of the licensee.¹¹ DHSMV must maintain a record of the digital image and signature of the licensee, together with other data required for identification and retrieval.¹²

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹³ to provide access to public records.¹⁴ Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records. As such, DHSMV is required to make all motor vehicle records available to the public unless the Legislature has enacted an exemption to protect the record.

Public Record Exemptions for DHSMV Records

Section 119.0712(2), F.S., provides that personal information, including highly restricted personal information as defined in the Driver's Privacy Protection Act (DPPA),¹⁵ contained in a motor vehicle record is confidential pursuant to DPPA. Such information may be released only as authorized by DPPA; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

DPPA is a federal statute requiring the states to restrict public access to state motor vehicle records. Although DPPA begins with a general prohibition against disclosure of personal information, 14 exceptions to the general prohibition follow.¹⁶ In addition, states may adopt the permissible exceptions or may enact more restrictive measures than DPPA requires. However, states may not allow more permissible access to motor vehicle records than DPPA allows.

The Florida Statutes further restrict access to certain motor vehicle records in s. 322.142(4), F.S. The law provides that reproductions from the film negative or print file or record of the digital image and signature of the licensee are exempt from public records requirements. The law, however, provides for specific exceptions for specified purposes. Reproductions may be made:

- For DHSMV administrative purposes;
- For the issuance of duplicate licenses;
- In response to law enforcement agency requests;

¹¹ Section 322.14 (1)(a) and (b), F.S.

¹² Section 322.142(4), F.S.

¹³ Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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 agency.

¹⁴ Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

¹⁵ 18 U.S.C. s. 2721 *et seq.*; DPPA defines the term "personal information" as information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information. The term "highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information. Section 2725(3) and (4) of the DPPA.

¹⁶ Section 2721(b)(1)-(14).

- To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the agencies;
- To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters;
- To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations;
- To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations and to verify identity and expedite the determination of eligibility for public assistance;
- To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse and to prevent health care fraud;
- To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code;
- To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin; and
- To the following persons for the purpose of identifying a person as part of the official work of the court:
 - A justice or judge of this state;
 - An employee of the state courts system who works in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or
 - A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Although the law provides access to various governmental entities, DEO does not currently have access to DHSMV records that contain a driver's image or signature.

Effect of the Bill

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes DHSMV to disclose images and signatures of licensees to DEO pursuant to an interagency agreement.

B. SECTION DIRECTORY:

- Section 1. Amends s. 322.142, F.S., authorizing DHSMV to provide DEO with the image and signature of licensees.
- Section 2. Provides and effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DHSMV, it will need to alter its system programming in order for DEO to access driver records. DHSMV estimates that it may take up to 315 hours for programming and implementation and that such programming and implementation may cost DHSMV \$20,025.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁷ 2017 DHSMV Bill Analysis for HB 671, March 6, 2017, at 3 (on file with the Oversight, Transparency & Administration Subcommittee).

1 A bill to be entitled
 2 An act relating to reemployment assistance fraud;
 3 amending s. 322.142, F.S.; adding the Department of
 4 Economic Opportunity as an entity that may be issued
 5 reproductions from certain files or digital records
 6 for specified reasons; providing an effective date.

7
 8 WHEREAS, the incidence of identity theft and resulting
 9 fraud has reached a crisis level, and

10 WHEREAS, identity theft is especially problematic in this
 11 state, which the Federal Trade Commission reports has the
 12 highest per capita rate of identity theft in the nation, and

13 WHEREAS, stolen identities are used to commit an ever-
 14 expanding range of fraud, including public assistance fraud, and

15 WHEREAS, identity theft and related fraud harm those whose
 16 identities are stolen, rob the social safety net of precious
 17 resources, impose unwarranted costs on taxpayers, and undermine
 18 public confidence in government, and

19 WHEREAS, the Department of Economic Opportunity's efforts
 20 to detect, prevent, and prosecute fraud have revealed that
 21 thousands of fraudulent claims for reemployment assistance are
 22 being filed, and

23 WHEREAS, the Department of Economic Opportunity has made
 24 prevention, detection, and prosecution of reemployment
 25 assistance fraud a top priority and has identified additional

26 resources and tools necessary to effectively combat fraud, NOW,
27 THEREFORE,

28

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

30

31 Section 1. Paragraphs (k), (l), and (m) of subsection (4)
32 of section 322.142, Florida Statutes, are redesignated as
33 paragraphs (l), (m), and (n), respectively, and a new paragraph
34 (k) is added to that subsection to read:

35 322.142 Color photographic or digital imaged licenses.—

36 (4) The department may maintain a film negative or print
37 file. The department shall maintain a record of the digital
38 image and signature of the licensees, together with other data
39 required by the department for identification and retrieval.
40 Reproductions from the file or digital record are exempt from
41 the provisions of s. 119.07(1) and may be made and issued only:

42 (k) To the Department of Economic Opportunity pursuant to
43 an interagency agreement to facilitate the validation of
44 reemployment assistance claims and the identification of
45 fraudulent or false reemployment assistance claims;

46 Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6031 Elections
SPONSOR(S): Geller
TIED BILLS: IDEN./SIM. BILLS: SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington
2) Government Accountability Committee		Toliver <i>FT</i>	Williamson <i>Law</i>

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required at the time of election or at the time the candidate assumes office.

Current law provides a residency requirement for write-in candidates. Specifically, s. 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. The Florida Supreme Court recently found the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which require residency at the time of election or when the candidate assumes office and not at the time of qualification.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by Florida Supreme Court.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, including residency requirements, for legislators,¹ county commissioners,² justices,³ judges,⁴ and the governor, lieutenant governor, and members of the cabinet.⁵

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district in which elected, and must have resided in the state for two years prior to the election.⁶
- A county commissioner must be elected from the district from which he or she resides.⁷
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.⁸
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.⁹

The Florida Constitution requires the governor, lieutenant governor, and members of the cabinet to meet residency requirements at the time of election.¹⁰ In addition, state courts have interpreted the Florida Constitution to establish specific dates by which residency requirements must be met for certain constitutional officers. Legislators¹¹ and county commissioners¹² must be residents of the district represented by the office sought at the time of election, while justices and judges must be residents at the time of assuming office.¹³ The Florida Supreme Court has held that the Legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices.¹⁴

Residency Requirements for Write-in Candidates

Section 99.0615, F.S., requires a write-in candidate to reside, at the time of qualification, within the district represented by the office.

In 2016, the Florida Supreme Court, in *Brinkmann v. Francois*,¹⁵ held that s. 99.0615, F.S., was unconstitutional because the timing of the residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established in the Florida Constitution. The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.¹⁶ Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a

¹ Article III, s. 15(c), FLA. CONST.

² Article VIII, s. 1(e), FLA. CONST.

³ Article V, s. 8, FLA. CONST.

⁴ *Id.*

⁵ Article IV, s. 5, FLA. CONST.

⁶ Article III, s. 15(c), FLA. CONST.

⁷ Article VIII, s. 1(e), FLA. CONST.

⁸ Article V, s. 8, FLA. CONST.

⁹ Article IV, s. 5(b), FLA. CONST.

¹⁰ Article IV, s. 5, Fla. Const.

¹¹ *Norman v. Ambler*, 46 So.3d 178, 183 (1st DCA 2010).

¹² *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988)

¹³ *Miller v. Mendez*, 804 So.2d 1243, 1247 (Fla. 2001).

¹⁴ *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

¹⁵ *Brinkmann v. Francois*, 184 So. 3d 504 (Fla. 2016).

¹⁶ *Id.*

write-in candidate.¹⁷ The court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the Florida Constitution and, therefore, the statute was unconstitutional.¹⁸

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the Florida Supreme Court.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is an election law.

2. Other:

None.

¹⁷ *Id.*

¹⁸ *Id.*

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 6031

2017

1 A bill to be entitled
2 An act relating to elections; repealing s. 99.0615,
3 F.S., relating to write-in candidate residency
4 requirements; providing an effective date.

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

7
8 Section 1. Section 99.0615, Florida Statutes, is repealed.
9 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7087 PCB OTA 17-06 OGSR/Protective Injunctions for Certain Types of Violence
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Davis
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington
1) Government Accountability Committee		Toliver <i>LT</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

Current law provides that specified personal identifying and location information held by the clerk and law enforcement agencies in conjunction with the automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence is confidential and exempt from public record requirements. The clerk of court is required to apprise a petitioner of his or her right to request in writing that such information be made exempt from public record requirements. The exemption provides that such information is exempt for five years after receipt of the written request. The automated process itself has not been created yet; it is estimated to be completed in summer 2017.

The bill extends the repeal dates for the public record exemptions under review by one year to allow for the development, testing, and implementation of the automated system.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. In 2011, the Legislature directed the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.⁶ This system requires the petitioner to provide the Association with personal identification and location information.

Public Record Exemptions under Review

In 2012, the Legislature created public record exemptions for information that reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other election means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.⁷ The information is exempt from public record requirements.⁸ The petitioner must be informed

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Chapter 2011-187, L.O.F.

⁷ Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b, F.S.

⁸ *Id.*

of his or her right to request, in writing, that such information be made exempt from public record requirements.⁹ The exemption expires five years after the request.¹⁰ Any state or federal agency authorized to have access to such information in furtherance of their statutory duties must be given access.¹¹

The 2012 public necessity statement for the exemptions provides that:¹²

Such information, if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally, if such information were publicly available, it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.

Pursuant to the Open Government Sunset Review Act the exemptions will repeal on October 2, 2017, unless reenacted by the Legislature.¹³

During the 2016 interim, subcommittee staff consulted with staff from the Association regarding the automated system and discovered that the system was still in the development stage. According to the Association, the system will likely be ready for testing in the spring of 2017 and ready for full implementation in the summer of 2017.

Effect of the Bill

The bill extends the repeal date for the public record exemptions under review by one year to allow for the development, testing, and implementation of the system.

B. SECTION DIRECTORY:

Section 1 amends s. 741.30, F.S., relating to domestic violence injunctions.

Section 2 amends s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence injunctions.

Section 3 provides an effective date of October 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Chapter 2012-154, L.O.F.

¹³ Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending ss. 741.30 and 784.046,
 4 F.S., which provide exemptions from public record
 5 requirements for personal identifying and location
 6 information of a petitioner requesting notification of
 7 service of an injunction for protection against
 8 domestic violence, repeat violence, sexual violence,
 9 and dating violence and other court actions related to
 10 the injunction held by the clerks and law enforcement
 11 agencies; extending the repeal dates; providing an
 12 effective date.

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

15
 16 Section 1. Paragraph (c) of subsection (8) of section
 17 741.30, Florida Statutes, is amended to read:

18 741.30 Domestic violence; injunction; powers and duties of
 19 court and clerk; petition; notice and hearing; temporary
 20 injunction; issuance of injunction; statewide verification
 21 system; enforcement; public records exemption.—

22 (8)

23 (c)1. Within 24 hours after the court issues an injunction
 24 for protection against domestic violence or changes, continues,
 25 extends, or vacates an injunction for protection against

26 domestic violence, the clerk of the court must forward a
 27 certified copy of the injunction for service to the sheriff with
 28 jurisdiction over the residence of the petitioner. The
 29 injunction must be served in accordance with this subsection.

30 2. Within 24 hours after service of process of an
 31 injunction for protection against domestic violence upon a
 32 respondent, the law enforcement officer must forward the written
 33 proof of service of process to the sheriff with jurisdiction
 34 over the residence of the petitioner.

35 3. Within 24 hours after the sheriff receives a certified
 36 copy of the injunction for protection against domestic violence,
 37 the sheriff must make information relating to the injunction
 38 available to other law enforcement agencies by electronically
 39 transmitting such information to the department.

40 4. Within 24 hours after the sheriff or other law
 41 enforcement officer has made service upon the respondent and the
 42 sheriff has been so notified, the sheriff must make information
 43 relating to the service available to other law enforcement
 44 agencies by electronically transmitting such information to the
 45 department.

46 5.a. Subject to available funding, the Florida Association
 47 of Court Clerks and Comptrollers shall develop an automated
 48 process by which a petitioner may request notification of
 49 service of the injunction for protection against domestic
 50 violence and other court actions related to the injunction for

51 protection. The automated notice shall be made within 12 hours
 52 after the sheriff or other law enforcement officer serves the
 53 injunction upon the respondent. The notification must include,
 54 at a minimum, the date, time, and location where the injunction
 55 for protection against domestic violence was served. When a
 56 petitioner makes a request for notification, the clerk must
 57 apprise the petitioner of her or his right to request in writing
 58 that the information specified in sub-subparagraph b. be held
 59 exempt from public records requirements for 5 years. The Florida
 60 Association of Court Clerks and Comptrollers may apply for any
 61 available grants to fund the development of the automated
 62 process.

63 b. Upon implementation of the automated process,
 64 information held by clerks and law enforcement agencies in
 65 conjunction with the automated process developed under sub-
 66 subparagraph a. which reveals the home or employment telephone
 67 number, cellular telephone number, home or employment address,
 68 electronic mail address, or other electronic means of
 69 identification of a petitioner requesting notification of
 70 service of an injunction for protection against domestic
 71 violence and other court actions related to the injunction for
 72 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
 73 the State Constitution, upon written request by the petitioner.
 74 Such information shall cease to be exempt 5 years after the
 75 receipt of the written request. Any state or federal agency that

76 is authorized to have access to such documents by any provision
 77 of law shall be granted such access in the furtherance of such
 78 agency's statutory duties, notwithstanding this sub-
 79 subparagraph. This sub-subparagraph is subject to the Open
 80 Government Sunset Review Act in accordance with s. 119.15 and
 81 shall stand repealed on October 2, 2018 ~~2017~~, unless reviewed
 82 and saved from repeal through reenactment by the Legislature.

83 6. Within 24 hours after an injunction for protection
 84 against domestic violence is vacated, terminated, or otherwise
 85 rendered no longer effective by ruling of the court, the clerk
 86 of the court must notify the sheriff receiving original
 87 notification of the injunction as provided in subparagraph 2.
 88 That agency shall, within 24 hours after receiving such
 89 notification from the clerk of the court, notify the department
 90 of such action of the court.

91 Section 2. Paragraph (c) of subsection (8) of section
 92 784.046, Florida Statutes, is amended to read:

93 784.046 Action by victim of repeat violence, sexual
 94 violence, or dating violence for protective injunction; dating
 95 violence investigations, notice to victims, and reporting;
 96 pretrial release violations; public records exemption.—

97 (8)

98 (c)1. Within 24 hours after the court issues an injunction
 99 for protection against repeat violence, sexual violence, or
 100 dating violence or changes or vacates an injunction for

101 protection against repeat violence, sexual violence, or dating
 102 violence, the clerk of the court must forward a copy of the
 103 injunction to the sheriff with jurisdiction over the residence
 104 of the petitioner.

105 2. Within 24 hours after service of process of an
 106 injunction for protection against repeat violence, sexual
 107 violence, or dating violence upon a respondent, the law
 108 enforcement officer must forward the written proof of service of
 109 process to the sheriff with jurisdiction over the residence of
 110 the petitioner.

111 3. Within 24 hours after the sheriff receives a certified
 112 copy of the injunction for protection against repeat violence,
 113 sexual violence, or dating violence, the sheriff must make
 114 information relating to the injunction available to other law
 115 enforcement agencies by electronically transmitting such
 116 information to the department.

117 4. Within 24 hours after the sheriff or other law
 118 enforcement officer has made service upon the respondent and the
 119 sheriff has been so notified, the sheriff must make information
 120 relating to the service available to other law enforcement
 121 agencies by electronically transmitting such information to the
 122 department.

123 5.a. Subject to available funding, the Florida Association
 124 of Court Clerks and Comptrollers shall develop an automated
 125 process by which a petitioner may request notification of

126 service of the injunction for protection against repeat
 127 violence, sexual violence, or dating violence and other court
 128 actions related to the injunction for protection. The automated
 129 notice shall be made within 12 hours after the sheriff or other
 130 law enforcement officer serves the injunction upon the
 131 respondent. The notification must include, at a minimum, the
 132 date, time, and location where the injunction for protection
 133 against repeat violence, sexual violence, or dating violence was
 134 served. When a petitioner makes a request for notification, the
 135 clerk must apprise the petitioner of her or his right to request
 136 in writing that the information specified in sub-subparagraph b.
 137 be held exempt from public records requirements for 5 years. The
 138 Florida Association of Court Clerks and Comptrollers may apply
 139 for any available grants to fund the development of the
 140 automated process.

141 b. Upon implementation of the automated process,
 142 information held by clerks and law enforcement agencies in
 143 conjunction with the automated process developed under sub-
 144 subparagraph a. which reveals the home or employment telephone
 145 number, cellular telephone number, home or employment address,
 146 electronic mail address, or other electronic means of
 147 identification of a petitioner requesting notification of
 148 service of an injunction for protection against repeat violence,
 149 sexual violence, or dating violence and other court actions
 150 related to the injunction for protection is exempt from s.

151 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
152 written request by the petitioner. Such information shall cease
153 to be exempt 5 years after the receipt of the written request.
154 Any state or federal agency that is authorized to have access to
155 such documents by any provision of law shall be granted such
156 access in the furtherance of such agency's statutory duties,
157 notwithstanding this sub-subparagraph. This sub-subparagraph is
158 subject to the Open Government Sunset Review Act in accordance
159 with s. 119.15 and shall stand repealed on October 2, 2018 ~~2017~~,
160 unless reviewed and saved from repeal through reenactment by the
161 Legislature.

162 6. Within 24 hours after an injunction for protection
163 against repeat violence, sexual violence, or dating violence is
164 lifted, terminated, or otherwise rendered no longer effective by
165 ruling of the court, the clerk of the court must notify the
166 sheriff or local law enforcement agency receiving original
167 notification of the injunction as provided in subparagraph 2.
168 That agency shall, within 24 hours after receiving such
169 notification from the clerk of the court, notify the department
170 of such action of the court.

171 Section 3. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 17-03 Elections
SPONSOR(S): Government Accountability Committee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Toliver <i>LT</i>	Williamson <i>Law</i>

SUMMARY ANALYSIS

The bill makes several changes to the Florida Election Code.

Current law allows municipalities to conduct their elections at a time of their choosing. The bill requires municipal elections to be held at one of four dates: at the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the first Tuesday after the first Monday in April in an odd-numbered or even-numbered year. The governing body of the municipality must choose on which of the dates to conduct its elections. The bill sets a format for runoff elections based on the four election dates and allows elected municipal officers to continue in office until the next municipal election held in accordance with the bill. The changes to municipal election dates do not take effect until July 1, 2020.

Current law requires a candidate for a state, district, county, or municipal position to resign from office if any part of the term will run concurrently with the office the candidate presently holds. The current resign-to-run provision does not apply to persons holding any federal office or seeking the office of President or Vice President. The bill requires state or local officers who qualify for federal public office to resign from the office they presently hold if the terms or any part thereof will run concurrently and sets the requirements for such resignations.

Current law only requires a ballot to indicate that a candidate is an incumbent when two or more candidates running for the same office in a primary election have the same or similar surnames. The bill requires that in any election the word "incumbent" must appear on the ballot beside the name of a candidate for reelection to public office when the office sought is not subject to term limits.

Current law allows candidates to qualify without party affiliation (NPA) despite being registered with a political party. The bill requires all candidates who qualify for office as an NPA candidate in partisan elections to be registered at the time of qualification as NPA. The bill also requires that an NPA candidate attest in writing that he or she is registered as NPA.

Current law requires a candidate to pay his or her qualification fee with a properly executed check. The bill allows a candidate to pay his or her qualification fee with a certified check as an alternative to paying with a properly executed check.

The bill may have a negative fiscal impact on the state and an indeterminate fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Municipal Election Dates

Current Situation

Article VI, s. 5(a) of the Florida Constitution requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election. Section 100.031, F.S., incorporates that constitutional provision into statute, but also requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal and district officer whose term will expire before the next general election.

Article VI, s. 6 of the Florida Constitution provides that registration and elections in municipalities must, and in other governmental entities created by statute may, be provided by general law. The Florida Election Code,¹ which is a collection of general laws, provides that it governs the conduct of municipal elections in the absence of an applicable special act, charter, or ordinance.² However, no act, charter, or ordinance may be adopted which conflicts with or exempts a municipality from any provision in The Florida Election Code that expressly applies to municipalities.³

Elections for municipal officers are conducted during the general election in November of even-numbered years unless the governing body of a municipality has adopted an ordinance to change the dates for qualifying and for the election of members of the governing body of the municipality.⁴ The ordinance may also provide for the orderly transition of office resulting from the date changes.⁵

Section 101.75, F.S., allows the governing body of a municipality to move the date of any municipal election to a date concurrent with any statewide or countywide election provided the election date and dates for qualifying for the election are specifically provided for in the ordinance.⁶ However, if the voting devices used in the county are not available to the municipality during the statewide or countywide election, the municipality may provide that its election will be held 30 days before or after the statewide or countywide election.⁷

Any member of the governing body of a municipality may be removed from office by the electors of the municipality provided certain requirements are met.⁸ If the requirements are met but the municipal officer does not resign his or her office, a municipal recall election is held for the removal of that officer.⁹ A municipal recall election is held in conjunction with a general or special election if such an election is held during the defined timeframe for conducting a recall election.¹⁰

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.¹¹

¹ Chapters 97-106, F.S., are known as "The Florida Election Code."

² Section 100.3605(1), F.S.

³ *Id.*

⁴ Section 100.3605(2), F.S.; *see also* s. 166.021(4), F.S.

⁵ Section 100.3605(2), F.S.

⁶ Section 101.75(3), F.S.

⁷ Section 101.75(1), F.S.

⁸ Section 100.361, F.S.

⁹ Section 100.361(4), F.S.

¹⁰ *Id.*

¹¹ Section 101.21, F.S.

Effect of the Bill

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers. The bill requires the governing body of a municipality to choose one of the following four dates on which to hold elections for municipal office:

- The general election in November of each even-numbered year; or
- The first Tuesday after the first Monday in November of each odd-numbered year; or
- The first Tuesday after the first Monday in April of an even-numbered year; or
- The first Tuesday after the first Monday in April of an odd-numbered year.

If a municipal charter or ordinance requires the municipality to conduct its election in a runoff format, the bill requires the municipality to choose one of following options:

	Initial Election	Runoff Election
Option 1	Primary Election (Tuesday, 10 weeks prior to General Election)	General Election
Option 2	Tuesday 10 weeks before the first Tuesday after the first Monday in November of odd-numbered years	First Tuesday after the first Monday in November of odd-numbered years
Option 3	Tuesday 10 weeks before the first Tuesday after the first Monday in April of even-numbered years	First Tuesday after the first Monday in April of even-numbered years
Option 4	Tuesday 10 weeks before the first Tuesday after the first Monday in April of odd-numbered years	First Tuesday after the first Monday in April of odd-numbered years

The bill does not require a municipality to alter or amend its charter. Any municipal charter provision that conflicts with the bill is automatically superseded without further action by the municipality. Likewise, any ordinance that conflicts with the bill is automatically superseded without any further action of the municipality.

The provisions of the bill that establish the method of selecting municipal officer election dates does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific time period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election held in accordance with the provisions of the bill.

The bill also repeals s. 101.75, F.S., which allows a municipality to change municipal officer election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

The bill specifies that this portion of the bill is effective on July 1, 2020.

Resign-to-Run

Current Situation

Current law requires state, district, county, or municipal public officers¹² to resign if that officer qualifies as a candidate for another office and the terms run concurrently.¹³ The resignation must be in writing

¹² Section 99.012(1)(a), F.S., defines the term "officer" to mean a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the Florida Constitution or laws of the state. With
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DATE: 3/27/2017

and once proffered it is irrevocable.¹⁴ The resignation must be submitted¹⁵ at least 10 days prior to first day of qualification for the office sought and is effective on the date the officer would take office, if elected, or the date the officer's successor is required to take office, whichever is earlier.¹⁶ However, the resign-to-run provision does not apply to persons holding any federal office or seeking the office of President or Vice President.¹⁷

Effect of the Bill

The bill requires state or local officers who qualify for federal public office to resign from the office they presently hold if the terms or any part thereof run concurrently. The resignation must be in writing and once proffered is irrevocable. The bill requires the resignation to be submitted no later than the date upon which the officer qualifies for office. The resignation is effective on the date the officer takes office, if elected, or the date the officer's successor is required to take office, whichever is earlier. Any resignation of an elected officer under these provisions results in the office held becoming vacant upon the effective date of the resignation.

The person to whom the candidate must submit his or resignation varies according to the office held. If the officer is an elected district, county, or municipal officer, the resignation must be submitted to the officer before whom the officer initially qualified. If the officer is an appointed district, county, or municipal officer, the resignation must be submitted to the person or authority which appointed him or her. Any person holding public office that is not a district, county, or municipal officer must submit his or her resignation to the Governor.

The bill also contains an automatic resignation provision that becomes effective if an officer, subject to the bill's provisions, qualifies for federal public office without submitting the required resignation. In that instance, the resignation is irrevocable and effective immediately upon qualification. The Department of State must notify the appropriate authority of the resignation.

Incumbency Designation

Current Situation

Current law requires the word "incumbent" to appear next to an incumbent candidate's name only when two or more candidates running for the same office on a primary election ballot have the same or similar surname.¹⁸

Effect of the Bill

The bill requires that in any election, the word "incumbent" must appear on the ballot beside the name of a candidate for reelection to public office when the office sought is not subject to term limits.¹⁹

respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the Florida Constitution, state laws, or municipal charter.

¹³ Section 99.012(3), F.S.

¹⁴ Section 99.012(3)(b), F.S.

¹⁵ See s. 99.012(3)(e), F.S.

¹⁶ Section 99.012(3)(d), F.S.

¹⁷ Section 99.012(7), F.S.

¹⁸ Section 101.151(4)(b), F.S.; Fla. Admin. Code R. 1S-2.032(9)(d).

¹⁹ The Florida Constitution places term limits of eight consecutive years on the following offices: Florida Representative, Florida Senator, Florida Lieutenant Governor; and any office of the Florida Cabinet. Art. VII, s. 4(b), Fla. Const. Additionally, the Florida Supreme Court has upheld the ability of charter counties to enact term limits on their officers. See *Telli v. Broward Cnty*, 94 So. 3d 504 (Fla. 2012). As such, persons running for reelection for an office subject to term limits will not have the term "incumbent" appear next to their name on the ballot.

Candidates Qualifying with No Party Affiliation

Current Situation

A candidate in a partisan election is currently allowed to run without party affiliation regardless of whether that candidate is personally registered with a political party. Candidates running for office without party affiliation do not participate in the primary election. As such, a candidate registered with a political party is able to avoid the primary election and be placed on the general election ballot as a No Party Affiliated (NPA) candidate even though that candidate is registered with a political party.²⁰

Effect of the Bill

The bill requires a person seeking to qualify as an NPA candidate to be personally registered as NPA and attest to such in writing at the time of qualification.

Payment of Candidate Qualification Fee

Current Situation

Current law requires a person seeking to become a candidate for public office to either pay a qualification fee or qualify by petition.²¹ If the person opts for the former, he or she must pay the qualification fee with a "properly executed check drawn upon the candidate's campaign account."²² If the check is returned by the bank for any reason, the filing officer must immediately notify the candidate.²³ The candidate then has until the end of the qualification period²⁴ to pay the fee with a cashier's check purchased from funds of the campaign account.²⁵

The Florida Supreme Court, in *Wright v. City of Miami Gardens*,²⁶ recently declared the statutory requirement that a candidate has until the end of the qualification period to rectify a check returned by a bank unconstitutional. In that case, a candidate for mayor of the City of Miami Gardens had the check he used to pay his qualification fee returned by the bank due to banking error. The candidate was not notified of the bank's erroneous action in time to remedy the defective instrument. The candidate was thereafter disqualified and his name withheld from the ballot. The Court held that the statute "unconstitutionally erects a barrier that is an unnecessary restraint on one's right to seek elective office" and severed the portion of the 2011 law that created that process. In so doing, the court reverted the statute back to its pre-2011 form, which allows a candidate 48 hours, notwithstanding the end of the qualification period, after notification of the returned check to pay the qualification fee with a cashier's check.²⁷

Effect of the Bill

The bill allows a candidate to pay his or her qualification fee with a certified check.

B. SECTION DIRECTORY:

Section 1 amends s. 99.012, F.S., relating to restrictions on individuals qualifying for public office.

Section 2 amends s. 99.021, F.S., relating to the form of a candidate's oath.

²⁰ Section 99.0955(1), F.S.

²¹ Section 99.061, F.S.

²² Sections 99.051(7)(a)1. and 105.031(5)(a)1., F.S.; The Division of Elections in the Department of State has interpreted that phrase to prohibit the use of cashier's checks. See 2016 State Qualification Handbook, Division of Elections, Department of State, at pg. 5. available at <http://dos.myflorida.com/media/695458/state-qualifying-handbook.pdf> (last visited March 20, 2017).

²³ Section 99.061(7)(a)1., F.S.

²⁴ Section 99.061(1)-(2), F.S.

²⁵ Section 99.061(7)(a)1., F.S.

²⁶ *Wright v. City of Miami Gardens*, 200 So. 3d 765 (Fla. 2016).

²⁷ *Id.*

Section 3 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 4 amends s. 99.063, F.S., relating to candidates for Governor and Lieutenant Governor.

Section 5 amends s. 99.0955, F.S., relating to NPA candidates.

Section 6 amends s. 100.3605, F.S., relating to the conduct of municipal elections, effective July 1, 2020.

Section 7 amends s. 100.361, F.S., relating to municipal recall elections.

Section 8 amends s. 101.151, F.S., relating to specifications of ballots.

Section 9 repeals s. 101.75, F.S., relating to municipal elections.

Section 10 amends s. 105.031, F.S., relating to qualification of candidates in nonpartisan elections.

Section 11 amends s. 121.121, F.S., making a conforming change.

Section 12 creates an unnumbered section of law requiring the terms of incumbent elected municipal officers to be extended to the next municipal election held in accordance with this bill.

Section 13 provides an effective date of July 1, 2017, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be a minimal fiscal impact associated with the rulemaking process that the Department of State, Division of Elections will have to engage in to implement some of the changes in the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments as it may decrease or increase the cost of conducting elections for certain municipalities. The bill does not require municipalities to amend their charters because all conflicting provisions are automatically superseded.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill may require some municipalities to spend funds or take action requiring the expenditure of funds in order to comply with the new election date requirements created by the bill; however, Art. VII, s. 18 of the Florida Constitution explicitly exempts election laws from the county/municipality mandates provision within that section.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of State may be required to revise forms, incorporated in rule by reference, relating to the candidate oath for NPA candidates; however, it does not require any additional rulemaking authority for the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to elections; amending s. 99.012,
 3 F.S.; requiring an officer who qualifies for federal
 4 public office to resign from the office he or she
 5 presently holds if the terms or any part thereof run
 6 concurrently with each other; providing requirements
 7 for resignation; revising exemptions; amending s.
 8 99.021, F.S.; requiring persons seeking to qualify as
 9 a candidate with no party affiliation to state that he
 10 or she is registered without party affiliation;
 11 amending s. 99.061, F.S.; allowing candidates to use a
 12 certified check to pay candidate qualification fee;
 13 making conforming changes; amending s. 99.063, F.S.;
 14 making conforming changes; amending s. 99.0955, F.S.;
 15 requiring a person seeking to qualify as a candidate
 16 with no party affiliation to be registered without
 17 party affiliation at the time of qualification;
 18 amending s. 100.3605, F.S.; requiring the governing
 19 body of a municipality to determine the date on which
 20 initial and runoff elections for municipal office are
 21 held and providing options therefor; preempting to the
 22 state the authority to establish election dates for
 23 municipal elections; providing construction; amending
 24 s. 100.361, F.S.; requiring municipal recall elections
 25 to be held concurrently with municipal elections under

26 certain conditions; amending s. 101.151, F.S.;

27 requiring ballots to indicate whether a candidate not

28 subject to term limits is an incumbent; repealing s.

29 101.75, F.S., relating to change of dates for cause in

30 municipal elections; amending s. 105.031, F.S.;

31 allowing certain nonpartisan candidates to use a

32 certified check to pay candidate qualification fee;

33 amending s. 121.121, F.S.; correcting a cross-

34 reference; providing that the terms of incumbent

35 elected municipal officers are extended until the next

36 municipal election; providing effective dates.

37

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

39

40 Section 1. Subsections (4) through (7) of section 99.012,

41 Florida Statutes, are renumbered as subsections (5) through (8),

42 respectively, present subsection (7) is amended, and a new

43 subsection (4) is added to that section, to read:

44 99.012 Restrictions on individuals qualifying for public

45 office.—

46 (4) (a) Any officer who qualifies for federal public office

47 must resign from the office he or she presently holds if the

48 terms or any part thereof run concurrently with each other.

49 (b) The resignation is irrevocable.

50 (c) The resignation must be submitted in writing no later

51 than the date upon which the officer qualifies for office.

52 (d) The written resignation must be effective no later
 53 than the earlier of the following dates:

54 1. The date the officer would take office, if elected; or

55 2. The date the officer's successor is required to take
 56 office.

57 (e)1. An elected district, county, or municipal officer
 58 must submit his or her resignation to the officer before whom he
 59 or she qualified for the office he or she holds, and must submit
 60 a copy of his or her resignation to the Governor and the
 61 Department of State.

62 2. An appointed district, county, or municipal officer
 63 must submit his or her resignation to the officer or authority
 64 which appointed him or her to the office he or she holds, and
 65 must submit a copy of his or her resignation to the Governor and
 66 the Department of State.

67 3. Any other officer must submit his or her resignation to
 68 the Governor, and must submit a copy of his or her resignation
 69 to the Department of State.

70 (f)1. The failure of an officer who qualifies for federal
 71 public office to submit a resignation pursuant to this
 72 subsection constitutes an automatic irrevocable resignation,
 73 effective immediately, from the office he or she presently
 74 holds.

75 2. The Department of State shall send a notice of the

76 automatic resignation to the Governor, and in the case of a
 77 district, county, or municipal officer, a copy of the notice of
 78 automatic resignation to:

79 a. The officer before whom he or she qualified if he or
 80 she held an elective office; or

81 b. The officer or authority who appointed him or her if he
 82 or she held an appointive office.

83 (g) The provisions of any special act to the contrary
 84 notwithstanding, with regard to an elective office, the
 85 resignation creates a vacancy in office to be filled by
 86 election, thereby permitting persons to qualify as candidates
 87 for nomination and election as if the officer's term was
 88 otherwise scheduled to expire. With regard to an elective
 89 charter county office or elective municipal office, the vacancy
 90 created by the officer's resignation may be filled for that
 91 portion of the officer's unexpired term in a manner provided by
 92 the respective charter. The office is deemed vacant upon the
 93 effective date of the resignation submitted by the official in
 94 his or her letter of resignation.

95 (8)-(7) Nothing contained in subsection (3) or subsection
 96 (4) relates to persons holding any federal office or seeking the
 97 office of President or Vice President.

98 Section 2. Subsection (1) of section 99.021, Florida
 99 Statutes, is amended to read:

100 99.021 Form of candidate oath.-

101 (1)(a)1. Each candidate, whether a party candidate, a
 102 candidate with no party affiliation, or a write-in candidate, in
 103 order to qualify for nomination or election to any office other
 104 than a judicial office as defined in chapter 105 or a federal
 105 office, shall take and subscribe to an oath or affirmation in
 106 writing. A copy of the oath or affirmation shall be made
 107 available to the candidate by the officer before whom such
 108 candidate seeks to qualify and shall be substantially in the
 109 following form:

110 State of Florida
 111 County of....

112 Before me, an officer authorized to administer oaths,
 113 personally appeared ...(please print name as you wish it to
 114 appear on the ballot)..., to me well known, who, being sworn,
 115 says that he or she is a candidate for the office of; that
 116 he or she is a qualified elector of County, Florida; that
 117 he or she is qualified under the Constitution and the laws of
 118 Florida to hold the office to which he or she desires to be
 119 nominated or elected; that he or she has qualified for no other
 120 public office in the state, the term of which office or any part
 121 thereof runs concurrent with that of the office he or she seeks;
 122 that he or she has resigned from any office from which he or she
 123 is required to resign pursuant to s. 99.012, Florida Statutes;
 124 and that he or she will support the Constitution of the United
 125 States and the Constitution of the State of Florida.

126 ... (Signature of candidate) ...

127 ... (Address) ...

128 Sworn to and subscribed before me this day of,

129 ... (year) ..., at County, Florida.

130 ... (Signature and title of officer administering oath) ...

131 2. Each candidate for federal office, whether a party
132 candidate, a candidate with no party affiliation, or a write-in
133 candidate, in order to qualify for nomination or election to
134 office shall take and subscribe to an oath or affirmation in
135 writing. A copy of the oath or affirmation shall be made
136 available to the candidate by the officer before whom such
137 candidate seeks to qualify and shall be substantially in the
138 following form:

139 State of Florida

140 County of

141 Before me, an officer authorized to administer oaths,
142 personally appeared ... (please print name as you wish it to
143 appear on the ballot) ..., to me well known, who, being sworn,
144 says that he or she is a candidate for the office of; that
145 he or she is qualified under the Constitution and laws of the
146 United States to hold the office to which he or she desires to
147 be nominated or elected; that he or she has qualified for no
148 other public office in the state, the term of which office or
149 any part thereof runs concurrent with that of the office he or
150 she seeks; and that he or she will support the Constitution of

151 the United States.
 152 ... (Signature of candidate)...
 153 ... (Address)...

154 Sworn to and subscribed before me this day of,
 155 ... (year)...., at County, Florida.
 156 ... (Signature and title of officer administering oath)...

157 (b) ~~In addition,~~ Any person seeking to qualify for
 158 nomination as a candidate of any political party shall, at the
 159 time of subscribing to the oath or affirmation, state in
 160 writing:

- 161 1. The party of which the person is a member.
- 162 2. That the person has not been a registered member of any
 163 other political party for 365 days before the beginning of
 164 qualifying preceding the general election for which the person
 165 seeks to qualify.
- 166 3. That the person has paid the assessment levied against
 167 him or her, if any, as a candidate for said office by the
 168 executive committee of the party of which he or she is a member.

169 (c) Any person seeking to qualify for election as a
 170 candidate with no party affiliation shall, at the time of
 171 subscribing to the oath or affirmation, state in writing that he
 172 or she is registered without party affiliation.

173 (d)~~(e)~~ The officer before whom such person qualifies shall
 174 certify the name of such person to the supervisor of elections
 175 in each county affected by such candidacy so that the name of

176 such person may be printed on the ballot. Each person seeking
 177 election as a write-in candidate shall subscribe to the oath
 178 prescribed in this section in order to be entitled to have
 179 write-in ballots cast for him or her counted.

180 Section 3. Subsection (7) of section 99.061, Florida
 181 Statutes, is amended to read:

182 99.061 Method of qualifying for nomination or election to
 183 federal, state, county, or district office.—

184 (7) (a) In order for a candidate to be qualified, the
 185 following items must be received by the filing officer by the
 186 end of the qualifying period:

187 1. A properly executed check or certified check drawn upon
 188 the candidate's campaign account payable to the person or entity
 189 as prescribed by the filing officer in an amount not less than
 190 the fee required by s. 99.092, unless the candidate obtained the
 191 required number of signatures on petitions pursuant to s.
 192 99.095. The filing fee for a special district candidate is not
 193 required to be drawn upon the candidate's campaign account. If a
 194 candidate's check is returned by the bank for any reason, the
 195 filing officer shall immediately notify the candidate and the
 196 candidate shall have until the end of qualifying to pay the fee
 197 with a cashier's check purchased from funds of the campaign
 198 account. Failure to pay the fee as provided in this subparagraph
 199 shall disqualify the candidate.

200 2. The candidate's oath required by s. 99.021, which must

201 contain the name of the candidate as it is to appear on the
 202 ballot; the office sought, including the district or group
 203 number if applicable; and the signature of the candidate, which
 204 must be verified under oath or affirmation pursuant to s.
 205 92.525(1)(a).

206 3. If the office sought is partisan, the written statement
 207 of political party affiliation required by s. 99.021(1)(b) or,
 208 in the case of a person seeking to qualify for election as a
 209 candidate with no party affiliation, s. 99.021(1)(c).

210 4. The completed form for the appointment of campaign
 211 treasurer and designation of campaign depository, as required by
 212 s. 106.021.

213 5. The full and public disclosure or statement of
 214 financial interests required by subsection (5). A public officer
 215 who has filed the full and public disclosure or statement of
 216 financial interests with the Commission on Ethics or the
 217 supervisor of elections prior to qualifying for office may file
 218 a copy of that disclosure at the time of qualifying.

219 (b) If the filing officer receives qualifying papers
 220 during the qualifying period prescribed in this section which do
 221 not include all items as required by paragraph (a) prior to the
 222 last day of qualifying, the filing officer shall make a
 223 reasonable effort to notify the candidate of the missing or
 224 incomplete items and shall inform the candidate that all
 225 required items must be received by the close of qualifying. A

226 candidate's name as it is to appear on the ballot may not be
 227 changed after the end of qualifying.

228 (c) The filing officer performs a ministerial function in
 229 reviewing qualifying papers. In determining whether a candidate
 230 is qualified, the filing officer shall review the qualifying
 231 papers to determine whether all items required by paragraph (a)
 232 have been properly filed and whether each item is complete on
 233 its face, including whether items that must be verified have
 234 been properly verified pursuant to s. 92.525(1)(a). The filing
 235 officer may not determine whether the contents of the qualifying
 236 papers are accurate.

237 Section 4. Subsection (2) of section 99.063, Florida
 238 Statutes, is amended to read:

239 99.063 Candidates for Governor and Lieutenant Governor.—

240 (2) No later than 5 p.m. of the 9th day following the
 241 primary election, each designated candidate for Lieutenant
 242 Governor shall file with the Department of State:

243 (a) The candidate's oath required by s. 99.021, which must
 244 contain the name of the candidate as it is to appear on the
 245 ballot; the office sought; and the signature of the candidate,
 246 which must be verified under oath or affirmation pursuant to s.
 247 92.525(1)(a).

248 (b) If the office sought is partisan, the written
 249 statement of political party affiliation required by s.
 250 99.021(1)(b) or, in the case of a person seeking to qualify for

251 election as a candidate with no party affiliation, s.
 252 99.021(1)(c).

253 (c) The full and public disclosure of financial interests
 254 pursuant to s. 8, Art. II of the State Constitution. A public
 255 officer who has filed the full and public disclosure with the
 256 Commission on Ethics prior to qualifying for office may file a
 257 copy of that disclosure at the time of qualifying.

258 Section 5. Subsection (1) of section 99.0955, Florida
 259 Statutes, is amended to read:

260 99.0955 Candidates with no party affiliation; name on
 261 general election ballot.-

262 (1) Each person seeking to qualify for election as a
 263 candidate with no party affiliation shall file his or her
 264 qualifying papers and pay the qualifying fee or qualify by the
 265 petition process pursuant to s. 99.095 with the officer and
 266 during the times and under the circumstances prescribed in s.
 267 99.061. A person seeking to qualify for election as a candidate
 268 with no party affiliation must be registered without party
 269 affiliation at the time of qualification. Upon qualifying, the
 270 candidate is entitled to have his or her name placed on the
 271 general election ballot.

272 Section 6. Effective July 1, 2020, section 100.3605,
 273 Florida Statutes, is amended to read:

274 100.3605 Conduct of municipal elections.-

275 (1) The Florida Election Code, chapters 97-106, shall

276 govern the conduct of a municipality's election in the absence
 277 of an applicable special act, charter, or ordinance provision.
 278 No charter or ordinance provision shall be adopted which
 279 conflicts with or exempts a municipality from any provision in
 280 the Florida Election Code that expressly applies to
 281 municipalities.

282 (2) (a) The governing body of a municipality shall
 283 determine if an election for municipal office is held on the
 284 same date as the general election, the first Tuesday after the
 285 first Monday in November in an odd-numbered year, or the first
 286 Tuesday after the first Monday in April in an odd-numbered or
 287 even-numbered year.

288 (b) If a municipal charter or ordinance requires a runoff
 289 election for municipal office, the governing body of a
 290 municipality shall conduct its elections in one of the following
 291 formats:

292 1. The initial election shall be held at the primary
 293 election on the Tuesday 10 weeks before the general election and
 294 the runoff election shall be held on the same date as the
 295 general election.

296 2. The initial election shall be held at an election on
 297 the Tuesday 10 weeks before the election held on the first
 298 Tuesday after the first Monday in November in an odd-numbered
 299 year and the runoff election shall be held at an election on the
 300 first Tuesday after the first Monday in November in an odd-

301 numbered year.

302 3. The initial election shall be held at an election on
 303 the Tuesday 10 weeks before the first Tuesday after the first
 304 Monday in April and the runoff election shall be held at an
 305 election on the first Tuesday after the first Monday in April.

306 (c) This subsection does not affect the manner in which
 307 vacancies in municipal office are filled or recall elections for
 308 municipal officers are conducted.

309 (d) Notwithstanding any general law, special law, local
 310 law, municipal charter, or municipal ordinance, this subsection
 311 provides the exclusive method for establishing the dates of
 312 elections for municipal office in this state. Any general law,
 313 special law, local law, municipal charter, or municipal
 314 ordinance that conflicts with this subsection is superseded to
 315 the extent of the conflict.

316 (3) The governing body of a municipality may, by
 317 ordinance, ~~change the dates for qualifying and for the election~~
 318 ~~of members of the governing body of the municipality and provide~~
 319 for the orderly transition of office resulting from election
 320 ~~such~~ date changes.

321 Section 7. Subsection (4) of section 100.361, Florida
 322 Statutes, is amended to read:

323 100.361 Municipal recall.—

324 (4) RECALL ELECTION.—If the person designated in the
 325 petition files with the clerk, within 5 days after the last-

326 mentioned notice, his or her written resignation, the clerk
 327 shall at once notify the governing body of that fact, and the
 328 resignation shall be irrevocable. The governing body shall then
 329 proceed to fill the vacancy according to the provisions of the
 330 appropriate law. In the absence of a resignation, the chief
 331 judge of the judicial circuit in which the municipality is
 332 located shall fix a day for holding a recall election for the
 333 removal of those not resigning. Any such election shall be held
 334 not less than 30 days or more than 60 days after the expiration
 335 of the 5-day period last-mentioned and at the same time as any
 336 other general, municipal, or special election held within the
 337 period; but if no such election is to be held within that
 338 period, the judge shall call a special recall election to be
 339 held within the period aforesaid.

340 Section 8. Paragraphs (c) and (d) of subsection (2) of
 341 section 101.151, Florida Statutes, are redesignated as
 342 paragraphs (d) and (e) respectively, and paragraph (c) is
 343 created to read:

344 101.151 Specifications for ballots.-

345 (2)

346 (c) In any election in which a candidate is seeking
 347 reelection to public office and the office sought is not subject
 348 to term limits, the word "incumbent" shall appear on the ballot
 349 next to the candidate's name.

350 Section 9. Section 101.75, Florida Statutes, is repealed.

351 Section 10. Paragraph (a) of subsection (5) of section
 352 105.031, Florida Statutes, is amended to read:

353 105.031 Qualification; filing fee; candidate's oath; items
 354 required to be filed.-

355 (5) ITEMS REQUIRED TO BE FILED.-

356 (a) In order for a candidate for judicial office or the
 357 office of school board member to be qualified, the following
 358 items must be received by the filing officer by the end of the
 359 qualifying period:

360 1. Except for candidates for retention to judicial office,
 361 a properly executed check or certified check drawn upon the
 362 candidate's campaign account in an amount not less than the fee
 363 required by subsection (3) or, in lieu thereof, the copy of the
 364 notice of obtaining ballot position pursuant to s. 105.035. If a
 365 candidate's check is returned by the bank for any reason, the
 366 filing officer shall immediately notify the candidate and the
 367 candidate shall, the end of qualifying notwithstanding, have 48
 368 hours from the time such notification is received, excluding
 369 Saturdays, Sundays, and legal holidays, to pay the fee with a
 370 cashier's check purchased from funds of the campaign account.
 371 Failure to pay the fee as provided in this subparagraph shall
 372 disqualify the candidate.

373 2. The candidate's oath required by subsection (4), which
 374 must contain the name of the candidate as it is to appear on the
 375 ballot; the office sought, including the district or group

376 number if applicable; and the signature of the candidate, duly
 377 acknowledged.

378 3. The loyalty oath required by s. 876.05, signed by the
 379 candidate and duly acknowledged.

380 4. The completed form for the appointment of campaign
 381 treasurer and designation of campaign depository, as required by
 382 s. 106.021. In addition, each candidate for judicial office,
 383 including an incumbent judge, shall file a statement with the
 384 qualifying officer, within 10 days after filing the appointment
 385 of campaign treasurer and designation of campaign depository,
 386 stating that the candidate has read and understands the
 387 requirements of the Florida Code of Judicial Conduct. Such
 388 statement shall be in substantially the following form:

389 Statement of Candidate for Judicial Office

390 I, ...(name of candidate)..., a judicial candidate, have
 391 received, read, and understand the requirements of the Florida
 392 Code of Judicial Conduct.

393 ... (Signature of candidate) ...

394 ... (Date) ...

395 5. The full and public disclosure of financial interests
 396 required by s. 8, Art. II of the State Constitution or the
 397 statement of financial interests required by s. 112.3145,
 398 whichever is applicable. A public officer who has filed the full
 399 and public disclosure or statement of financial interests with
 400 the Commission on Ethics or the supervisor of elections prior to

401 qualifying for office may file a copy of that disclosure at the
 402 time of qualifying.

403 Section 11. Subsection (2) of section 121.121, Florida
 404 Statutes, is amended to read:

405 121.121 Authorized leaves of absence.—

406 (2) A member who is required to resign his or her office
 407 as a subordinate officer, deputy sheriff, or police officer
 408 because he or she is a candidate for a public office which is
 409 currently held by his or her superior officer who is also a
 410 candidate for reelection to the same office, in accordance with
 411 s. 99.012(5) ~~99.012(4)~~, shall, upon return to covered
 412 employment, be eligible to purchase retirement credit for the
 413 period between his or her date of resignation and the beginning
 414 of the term of office for which he or she was a candidate as a
 415 leave of absence without pay, as provided in subsection (1).

416 Section 12. To provide for an orderly transition of
 417 office, the terms of incumbent elected municipal officers are
 418 extended until the next municipal election held in accordance
 419 with this act.

420 Section 13. Except as otherwise expressly provided in this
 421 act, this act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 17-04 Florida Retirement System
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Harrington	Williamson

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits. The FRS is the primary retirement plan for employees of the state and county government agencies, district school boards, state colleges, and universities and it also serves as the retirement plan for participating employees of the cities and independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program (SMSOAP), the State Community College System Optional Retirement Program (SCCSORP), and the State University System Optional Retirement Program (SUSORP).

Effective July 1, 2017, the bill authorizes renewed membership in the investment plan for retirees of the investment plan, the SMSOAP, the SUSORP, or the SCCSORP. Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the applicable optional retirement program.

Effective July 1, 2017, the bill expands the survivor benefit for members of the Special Risk Class. Specifically, it provides that such survivor benefits are retroactive to July 1, 2002. Effective July 1, 2017, the bill also establishes a survivor benefit for all other membership classes of the investment plan who are killed in the line of duty and provides that the benefit is retroactive to July 1, 2002. The survivor benefits are the same as those currently provided for other membership classes of the pension plan. It also provides a process for calculating the retroactive benefit.

Effective July 1, 2017, the bill closes the SMSOAP to new participants. The bill also prohibits elected officials from joining the Senior Management Service Class in lieu of the Elected Officers' Class.

Effective January 1, 2018, the bill changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan.

Effective July 1, 2018, the bill prohibits members initially enrolled in a position covered by the Elected Officers' Class from participating in the pension plan and requires participation in the investment plan. It also reduces the service accrual rate for purposes of calculating the pension plan benefit from 3.3 percent to 3.0 percent for certain members of the Elected Officers' Class.

The bill provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner. It also provides allocations for the survivor benefits authorized by the act and provides for adjustments to employer contribution rates in order to fund the proposed changes.

Based on the results of special actuarial studies performed by the Milliman actuarial and consulting firm, the bill will have a negative fiscal impact of \$17.3 million for fiscal year 2017-18. See Fiscal Comments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb04.GAC.DOCX

DATE: 3/27/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹

The FRS is a multiple-employer, contributory plan² governed by the Florida Retirement System Act.³ As of June 30, 2016, the FRS provides retirement income benefits to 630,350 active members,⁴ 394,907 retired members and beneficiaries, and 29,602 members of the Deferred Retirement Option Program (DROP).⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 173 cities and 261 independent hospitals and special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:⁷

- Regular Class⁸ consists of 549,389 members (87.16 percent of the membership);
- Special Risk Class⁹ includes 70,695 members (11.21 percent);
- Special Risk Administrative Support Class¹⁰ has 76 members (.01 percent);
- Elected Officers' Class¹¹ has 2,141 members (0.34 percent); and
- Senior Management Service Class¹² has 8,019 members (1.27 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

¹ *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016*, at 29. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 25, 2016) [hereinafter *Annual Report*].

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.

³ Chapter 121, F.S.

⁴ As of June 30, 2016, the FRS Pension Plan, which is a defined benefit plan, had 515,916 members, and the investment plan, which is a defined contribution plan, had 114,434 members. *Annual Report*, *supra* note 1, at 120.

⁵ *Id.*

⁶ Florida Retirement System Participating Employers for Plan Year 2016-17, prepared by the Department of Management Services, Division of Retirement, Revised February 2017, at 8. A copy of the document can be found online at: <https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited March 25, 2017).

⁷ *Annual Report*, *supra* note 1, at 123.

⁸ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁹ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency technicians, among others. Section 121.0515, F.S.

¹⁰ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. Section 121.0515(8), F.S.

¹¹ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹² The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹³ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁴

A member vests immediately in all employee contributions paid to the investment plan.¹⁵ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁶ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁷

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member's account varies by class as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class	
• Justices and Judges	13.23%
• County Elected Officers	11.34%
• Others	9.38%
Senior Management Service Class	7.67%

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).¹⁸ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members initially enrolled on or after July

¹³ Section 121.4501(8), F.S.

¹⁴ Section 4(e), Art. IV, Fla. Const.

¹⁵ Section 121.4501(6)(a), F.S.

¹⁶ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹⁷ Section 121.591, F.S.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²¹ The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%, 1.63%, 1.65%, 1.68% ²²
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, 1.68% ²³
Elected Officers' Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²⁴ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁵ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁶

Default and Second Election

A new member has until the last business day of the fifth month following the member's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.²⁷

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.²⁸

Disability Benefits

Disability retirement benefits are provided for both in-line-of-duty disability and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,²⁹ compensate a member who is disabled in the line of duty up to 65 percent of the average monthly compensation as of the disability retirement date for Special Risk Class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If a disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. A member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.³⁰

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.091(1)(a)1., F.S.

²³ Section 121.0515(8)(a), F.S.

²⁴ Section 121.021(29)(a)1., F.S.

²⁵ Section 121.021(29)(b)1., F.S.

²⁶ Section 121.021(29)(a)2. and (b)2., F.S.

²⁷ Section 121.4501(4), F.S.

²⁸ Section 121.4501(4)(g), F.S.

²⁹ See s. 121.4501(16), F.S.

³⁰ Section 121.091(4)(f), F.S.

Death or Survivor Benefits

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.³¹ Under the pension plan, if the member is vested at the time of his or her death, the member's joint annuitant³² is entitled to receive the optional form³³ of payment for the annuitant's lifetime.³⁴ If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.³⁵ If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.³⁶ If there is no surviving spouse or the surviving spouse dies, the member's children under 18 years of age and unmarried may receive the benefits until the youngest child's 18th birthday. In general, members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.³⁷

In 2016, the Legislature increased survivor benefits for Special Risk Class members of the pension plan killed in the line of duty on or after July 1, 2013.³⁸ Rather than receiving a monthly benefit equal to one-half of the member's monthly salary at the time of death, the member's spouse and children are eligible to receive a monthly payment equal to the member's total monthly salary at the time of death. At the same time, the Legislature created a new survivor benefit for Special Risk Class members of the investment plan killed in the line of duty on or after July 1, 2013.³⁹ As a result, the spouses and children of such members receive the same survivor benefits provided to Special Risk Class members of the pension plan, including the new increased benefit. In addition, for Special Risk Class members of the investment plan or pension plan killed in the line of duty on or after July 1, 2013, survivor benefits may be extended to the 25th birthday of an unmarried child enrolled as a full time student if there is no surviving spouse or the surviving spouse dies.⁴⁰

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.⁴¹ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.⁴²

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.⁴³

³¹ For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

³² A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

³³ Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

³⁴ Section 121.091(7)(b)1., F.S.

³⁵ Section 121.091(7)(b)2., F.S.

³⁶ Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children who are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

³⁷ See s. 121.591(3)(b), F.S.

³⁸ Chapter 2016-213, L.O.F.; codified in ss. 121.091 and 121.591, F.S.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

⁴² If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

⁴³ See s. 121.4501(2)(k) and (4)(f), F.S.

Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.⁴⁴ Termination is void if any FRS-participating employer reemploys a member during a specified period of time.⁴⁵

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.⁴⁶

Before July 1, 2010, an FRS retiree was allowed to be reemployed by an FRS employer provided certain requirements were met. A member was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12 after retiring or terminating DROP, the retiree was not authorized to receive her or his pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.⁴⁷

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13.⁴⁸ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed on or after July 1, 2010.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent child of a renewed member may qualify for survivor benefits.⁴⁹

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and do not earn creditable service toward a subsequent retirement benefit.⁵⁰ This restriction from renewed membership includes retirees of the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.⁵¹ Eligible retirees receive \$5 per month for each year of creditable service used to

⁴⁴ Section 121.021(39)(a), F.S.

⁴⁵ *Id.*

⁴⁶ Section 121.091(9)(a), F.S.

⁴⁷ Section 121.091(9)(b), F.S.

⁴⁸ Section 121.091(9)(c), F.S.

⁴⁹ Section 121.122(1), F.S.

⁵⁰ Section 121.122(2), F.S.

⁵¹ Section 112.363(1) and (2), F.S.

calculate the retirement benefit. The HIS payment must be at least \$30, but not more than \$150 per month.⁵²

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;⁵³
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,⁵⁴ and
- Members of a Florida College System institution may elect to enroll in the State Community College System Optional Retirement Program.⁵⁵

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member’s monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.⁵⁶ The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:⁵⁷

Membership Class	Effective July 1, 2016
Regular Class	2.97%
Special Risk Class	11.80%
Special Risk Administrative Support Class	3.87%
Elected Officers’ Class	
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.63%
• Justices and Judges	11.68%
• County Officers	8.55%
Senior Management Service Class	4.38%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.⁵⁸

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in

⁵² Section 112.363(3)(e), F.S.

⁵³ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

⁵⁴ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

⁵⁵ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

⁵⁶ Section 121.70(1), F.S.

⁵⁷ Section 121.71(4), F.S.

⁵⁸ Section 121.71(3), F.S.

the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.⁵⁹

Effect of the Bill

Renewed Membership

Effective July 1, 2017, the bill allows for renewed membership for certain former participants of the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program (SUSORP), or State Community College System Optional Retirement Program (SCCSORP). Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSORP or the SCCSORP, as applicable. To be eligible for renewed membership, the member must have retired from one of the four specified plans and must be employed in a regularly established position with a covered employer on or after July 1, 2017.

Such renewed member may not qualify for disability retirement benefits and must satisfy the vesting requirements of the specific plan. The bill prohibits certain funds from being paid into the renewed member's account for any employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2017. A renewed member who is not receiving the maximum health insurance subsidy is entitled to earn additional credit toward the subsidy.

Line-of-Duty Death Benefits

Effective July 1, 2017, the bill expands the survivor benefit for members of the Special Risk Class. Specifically, it provides that such survivor benefits are retroactive to July 1, 2002.

Effective July 1, 2017, the bill also establishes a survivor benefit for all other membership classes of the investment plan for members who are killed in the line of duty since 2002, which is when members were first allowed to participate in the investment plan. The survivor benefits are the same as those currently provided for other membership classes of the pension plan, which is a monthly payment equal to one-half of the member's salary at the time of death. To receive the benefit, the spouse and children must elect to transfer the balance of the member's investment plan account to the survivor benefit account of the FRS Trust Fund. The line-of-duty death benefits supersede any other distribution that may have been provided by the member's designation of beneficiary. For a member killed in the line of duty on or after July 1, 2002, but before July 1, 2017, the initial monthly benefit payable on or after July 1, 2017, will be equal to one-half the member's salary at the time of death, except that it will be:

- Actuarially reduced by the amount of the investment plan payout, if a payout was issued; and
- After the actuarial reduction, increased by the applicable cost-of-living adjustment that would have been payable if the survivor benefit payment had begun the month following the member's death. On each July 1 after the initial payment, the benefit will be increased by the applicable cost-of-living adjustment.

Senior Management Service Optional Annuity Program

The bill closes the SMSOAP to new participants effective July 1, 2017. Currently, fewer than 30 members participate in this optional retirement program.

Elected Officers' Class – Justices and Judges Subclass

Effective July 1, 2017, the bill reduces the accrual rate for purpose of determining a member's pension benefit for members in the Elected Officers' Class (EOC) – Justices and Judges Subclass from 3.3 percent to 3 percent, which is the same accrual rate for all other members of the EOC.

⁵⁹ See ss. 121.4503 and 121.72(1), F.S.

Default

For members initially enrolled in the FRS on or after January 1, 2018, the bill changes the default from the pension plan to the investment plan. Thus, if the member does not make a selection, the member will default to the investment plan instead of the pension plan. The bill maintains the member's second election option.

Elected Officers' Class

The bill provides that members initially enrolled in the FRS on or after July 1, 2018, in a position covered by the EOC may not participate in the pension plan. Instead of having a choice between two plans, such members must participate in the investment plan and may not utilize a second election option to become a member of the pension plan. Investment plan membership continues even if subsequent employment results in the member becoming covered by another membership class.

For a member initially enrolled in the FRS on or after July 1, 2018, in a position covered by another class, the member may choose to participate in the pension plan or the investment plan. If the member chooses to participate in the pension plan and subsequently participates in a position covered by the EOC, the member may continue to participate in the pension plan. Therefore, the prohibition against participation in the pension plan only affects members initially enrolling in the FRS on or after July 1, 2018, in positions covered by the EOC.

The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the EOC. Because the SMSOAP will not be offered to new members on or after July 1, 2017, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS Investment Plan or withdraw from the system.⁶⁰

Uniform Rates

The bill adjusts the uniform rates for the required employer contribution for each membership class and subclass of the FRS for both retirement plans, effective July 1, 2017. It also adjusts the required employer contribution rates for each membership class and subclass of the FRS necessary to address the plan's unfunded actuarial liability.

Important State Interest

The bill declares that it fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

B. SECTION DIRECTORY:

Section 1 amends s. 121.051, F.S., providing for compulsory membership in the investment plan for employees in the EOC initially enrolled on or after July 1, 2018.

Section 2 amends s. 121.052, F.S., prohibiting members of the EOC from joining the Senior Management Service Class; revising the accrual rate for certain members of the EOC.

Section 3 amends s. 121.053, F.S., relating to participation in the Elected Officers' Class for retired members.

Section 4 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 5 amends s. 121.091, F.S., relating to benefits payable under the FRS.

Section 6 amends s. 121.122, F.S., relating to renewed membership in the FRS.

⁶⁰ Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

Section 7 amends s. 121.4501, F.S., relating to the FRS Investment Plan.

Section 8 amends s. 121.591, F.S., relating to payment of benefits.

Section 9 amends s. 121.5912, F.S., relating to the survivor benefit retirement program.

Section 10 amends s. 121.71, F.S., relating to uniform rates.

Section 11 amends s. 238.072, F.S., conforming a cross-reference to changes made by the act.

Section 12 amends s. 413.051, F.S., conforming cross-references to changes made by the act.

Section 13 provides that the act fulfills an important state interest.

Section 14 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Milliman actuarial and consulting firm conducted several studies at the request of the Speaker of the House of Representatives. The purpose of the studies was to determine the fiscal impact of requiring new enrollees who participate in the Elected Officers' Class to participate in the investment plan, changing the default for employees who fail to make a selection, establishing a new in-line-of-duty death benefit, authorizing renewed membership in the investment plan, and reducing the accrual rate for certain members who participate in the Elected Officers' Class.

Based on the results of the applicable studies, the bill is projected to have a negative fiscal impact of \$17.3 million in fiscal year 2017-18. The projected costs/(savings) for select subsequent years are summarized in the table below (in millions \$):

2017-2020				2017-18									
Concept	17-18	18-19	19-20	State			All GR			County	Local	Grand Totals	
				GR	TF	Schools	Univ	Colleges	GR				TF
1 Close to Elected *	-	(0.01)	(0.01)	-	-	-	-	-	-	-	-	-	
2 Change Default	-	1.6	3.3	-	-	-	-	-	-	-	-	-	
3 Renewed IP	9.5	9.50	9.50	1.8	1.8	2.1	0.4	0.3	6.4	1.8	2.7	0.4	9.5
5 Reduce Service Accrual - Judges	(1.6)	(1.60)	(1.60)	(1.4)	(0.2)				(1.4)	(0.2)			(1.4)
6 ILOD - IP	9.4	9.9	10.2	0.9	0.9	1.2	0.1	0.1	3.2	0.9	5.7	0.5	9.4
	17.3	19.4	21.4	1.3	2.5	3.3	0.5	0.4	8.2	2.5	8.4	0.9	17.5

* Fiscal cost/savings are insignificant in 17-18

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exception may apply as the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

Contractual Obligations

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provides that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.⁶¹ This "preservation of rights" provision⁶² was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.⁶³ The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member under the previous benefit structure remain untouched, and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.⁶⁴

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits that accrue for future state service.⁶⁵ More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.⁶⁶

This bill does not change any benefits that a member earned prior to July 1, 2017.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁶² The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So. 2d 1033, 1037 (Fla. 1981).

⁶³ *Id.* at 1035.

⁶⁴ *Id.* at 1036.

⁶⁵ *Id.* at 1037.

⁶⁶ *Rick Scott, et al. v. George Williams, et al.*, 107 So. 3d 379 (Fla. 2013).

1 A bill to be entitled
 2 An act relating to the Florida Retirement System;
 3 amending s. 121.051, F.S.; providing for compulsory
 4 membership in the investment plan for employees in the
 5 Elected Officers' Class initially enrolled after a
 6 specified date; amending s. 121.052, F.S.; prohibiting
 7 members of the Elected Officers' Class from joining
 8 the Senior Management Service Class after a specified
 9 date; revising the accrual rate for members of the
 10 Elected Officers' Class; amending s. 121.053, F.S.;
 11 authorizing renewed membership in the Florida
 12 Retirement System for retirees who are reemployed in a
 13 position eligible for the Elected Officers' Class
 14 under certain circumstances; amending s. 121.055,
 15 F.S.; prohibiting an elected official eligible for
 16 membership in the Elected Officers' Class from
 17 enrolling in the Senior Management Service Class or in
 18 the Senior Management Service Optional Annuity
 19 Program; providing for renewed membership in the
 20 retirement system for retirees of the Senior
 21 Management Service Optional Annuity Program who are
 22 reemployed on or after a specified date; closing the
 23 Senior Management Service Optional Annuity Program to
 24 new members after a specified date; amending s.
 25 121.091, F.S.; revising the accrual rate for members

26 of the Elected Officers' Class; revising criteria for
 27 eligibility of payment of death benefits to the
 28 surviving children of a Special Risk Class member
 29 killed in the line of duty under specified
 30 circumstances; conforming a provision to changes made
 31 by the act; amending s. 121.122, F.S.; requiring that
 32 certain retirees who are reemployed on or after a
 33 specified date be renewed members in the investment
 34 plan; providing exceptions; specifying that creditable
 35 service does not accrue for employment during a
 36 specified period; prohibiting certain funds from being
 37 paid into a renewed member's investment plan account
 38 for a specified period of employment; requiring the
 39 renewed member to satisfy vesting requirements;
 40 prohibiting a renewed member from receiving specified
 41 disability benefits; specifying limitations and
 42 requirements; requiring the employer and the retiree
 43 to make applicable contributions to the renewed
 44 member's investment plan account; providing for the
 45 transfer of contributions; authorizing a renewed
 46 member to receive additional credit toward the health
 47 insurance subsidy under certain circumstances;
 48 prohibiting participation in the pension plan;
 49 providing that a retiree reemployed on or after a
 50 specified date in a regularly established position

51 eligible for the State University System Optional
 52 Retirement Program or State Community College System
 53 Optional Retirement Program is a renewed member of
 54 that program; specifying limitations and requirements;
 55 requiring the employer and the retiree to make
 56 applicable contributions; amending s. 121.4501, F.S.;
 57 requiring certain employees initially enrolled in the
 58 Florida Retirement System on or after a specified date
 59 to be compulsory members of the investment plan;
 60 revising definitions; revising a provision relating to
 61 acknowledgement of an employee's election to
 62 participate in the investment plan; enrolling certain
 63 employees in the pension plan from their date of hire
 64 until they are automatically enrolled in the
 65 investment plan or timely elect enrollment in the
 66 pension plan; conforming provisions to changes made by
 67 the act; revising requirements related to the
 68 education component; amending s. 121.591, F.S.;
 69 authorizing payment of death benefits to the surviving
 70 spouse or surviving children of a member in the
 71 investment plan; establishing qualifications and
 72 eligibility requirements for receipt of such benefits;
 73 prescribing the method of calculating the benefit;
 74 specifying circumstances under which benefit payments
 75 are terminated; amending s. 121.5912, F.S.; revising a

76 provision regarding program qualification under the
 77 Internal Revenue Code and rulemaking authority, to
 78 conform to changes made by the act; amending s.
 79 121.71, F.S.; revising required employer retirement
 80 contribution rates for each membership class and
 81 subclass of the Florida Retirement System; amending
 82 ss. 238.072 and 413.051, F.S.; conforming cross-
 83 references to changes made by the act; declaring that
 84 the act fulfills an important state interest;
 85 providing an effective date.

86

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

88

89 Section 1. Subsections (3) through (9) of section 121.051,
 90 Florida Statutes, are renumbered as subsections (4) through
 91 (10), respectively, and a new subsection (3) is added to that
 92 section, to read:

93 121.051 Participation in the system.—

94 (3) INVESTMENT PLAN MEMBERSHIP COMPULSORY.—

95 (a) An employee initially enrolled on or after July 1,
 96 2018, in a position covered by the Elected Officers' Class is a
 97 compulsory member of the investment plan, except an employee who
 98 withdraws from the system under s. 121.052(3)(d). An employee
 99 initially enrolled in the investment plan before July 1, 2018,
 100 continues if there is subsequent employment in a position

101 covered by another membership class. Membership in the pension
 102 plan for an employee initially enrolled on or after July 1,
 103 2018, is not permitted except as provided in s. 121.591(2) and
 104 (4). An employee initially enrolled in the Florida Retirement
 105 System before July 1, 2018, may retain his or her membership in
 106 the pension plan or investment plan and may use the election
 107 opportunity specified in s. 121.4501(4)(f). An employee
 108 initially enrolled on or after July 1, 2018, in a position
 109 covered by the Elected Officers' Class may not use the election
 110 opportunity specified in s. 121.4501(4)(f).

111 (b) An employee eligible to withdraw from the system under
 112 s. 121.052(3)(d) may elect to withdraw from the system or
 113 participate in the investment plan.

114 Section 2. Paragraph (c) of subsection (3) and subsection
 115 (10) of section 121.052, Florida Statutes, are amended to read:
 116 121.052 Membership class of elected officers.—

117 (3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective
 118 July 1, 1990, participation in the Elected Officers' Class shall
 119 be compulsory for elected officers listed in paragraphs (2)(a)-
 120 (d) and (f) assuming office on or after said date, unless the
 121 elected officer elects membership in another class or withdraws
 122 from the Florida Retirement System as provided in paragraphs
 123 (3)(a)-(d):

124 (c) Before July 1, 2018, any elected officer may, within 6
 125 months after assuming office, or within 6 months after this act

126 becomes a law for serving elected officers, elect membership in
 127 the Senior Management Service Class as provided in s. 121.055 in
 128 lieu of membership in the Elected Officers' Class. Any such
 129 election made by a county elected officer shall have no effect
 130 upon the statutory limit on the number of nonelective full-time
 131 positions that may be designated by a local agency employer for
 132 inclusion in the Senior Management Service Class under s.
 133 121.055(1)(b)1.

134 (10) ACCRUED SERVICE VALUE.—For creditable years of
 135 service earned before July 1, 2017, a member of the Elected
 136 Officers' Class who is a Supreme Court justice, district court
 137 of appeal judge, circuit judge, or county court judge shall
 138 receive judicial retirement credit of 3 1/3 percent of average
 139 final compensation, and all other members shall receive elected
 140 officer accrual value of 3 percent of average final
 141 compensation, for each year of creditable service in such class.
 142 For creditable years of service earned on or after July 1, 2017,
 143 a member of the Elected Officers' Class shall receive elected
 144 officer accrual value of 3 percent of the average final
 145 compensation for each year of creditable service in such class.

146 Section 3. Paragraph (a) of subsection (3) and subsection
 147 (5) of section 121.053, Florida Statutes, are amended to read:

148 121.053 Participation in the Elected Officers' Class for
 149 retired members.—

150 (3) On or after July 1, 2010:

151 (a) A retiree of a state-administered retirement system
 152 who is initially reemployed in elected or appointed for the
 153 ~~first time to~~ an elective office in a regularly established
 154 position with a covered employer may not reenroll in the Florida
 155 Retirement System, except as provided in s. 121.122.

156 (5) Any renewed member, as described in s. 121.122(1),
 157 (3), (4), or (5) ~~subsection (1) or subsection (2)~~, who is not
 158 receiving the maximum health insurance subsidy provided in s.
 159 112.363 is entitled to earn additional credit toward the maximum
 160 health insurance subsidy. Any additional subsidy due because of
 161 such additional credit may be received only at the time of
 162 payment of the second career retirement benefit. The total
 163 health insurance subsidy received from initial and renewed
 164 membership may not exceed the maximum allowed in s. 112.363.

165 Section 4. Paragraph (f) of subsection (1) and paragraph
 166 (c) of subsection (6) of section 121.055, Florida Statutes, are
 167 amended to read:

168 121.055 Senior Management Service Class.—There is hereby
 169 established a separate class of membership within the Florida
 170 Retirement System to be known as the "Senior Management Service
 171 Class," which shall become effective February 1, 1987.

172 (1)

173 (f) Effective July 1, 1997:

174 1. Except as provided in subparagraph 3., an elected state
 175 officer eligible for membership in the Elected Officers' Class

176 under s. 121.052(2)(a), (b), or (c) who elects membership in the
 177 Senior Management Service Class under s. 121.052(3)(c) may,
 178 within 6 months after assuming office or within 6 months after
 179 this act becomes a law for serving elected state officers, elect
 180 to participate in the Senior Management Service Optional Annuity
 181 Program, as provided in subsection (6), in lieu of membership in
 182 the Senior Management Service Class.

183 2. Except as provided in subparagraph 3., an elected
 184 officer of a local agency employer eligible for membership in
 185 the Elected Officers' Class under s. 121.052(2)(d) who elects
 186 membership in the Senior Management Service Class under s.
 187 121.052(3)(c) may, within 6 months after assuming office, or
 188 within 6 months after this act becomes a law for serving elected
 189 officers of a local agency employer, elect to withdraw from the
 190 Florida Retirement System, as provided in subparagraph (b)2., in
 191 lieu of membership in the Senior Management Service Class.

192 3. A retiree of a state-administered retirement system who
 193 is initially reemployed in a regularly established position on
 194 or after July 1, 2010, through June 30, 2017, as an elected
 195 official eligible for the Elected Officers' Class may not be
 196 enrolled in renewed membership in the Senior Management Service
 197 Class or in the Senior Management Service Optional Annuity
 198 Program as provided in subsection (6), and may not withdraw from
 199 the Florida Retirement System as a renewed member as provided in
 200 subparagraph (b)2., as applicable, in lieu of membership in the

201 Senior Management Service Class. Effective July 1, 2017, a
 202 retiree of the Senior Management Service Optional Annuity
 203 Program who is reemployed in a regularly established position
 204 with a covered employer shall be enrolled as a renewed member as
 205 provided in s. 121.122.

206 4. Effective July 1, 2017, an elected official eligible
 207 for membership in the Elected Officers' Class may not enroll in
 208 the Senior Management Service Class or in the Senior Management
 209 Service Optional Annuity Program as provided in subsection (6).

210 (6)

211 (c) *Participation.*—

212 1. An eligible employee who is employed on or before
 213 February 1, 1987, may elect to participate in the optional
 214 annuity program in lieu of participating in the Senior
 215 Management Service Class. Such election shall ~~must~~ be made in
 216 writing and filed with the department and the personnel officer
 217 of the employer on or before May 1, 1987. An eligible employee
 218 who is employed on or before February 1, 1987, and who fails to
 219 make an election to participate in the optional annuity program
 220 by May 1, 1987, is ~~shall be~~ deemed to have elected membership in
 221 the Senior Management Service Class.

222 2. Except as provided in subparagraph 6., an employee who
 223 becomes eligible to participate in the optional annuity program
 224 by reason of initial employment commencing after February 1,
 225 1987, may, within 90 days after the date of commencing

226 employment, elect to participate in the optional annuity
 227 program. Such election shall ~~must~~ be made in writing and filed
 228 with the personnel officer of the employer. An eligible employee
 229 who does not within 90 days after commencing employment elect to
 230 participate in the optional annuity program is ~~shall be~~ deemed
 231 to have elected membership in the Senior Management Service
 232 Class.

233 3. A person who is appointed to a position in the Senior
 234 Management Service Class and who is a member of an existing
 235 retirement system or the Special Risk or Special Risk
 236 Administrative Support Classes of the Florida Retirement System
 237 may elect to remain in such system or class in lieu of
 238 participating in the Senior Management Service Class or optional
 239 annuity program. Such election shall ~~must~~ be made in writing and
 240 filed with the department and the personnel officer of the
 241 employer within 90 days after such appointment. An eligible
 242 employee who fails to make an election to participate in the
 243 existing system, the Special Risk Class of the Florida
 244 Retirement System, the Special Risk Administrative Support Class
 245 of the Florida Retirement System, or the optional annuity
 246 program is ~~shall be~~ deemed to have elected membership in the
 247 Senior Management Service Class.

248 4. Except as provided in subparagraph 5., an employee's
 249 election to participate in the optional annuity program is
 250 irrevocable if the employee continues to be employed in an

251 eligible position and continues to meet the eligibility
 252 requirements set forth in this paragraph.

253 5. Effective from July 1, 2002, through September 30,
 254 2002, an active employee in a regularly established position who
 255 has elected to participate in the Senior Management Service
 256 Optional Annuity Program has one opportunity to choose to move
 257 from the Senior Management Service Optional Annuity Program to
 258 the Florida Retirement System Pension Plan.

259 a. The election shall ~~must~~ be made in writing and ~~must be~~
 260 filed with the department and the personnel officer of the
 261 employer before October 1, 2002, or, in the case of an active
 262 employee who is on a leave of absence on July 1, 2002, within 90
 263 days after the conclusion of the leave of absence. This election
 264 is irrevocable.

265 b. The employee shall receive service credit under the
 266 pension plan equal to his or her years of service under the
 267 Senior Management Service Optional Annuity Program. The cost for
 268 such credit is the amount representing the present value of that
 269 employee's accumulated benefit obligation for the affected
 270 period of service.

271 c. The employee shall ~~must~~ transfer the total accumulated
 272 employer contributions and earnings on deposit in his or her
 273 Senior Management Service Optional Annuity Program account. If
 274 the transferred amount is not sufficient to pay the amount due,
 275 the employee shall ~~must~~ pay a sum representing the remainder of

276 the amount due. The employee may not retain any employer
 277 contributions or earnings from the Senior Management Service
 278 Optional Annuity Program account.

279 6. A retiree of a state-administered retirement system who
 280 is initially reemployed on or after July 1, 2010, through June
 281 30, 2017, may not renew membership in the Senior Management
 282 Service Optional Annuity Program. Effective July 1, 2017, a
 283 retiree of the Senior Management Service Optional Annuity
 284 Program who is reemployed in a regularly established position
 285 with a covered employer shall be enrolled as a renewed member as
 286 provided in s. 121.122.

287 7. Effective July 1, 2017, the Senior Management Service
 288 Optional Annuity Program is closed to new members. A member
 289 enrolled in the Senior Management Service Optional Annuity
 290 Program before July 1, 2017, may retain his or her membership in
 291 the annuity program.

292 Section 5. Paragraph (a) of subsection (1), paragraphs (d)
 293 and (i) of subsection (7), and paragraph (c) of subsection (9)
 294 of section 121.091, Florida Statutes, are amended to read:

295 121.091 Benefits payable under the system.—Benefits may
 296 not be paid under this section unless the member has terminated
 297 employment as provided in s. 121.021(39)(a) or begun
 298 participation in the Deferred Retirement Option Program as
 299 provided in subsection (13), and a proper application has been
 300 filed in the manner prescribed by the department. The department

301 may cancel an application for retirement benefits when the
 302 member or beneficiary fails to timely provide the information
 303 and documents required by this chapter and the department's
 304 rules. The department shall adopt rules establishing procedures
 305 for application for retirement benefits and for the cancellation
 306 of such application when the required information or documents
 307 are not received.

308 (1) NORMAL RETIREMENT BENEFIT.—Upon attaining his or her
 309 normal retirement date, the member, upon application to the
 310 administrator, shall receive a monthly benefit which shall begin
 311 to accrue on the first day of the month of retirement and be
 312 payable on the last day of that month and each month thereafter
 313 during his or her lifetime. The normal retirement benefit,
 314 including any past or additional retirement credit, may not
 315 exceed 100 percent of the average final compensation. The amount
 316 of monthly benefit shall be calculated as the product of A and
 317 B, subject to the adjustment of C, if applicable, as set forth
 318 below:

319 (a)1. For creditable years of Regular Class service, A is
 320 1.60 percent of the member's average final compensation, up to
 321 the member's normal retirement date. Upon completion of the
 322 first year after the normal retirement date, A is 1.63 percent
 323 of the member's average final compensation. Following the second
 324 year after the normal retirement date, A is 1.65 percent of the
 325 member's average final compensation. Following the third year

326 after the normal retirement date, and for subsequent years, A is
 327 1.68 percent of the member's average final compensation.

328 2. For creditable years of special risk service, A is:

329 a. Two percent of the member's average final compensation
 330 for all creditable years prior to October 1, 1974;

331 b. Three percent of the member's average final
 332 compensation for all creditable years after September 30, 1974,
 333 and before October 1, 1978;

334 c. Two percent of the member's average final compensation
 335 for all creditable years after September 30, 1978, and before
 336 January 1, 1989;

337 d. Two and two-tenths percent of the member's final
 338 monthly compensation for all creditable years after December 31,
 339 1988, and before January 1, 1990;

340 e. Two and four-tenths percent of the member's average
 341 final compensation for all creditable years after December 31,
 342 1989, and before January 1, 1991;

343 f. Two and six-tenths percent of the member's average
 344 final compensation for all creditable years after December 31,
 345 1990, and before January 1, 1992;

346 g. Two and eight-tenths percent of the member's average
 347 final compensation for all creditable years after December 31,
 348 1991, and before January 1, 1993;

349 h. Three percent of the member's average final
 350 compensation for all creditable years after December 31, 1992;

351 and

352 i. Three percent of the member's average final
 353 compensation for all creditable years of service after September
 354 30, 1978, and before January 1, 1993, for any special risk
 355 member who retires after July 1, 2000, or any member of the
 356 Special Risk Administrative Support Class entitled to retain the
 357 special risk normal retirement date who was a member of the
 358 Special Risk Class during the time period and who retires after
 359 July 1, 2000.

360 3. For creditable years of Senior Management Service Class
 361 service after January 31, 1987, A is 2 percent;

362 4.a. For creditable years of service before July 1, 2017,
 363 A is 3 1/3 percent of the member's average final compensation
 364 ~~for creditable years of Elected Officers' Class service as a~~
 365 ~~Supreme Court Justice, district court of appeal judge, circuit~~
 366 ~~judge, or county court judge, A is 3 1/3 percent of the member's~~
 367 ~~average final compensation,~~ and for all other creditable service
 368 in such class, A is 3 percent of average final compensation;

369 b. For creditable years of service on or after July 1,
 370 2017, A is 3 percent of the member's average final compensation
 371 for Elected Officers' Class service.

372 (7) DEATH BENEFITS.—

373 (d) Notwithstanding any other provision in this chapter to
 374 the contrary, with the exception of the Deferred Retirement
 375 Option Program, as provided in subsection (13):

376 1. The surviving spouse of any member killed in the line
 377 of duty may receive a monthly pension equal to one-half of the
 378 monthly salary being received by the member at the time of death
 379 for the rest of the surviving spouse's lifetime or, if the
 380 member was vested, such surviving spouse may elect to receive a
 381 benefit as provided in paragraph (b). Benefits provided by this
 382 paragraph shall supersede any other distribution that may have
 383 been provided by the member's designation of beneficiary.

384 2. If the surviving spouse of a member killed in the line
 385 of duty dies, the monthly payments that would have been payable
 386 to such surviving spouse had such surviving spouse lived shall
 387 be paid for the use and benefit of such member's child or
 388 children under 18 years of age and unmarried until the 18th
 389 birthday of the member's youngest child. Beginning July 1, 2016,
 390 such payments may be extended, for the surviving child of a
 391 member in the Special Risk Class at the time he or she was
 392 killed in the line of duty on or after July 1, 2013, until the
 393 25th birthday of any child of the member if the child is
 394 unmarried and enrolled as a full-time student. Beginning July 1,
 395 2017, such payments may be extended, for the surviving child of
 396 a member in the Special Risk Class at the time he or she was
 397 killed in the line of duty on or after July 1, 2002, until the
 398 25th birthday of any child of the member if the child is
 399 unmarried and enrolled as a full-time student.

400 3. If a member killed in the line of duty leaves no

401 surviving spouse but is survived by a child or children under 18
402 years of age, the benefits provided by subparagraph 1., normally
403 payable to a surviving spouse, shall be paid for the use and
404 benefit of such member's child or children under 18 years of age
405 and unmarried until the 18th birthday of the member's youngest
406 child. Beginning July 1, 2016, such monthly payments may be
407 extended, for the surviving child of a member in the Special
408 Risk Class at the time he or she was killed in the line of duty
409 on or after July 1, 2013, until the 25th birthday of any child
410 of the member if the child is unmarried and enrolled as a full-
411 time student. Beginning July 1, 2017, such monthly payments may
412 be extended, for the surviving child of a member in the Special
413 Risk Class at the time he or she was killed in the line of duty
414 on or after July 1, 2002, until the 25th birthday of any child
415 of the member if the child is unmarried and enrolled as a full-
416 time student.

417 4. The surviving spouse of a member whose benefit
418 terminated because of remarriage shall have the benefit
419 reinstated beginning July 1, 1993, at an amount that would have
420 been payable had the benefit not been terminated.

421 (i) ~~Effective July 1, 2016, and~~ Notwithstanding any
422 provision in this chapter to the contrary, if a member in the
423 Special Risk Class, other than a participant in the Deferred
424 Retirement Option Program under subsection (13), is killed in
425 the line of duty on or after July 1, 2002 ~~2013~~, the following

426 benefits are payable in addition to the benefits provided in
 427 paragraph (d):

428 1. The surviving spouse may receive a monthly pension
 429 equal to one-half of the monthly salary being received by the
 430 member at the time of the member's death for the rest of the
 431 surviving spouse's lifetime or, if the member was vested, such
 432 surviving spouse may elect to receive a benefit as provided in
 433 paragraph (b). Benefits provided by this paragraph supersede any
 434 other distribution that may have been provided by the member's
 435 designation of beneficiary.

436 2. If the surviving spouse dies, the monthly payments that
 437 otherwise would have been payable to such surviving spouse shall
 438 be paid for the use and benefit of the member's child or
 439 children under 18 years of age and unmarried until the 18th
 440 birthday of the member's youngest child. Such monthly payments
 441 may be extended until the 25th birthday of the member's child if
 442 the child is unmarried and enrolled as a full-time student.

443 3. If the member leaves no surviving spouse but is
 444 survived by a child or children under 18 years of age, the
 445 benefits provided by subparagraph 1., normally payable to a
 446 surviving spouse, shall be paid for the use and benefit of such
 447 member's child or children under 18 years of age and unmarried
 448 until the 18th birthday of the member's youngest child. Such
 449 monthly payments may be extended until the 25th birthday of any
 450 of the member's children if the child is unmarried and enrolled

451 as a full-time student.

452 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

453 (c) Any person whose retirement is effective on or after
 454 July 1, 2010, or whose participation in the Deferred Retirement
 455 Option Program terminates on or after July 1, 2010, who is
 456 retired under this chapter, except under the disability
 457 retirement provisions of subsection (4) or as provided in s.
 458 121.053, may be reemployed by an employer that participates in a
 459 state-administered retirement system and receive retirement
 460 benefits and compensation from that employer. However, a person
 461 may not be reemployed by an employer participating in the
 462 Florida Retirement System before meeting the definition of
 463 termination in s. 121.021 and may not receive both a salary from
 464 the employer and retirement benefits for 6 calendar months after
 465 meeting the definition of termination. However, a DROP
 466 participant shall continue employment and receive a salary
 467 during the period of participation in the Deferred Retirement
 468 Option Program, as provided in subsection (13).

469 1. The reemployed retiree may not renew membership in the
 470 Florida Retirement System, except as provided in s. 121.122.

471 2. The employer shall pay retirement contributions in an
 472 amount equal to the unfunded actuarial liability portion of the
 473 employer contribution that would be required for active members
 474 of the Florida Retirement System in addition to the
 475 contributions required by s. 121.76.

476 3. A retiree initially reemployed in violation of this
 477 paragraph and an employer that employs or appoints such person
 478 are jointly and severally liable for reimbursement of any
 479 retirement benefits paid to the retirement trust fund from which
 480 the benefits were paid, including the Florida Retirement System
 481 Trust Fund and the Public Employee Optional Retirement Program
 482 Trust Fund, as appropriate. The employer must have a written
 483 statement from the employee that he or she is not retired from a
 484 state-administered retirement system. Retirement benefits shall
 485 remain suspended until repayment is made. Benefits suspended
 486 beyond the end of the retiree's 6-month reemployment limitation
 487 period shall apply toward the repayment of benefits received in
 488 violation of this paragraph.

489 Section 6. Subsection (2) of section 121.122, Florida
 490 Statutes, is amended, and subsections (3), (4), and (5) are
 491 added to that section, to read:

492 121.122 Renewed membership in system.—

493 (2) Except as otherwise provided in subsections (3), (4),
 494 and (5), a retiree of a state-administered retirement system who
 495 is initially reemployed in a regularly established position on
 496 or after July 1, 2010, may not be enrolled as a renewed member.

497 (3) A retiree of the investment plan, the State University
 498 System Optional Retirement Program, the Senior Management
 499 Service Optional Annuity Program, or the State Community College
 500 System Optional Retirement Program who is reemployed with a

501 covered employer in a regularly established position on or after
 502 July 1, 2017, shall be enrolled as a renewed member of the
 503 investment plan unless employed in a position eligible for
 504 participation in the State University System Optional Retirement
 505 Program as provided in subsection (4) or the State Community
 506 College System Optional Retirement Program as provided in
 507 subsection (5). The renewed member must satisfy the vesting
 508 requirements and other provisions of this chapter.

509 (a) A renewed member of the investment plan shall be
 510 enrolled in one of the following membership classes:

511 1. In the Regular Class, if the position does not meet the
 512 requirements for membership under s. 121.0515, s. 121.053, or s.
 513 121.055.

514 2. In the Special Risk Class, if the position meets the
 515 requirements of s. 121.0515.

516 3. In the Elected Officers' Class, if the position meets
 517 the requirements of s. 121.053.

518 4. In the Senior Management Service Class, if the position
 519 meets the requirements of s. 121.055.

520 (b) Creditable service, including credit toward the
 521 retiree health insurance subsidy provided in s. 112.363, does
 522 not accrue for a renewed member's employment in a regularly
 523 established position with a covered employer from July 1, 2010,
 524 through June 30, 2017.

525 (c) Employer and employee contributions, interest,

526 earnings, or any other funds may not be paid into a renewed
 527 member's investment plan account for any employment in a
 528 regularly established position with a covered employer on or
 529 after July 1, 2010, through June 30, 2017, by the renewed member
 530 or the employer on behalf of the renewed member.

531 (d) To be eligible to receive a retirement benefit, the
 532 renewed member must satisfy the vesting requirements in s.
 533 121.4501(6).

534 (e) The renewed member is ineligible to receive disability
 535 benefits as provided in s. 121.091(4) or s. 121.591(2).

536 (f) The renewed member is subject to the limitations on
 537 reemployment after retirement provided in s. 121.091(9), as
 538 applicable.

539 (g) The renewed member must satisfy the requirements for
 540 termination from employment provided in s. 121.021(39).

541 (h) Upon renewed membership or reemployment of a retiree,
 542 the employer and the renewed member shall pay the applicable
 543 employer and employee contributions required under ss. 112.363,
 544 121.71, 121.74, and 121.76. The contributions are payable only
 545 for employment and salary earned in a regularly established
 546 position with a covered employer on or after July 1, 2017. The
 547 employer and employee contributions shall be transferred to the
 548 investment plan and placed in a default fund as designated by
 549 the state board. The renewed member may move the contributions
 550 once an account is activated in the investment plan.

551 (i) A renewed member who earns creditable service under
 552 the investment plan and who is not receiving the maximum health
 553 insurance subsidy provided in s. 112.363 is entitled to earn
 554 additional credit toward the subsidy. Such credit may be earned
 555 only for employment in a regularly established position with a
 556 covered employer on or after July 1, 2017. Any additional
 557 subsidy due because of additional credit may be received only at
 558 the time of paying the second career retirement benefit. The
 559 total health insurance subsidy received by a retiree receiving
 560 benefits from initial and renewed membership may not exceed the
 561 maximum allowed under s. 112.363.

562 (j) Notwithstanding s. 121.4501(4)(f), the renewed member
 563 is not eligible to elect membership in the pension plan.

564 (4) A retiree of the investment plan, the State University
 565 System Optional Retirement Program, the Senior Management
 566 Service Optional Annuity Program, or the State Community College
 567 System Optional Retirement Program who is reemployed on or after
 568 July 1, 2017, in a regularly established position eligible for
 569 participation in the State University System Optional Retirement
 570 Program shall become a renewed member of the optional retirement
 571 program. The renewed member must satisfy the vesting
 572 requirements and other provisions of this chapter. Once
 573 enrolled, a renewed member remains enrolled in the optional
 574 retirement program while employed in an eligible position for
 575 the optional retirement program. If employment in a different

576 covered position results in the renewed member's enrollment in
 577 the investment plan, the renewed member is no longer eligible to
 578 participate in the optional retirement program unless employed
 579 in a mandatory position under s. 121.35.

580 (a) The renewed member is subject to the limitations on
 581 reemployment after retirement provided in s. 121.091(9), as
 582 applicable.

583 (b) The renewed member must satisfy the requirements for
 584 termination from employment provided in s. 121.021(39).

585 (c) Upon renewed membership or reemployment of a retiree,
 586 the employer and the renewed member shall pay the applicable
 587 employer and employee contributions required under s. 121.35.

588 (d) Employer and employee contributions, interest,
 589 earnings, or any other funds may not be paid into a renewed
 590 member's optional retirement program account for any employment
 591 in a regularly established position with a covered employer on
 592 or after July 1, 2010, through June 30, 2017, by the renewed
 593 member or the employer on behalf of the renewed member.

594 (e) Notwithstanding s. 121.4501(4)(f), the renewed member
 595 is not eligible to elect membership in the pension plan.

596 (5) A retiree of the investment plan, the State University
 597 System Optional Retirement Program, the Senior Management
 598 Service Optional Annuity Program, or the State Community College
 599 System Optional Retirement Program who is reemployed on or after
 600 July 1, 2017, in a regularly established position eligible for

601 participation in the State Community College System Optional
 602 Retirement Program shall become a renewed member of the optional
 603 retirement program. The renewed member must satisfy the
 604 eligibility requirements of this chapter and s. 1012.875 for the
 605 optional retirement program. Once enrolled, a renewed member
 606 remains enrolled in the optional retirement program while
 607 employed in an eligible position for the optional retirement
 608 program. If employment in a different covered position results
 609 in the renewed member's enrollment in the investment plan, the
 610 renewed member is no longer eligible to participate in the
 611 optional retirement program.

612 (a) The renewed member is subject to the limitations on
 613 reemployment after retirement provided in s. 121.091(9), as
 614 applicable.

615 (b) The renewed member must satisfy the requirements for
 616 termination from employment provided in s. 121.021(39).

617 (c) Upon renewed membership or reemployment of a retiree,
 618 the employer and the renewed member shall pay the applicable
 619 employer and employee contributions required under ss.
 620 121.051(2)(c) and 1012.875.

621 (d) Employer and employee contributions, interest,
 622 earnings, or any other funds may not be paid into a renewed
 623 member's optional retirement program account for any employment
 624 in a regularly established position with a covered employer on
 625 or after July 1, 2010, through June 30, 2017, by the renewed

626 member or the employer on behalf of the renewed member.

627 (e) Notwithstanding s. 121.4501(4)(f), the renewed member
 628 is not eligible to elect membership in the pension plan.

629 Section 7. Subsection (1), paragraphs (e) and (i) of
 630 subsection (2), paragraph (b) of subsection (3), subsection (4),
 631 paragraph (c) of subsection (5), and paragraphs (a), (b), (c),
 632 and (h) of subsection (10) of section 121.4501, Florida
 633 Statutes, are amended to read:

634 121.4501 Florida Retirement System Investment Plan.—

635 (1) The Trustees of the State Board of Administration
 636 shall establish a defined contribution program called the
 637 "Florida Retirement System Investment Plan" or "investment plan"
 638 for members of the Florida Retirement System under which
 639 retirement benefits will be provided for eligible employees who
 640 elect to participate in the program and for employees initially
 641 enrolled on or after July 1, 2018, in positions covered by the
 642 Elected Officers' Class who are compulsory members of the
 643 investment plan unless the member withdraws from the system
 644 under s. 121.052(3)(d). Investment plan membership continues if
 645 there is subsequent employment in a position covered by another
 646 membership class. The retirement benefits shall be provided
 647 through member-directed investments, in accordance with s.
 648 401(a) of the Internal Revenue Code and related regulations. The
 649 employer and employee shall make contributions, as provided in
 650 this section and ss. 121.571 and 121.71, to the Florida

651 Retirement System Investment Plan Trust Fund toward the funding
 652 of benefits.

653 (2) DEFINITIONS.—As used in this part, the term:

654 (e) "Eligible employee" means an officer or employee, as
 655 defined in s. 121.021, who:

656 1. Is a member of, or is eligible for membership in, the
 657 Florida Retirement System, including any renewed member of the
 658 Florida Retirement System initially enrolled before July 1,
 659 2010; ~~or~~

660 2. Participates in, or is eligible to participate in, the
 661 Senior Management Service Optional Annuity Program as
 662 established under s. 121.055(6), the State Community College
 663 System Optional Retirement Program as established under s.
 664 121.051(2)(c), or the State University System Optional
 665 Retirement Program established under s. 121.35; or

666 3. Is a retired member of the investment plan, the State
 667 University System Optional Retirement Program, the Senior
 668 Management Service Optional Annuity Program, or the State
 669 Community College System Optional Retirement Program who is
 670 reemployed in a regularly established position on or after July
 671 1, 2017, and enrolled as a renewed member as provided in s.
 672 121.122.

673
 674 The term does not include any member participating in the
 675 Deferred Retirement Option Program established under s.

676 121.091(13), a retiree of the pension plan who is reemployed in
 677 a regularly established position on or after July 1, 2010, a
 678 retiree of a state-administered retirement system initially
 679 reemployed in a regularly established position on or after July
 680 1, 2010, through June 30, 2017, or a mandatory participant of
 681 the State University System Optional Retirement Program
 682 established under s. 121.35.

683 (i) "Member" or "employee" means an eligible employee who
 684 enrolls in, or who defaults into, the investment plan as
 685 provided in subsection (4), a terminated Deferred Retirement
 686 Option Program member as described in subsection (21), or a
 687 beneficiary or alternate payee of a member or employee.

688 (3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

689 (b) Notwithstanding paragraph (a), an eligible employee
 690 who elects to participate in, or who defaults into, the
 691 investment plan and establishes one or more individual member
 692 accounts may elect to transfer to the investment plan a sum
 693 representing the present value of the employee's accumulated
 694 benefit obligation under the pension plan, except as provided in
 695 paragraph (4) (b). Upon transfer, all service credit earned under
 696 the pension plan is nullified for purposes of entitlement to a
 697 future benefit under the pension plan. A member may not transfer
 698 the accumulated benefit obligation balance from the pension plan
 699 after the time period for enrolling in the investment plan has
 700 expired.

701 1. For purposes of this subsection, the present value of
 702 the member's accumulated benefit obligation is based upon the
 703 member's estimated creditable service and estimated average
 704 final compensation under the pension plan, subject to
 705 recomputation under subparagraph 2. For state employees, initial
 706 estimates shall be based upon creditable service and average
 707 final compensation as of midnight on June 30, 2002; for district
 708 school board employees, initial estimates shall be based upon
 709 creditable service and average final compensation as of midnight
 710 on September 30, 2002; and for local government employees,
 711 initial estimates shall be based upon creditable service and
 712 average final compensation as of midnight on December 31, 2002.
 713 The dates specified are the "estimate date" for these employees.
 714 The actuarial present value of the employee's accumulated
 715 benefit obligation shall be based on the following:

716 a. The discount rate and other relevant actuarial
 717 assumptions used to value the Florida Retirement System Trust
 718 Fund at the time the amount to be transferred is determined,
 719 consistent with the factors provided in sub-subparagraphs b. and
 720 c.

721 b. A benefit commencement age, based on the member's
 722 estimated creditable service as of the estimate date.

723 c. Except as provided under sub-subparagraph d., for a
 724 member initially enrolled:

725 (I) Before July 1, 2011, the benefit commencement age is

726 the younger of the following, but may not be younger than the
 727 member's age as of the estimate date:

728 (A) Age 62; or

729 (B) The age the member would attain if the member
 730 completed 30 years of service with an employer, assuming the
 731 member worked continuously from the estimate date, and
 732 disregarding any vesting requirement that would otherwise apply
 733 under the pension plan.

734 (II) On or after July 1, 2011, the benefit commencement
 735 age is the younger of the following, but may not be younger than
 736 the member's age as of the estimate date:

737 (A) Age 65; or

738 (B) The age the member would attain if the member
 739 completed 33 years of service with an employer, assuming the
 740 member worked continuously from the estimate date, and
 741 disregarding any vesting requirement that would otherwise apply
 742 under the pension plan.

743 d. For members of the Special Risk Class and for members
 744 of the Special Risk Administrative Support Class entitled to
 745 retain the special risk normal retirement date:

746 (I) Initially enrolled before July 1, 2011, the benefit
 747 commencement age is the younger of the following, but may not be
 748 younger than the member's age as of the estimate date:

749 (A) Age 55; or

750 (B) The age the member would attain if the member

751 completed 25 years of service with an employer, assuming the
 752 member worked continuously from the estimate date, and
 753 disregarding any vesting requirement that would otherwise apply
 754 under the pension plan.

755 (II) Initially enrolled on or after July 1, 2011, the
 756 benefit commencement age is the younger of the following, but
 757 may not be younger than the member's age as of the estimate
 758 date:

759 (A) Age 60; or

760 (B) The age the member would attain if the member
 761 completed 30 years of service with an employer, assuming the
 762 member worked continuously from the estimate date, and
 763 disregarding any vesting requirement that would otherwise apply
 764 under the pension plan.

765 e. The calculation must disregard vesting requirements and
 766 early retirement reduction factors that would otherwise apply
 767 under the pension plan.

768 2. For each member who elects to transfer moneys from the
 769 pension plan to his or her account in the investment plan, the
 770 division shall recompute the amount transferred under
 771 subparagraph 1. within 60 days after the actual transfer of
 772 funds based upon the member's actual creditable service and
 773 actual final average compensation as of the initial date of
 774 participation in the investment plan. If the recomputed amount
 775 differs from the amount transferred by \$10 or more, the division

776 shall:

777 a. Transfer, or cause to be transferred, from the Florida
 778 Retirement System Trust Fund to the member's account the excess,
 779 if any, of the recomputed amount over the previously transferred
 780 amount together with interest from the initial date of transfer
 781 to the date of transfer under this subparagraph, based upon the
 782 effective annual interest equal to the assumed return on the
 783 actuarial investment which was used in the most recent actuarial
 784 valuation of the system, compounded annually.

785 b. Transfer, or cause to be transferred, from the member's
 786 account to the Florida Retirement System Trust Fund the excess,
 787 if any, of the previously transferred amount over the recomputed
 788 amount, together with interest from the initial date of transfer
 789 to the date of transfer under this subparagraph, based upon 6
 790 percent effective annual interest, compounded annually, pro rata
 791 based on the member's allocation plan.

792 3. If contribution adjustments are made as a result of
 793 employer errors or corrections, including plan corrections,
 794 following recomputation of the amount transferred under
 795 subparagraph 1., the member is entitled to the additional
 796 contributions or is responsible for returning any excess
 797 contributions resulting from the correction. However, a ~~any~~
 798 return of such erroneous excess pretax contribution by the plan
 799 must be made within the period allowed by the Internal Revenue
 800 Service. The present value of the member's accumulated benefit

801 obligation may ~~shall~~ not be recalculated.

802 4. As directed by the member, the state board shall
 803 transfer or cause to be transferred the appropriate amounts to
 804 the designated accounts within 30 days after the effective date
 805 of the member's participation in the investment plan unless the
 806 major financial markets for securities available for a transfer
 807 are seriously disrupted by an unforeseen event that causes the
 808 suspension of trading on a ~~any~~ national securities exchange in
 809 the country where the securities were issued. In that event, the
 810 30-day period may be extended by a resolution of the state
 811 board. Transfers are not commissionable or subject to other fees
 812 and may be in the form of securities or cash, as determined by
 813 the state board. Such securities are valued as of the date of
 814 receipt in the member's account.

815 5. If the state board or the division receives
 816 notification from the United States Internal Revenue Service
 817 that this paragraph or any portion of this paragraph will cause
 818 the retirement system, or a portion thereof, to be disqualified
 819 for tax purposes under the Internal Revenue Code, the portion
 820 that will cause the disqualification does not apply. Upon such
 821 notice, the state board and the division shall notify the
 822 presiding officers of the Legislature.

823 (4) PARTICIPATION; ENROLLMENT.—

824 (a)1. Effective June 1, 2002, through February 28, 2003, a
 825 90-day election period was provided to each eligible employee

826 participating in the Florida Retirement System, preceded by a
 827 90-day education period, permitting each eligible employee to
 828 elect membership in the investment plan. An employee who failed
 829 to elect the investment plan during the election period remained
 830 in the pension plan. An eligible employee who was employed in a
 831 regularly established position during the election period was
 832 granted the option to make one subsequent election, as provided
 833 in paragraph (f). With respect to an eligible employee who did
 834 not participate in the initial election period or who is
 835 initially employed in a regularly established position after the
 836 close of the initial election period but before January 1, 2018,
 837 on June 1, 2002, by a state employer.

838 ~~a. Any such employee may elect to participate in the~~
 839 ~~investment plan in lieu of retaining his or her membership in~~
 840 ~~the pension plan. The election must be made in writing or by~~
 841 ~~electronic means and must be filed with the third party~~
 842 ~~administrator by August 31, 2002, or, in the case of an active~~
 843 ~~employee who is on a leave of absence on April 1, 2002, by the~~
 844 ~~last business day of the 5th month following the month the leave~~
 845 ~~of absence concludes. This election is irrevocable, except as~~
 846 ~~provided in paragraph (g). Upon making such election, the~~
 847 ~~employee shall be enrolled as a member of the investment plan,~~
 848 ~~the employee's membership in the Florida Retirement System is~~
 849 ~~governed by the provisions of this part, and the employee's~~
 850 ~~membership in the pension plan terminates. The employee's~~

851 ~~enrollment in the investment plan is effective the first day of~~
 852 ~~the month for which a full month's employer contribution is made~~
 853 ~~to the investment plan.~~

854 ~~b. Any such employee who fails to elect to participate in~~
 855 ~~the investment plan within the prescribed time period is deemed~~
 856 ~~to have elected to retain membership in the pension plan, and~~
 857 ~~the employee's option to elect to participate in the investment~~
 858 ~~plan is forfeited.~~

859 ~~2. With respect to employees who become eligible to~~
 860 ~~participate in the investment plan by reason of employment in a~~
 861 ~~regularly established position with a state employer commencing~~
 862 ~~after April 1, 2002:~~

863 ~~a. Any such employee shall, by default, be enrolled in the~~
 864 ~~pension plan at the commencement of employment, and may, by the~~
 865 ~~last business day of the 5th month following the employee's~~
 866 ~~month of hire, elect to participate in the investment plan. The~~
 867 ~~employee's election must be made in writing or by electronic~~
 868 ~~means and must be filed with the third-party administrator. The~~
 869 ~~election to participate in the investment plan is irrevocable,~~
 870 ~~except as provided in paragraph (f) ~~(g)~~.~~

871 ~~a.b.~~ a. If the employee files such election within the
 872 prescribed time period, enrollment in the investment plan is
 873 effective on the first day of employment. The retirement
 874 contributions paid through the month of the employee plan change
 875 shall be transferred to the investment program, and, effective

876 the first day of the next month, the employer and employee must
 877 pay the applicable contributions based on the employee
 878 membership class in the program.

879 b.e. An employee who fails to elect to participate in the
 880 investment plan within the prescribed time period is deemed to
 881 have elected to retain membership in the pension plan, and the
 882 employee's option to elect to participate in the investment plan
 883 is forfeited.

884 2.3. With respect to employees who become eligible to
 885 participate in the investment plan pursuant to s.
 886 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to
 887 participate in the investment plan in lieu of retaining his or
 888 her membership in the State Community College System Optional
 889 Retirement Program or the State University System Optional
 890 Retirement Program. The election must be made in writing or by
 891 electronic means and must be filed with the third-party
 892 administrator. This election is irrevocable, except as provided
 893 in paragraph (f) ~~(g)~~. Upon making such election, the employee
 894 shall be enrolled as a member in the investment plan, the
 895 employee's membership in the Florida Retirement System is
 896 governed by the provisions of this part, and the employee's
 897 participation in the State Community College System Optional
 898 Retirement Program or the State University System Optional
 899 Retirement Program terminates. The employee's enrollment in the
 900 investment plan is effective on the first day of the month for

901 | which a full month's employer and employee contribution is made
 902 | to the investment plan.

903 | (b)1. With respect to employees who become eligible to
 904 | participate in the investment plan by reason of employment in a
 905 | regularly established position commencing on or after January 1,
 906 | 2018, or who did not complete an election window before January
 907 | 1, 2018, any such employee shall be enrolled in the pension plan
 908 | at the commencement of employment and may, by the last business
 909 | day of the fifth month following the employee's month of hire,
 910 | elect to participate in the pension plan or the investment plan.
 911 | Eligible employees may make a plan election only if they are
 912 | earning service credit in an employer-employee relationship
 913 | consistent with s. 121.021(17) (b), excluding leaves of absence
 914 | without pay.

915 | 2. The employee's election must be made in writing or by
 916 | electronic means and must be filed with the third-party
 917 | administrator. The election to participate in the pension plan
 918 | or investment plan is irrevocable, except as provided in
 919 | paragraph (f).

920 | 3. If the employee fails to make an election of the
 921 | pension plan or investment plan within 5 months following the
 922 | month of hire, the employee is deemed to have elected the
 923 | investment plan and shall default into the investment plan
 924 | retroactively to the employee's date of employment. The
 925 | employee's option to participate in the pension plan is

926 forfeited, except as provided in paragraph (f).

927 4. The amount of the employee and employer contributions
 928 paid through the date of default to the investment plan shall be
 929 transferred to the investment plan and shall be placed in a
 930 default fund as designated by the State Board of Administration.
 931 The employee may move the contributions once an account is
 932 activated in the investment plan.

933 5. Effective the first day of the month after an eligible
 934 employee makes a plan election of the pension plan or investment
 935 plan, or the first day of the month after default to the
 936 investment plan, the employee and employer shall pay the
 937 applicable contributions based on the employee membership class
 938 in the program.

939 ~~4. For purposes of this paragraph, "state employer" means~~
 940 ~~any agency, board, branch, commission, community college,~~
 941 ~~department, institution, institution of higher education, or~~
 942 ~~water management district of the state, which participates in~~
 943 ~~the Florida Retirement System for the benefit of certain~~
 944 ~~employees.~~

945 ~~(b)1. With respect to an eligible employee who is employed~~
 946 ~~in a regularly established position on September 1, 2002, by a~~
 947 ~~district school board employer:~~

948 ~~a. Any such employee may elect to participate in the~~
 949 ~~investment plan in lieu of retaining his or her membership in~~
 950 ~~the pension plan. The election must be made in writing or by~~

951 ~~electronic means and must be filed with the third party~~
 952 ~~administrator by November 30, or, in the case of an active~~
 953 ~~employee who is on a leave of absence on July 1, 2002, by the~~
 954 ~~last business day of the 5th month following the month the leave~~
 955 ~~of absence concludes. This election is irrevocable, except as~~
 956 ~~provided in paragraph (g). Upon making such election, the~~
 957 ~~employee shall be enrolled as a member of the investment plan,~~
 958 ~~the employee's membership in the Florida Retirement System is~~
 959 ~~governed by the provisions of this part, and the employee's~~
 960 ~~membership in the pension plan terminates. The employee's~~
 961 ~~enrollment in the investment plan is effective the first day of~~
 962 ~~the month for which a full month's employer contribution is made~~
 963 ~~to the investment program.~~

964 ~~b. Any such employee who fails to elect to participate in~~
 965 ~~the investment plan within the prescribed time period is deemed~~
 966 ~~to have elected to retain membership in the pension plan, and~~
 967 ~~the employee's option to elect to participate in the investment~~
 968 ~~plan is forfeited.~~

969 ~~2. With respect to employees who become eligible to~~
 970 ~~participate in the investment plan by reason of employment in a~~
 971 ~~regularly established position with a district school board~~
 972 ~~employer commencing after July 1, 2002:~~

973 ~~a. Any such employee shall, by default, be enrolled in the~~
 974 ~~pension plan at the commencement of employment, and may, by the~~
 975 ~~last business day of the 5th month following the employee's~~

976 ~~month of hire, elect to participate in the investment plan. The~~
 977 ~~employee's election must be made in writing or by electronic~~
 978 ~~means and must be filed with the third party administrator. The~~
 979 ~~election to participate in the investment plan is irrevocable,~~
 980 ~~except as provided in paragraph (g).~~

981 ~~b. If the employee files such election within the~~
 982 ~~prescribed time period, enrollment in the investment plan is~~
 983 ~~effective on the first day of employment. The employer~~
 984 ~~retirement contributions paid through the month of the employee~~
 985 ~~plan change shall be transferred to the investment plan, and,~~
 986 ~~effective the first day of the next month, the employer shall~~
 987 ~~pay the applicable contributions based on the employee~~
 988 ~~membership class in the investment plan.~~

989 ~~c. Any such employee who fails to elect to participate in~~
 990 ~~the investment plan within the prescribed time period is deemed~~
 991 ~~to have elected to retain membership in the pension plan, and~~
 992 ~~the employee's option to elect to participate in the investment~~
 993 ~~plan is forfeited.~~

994 ~~3. For purposes of this paragraph, "district school board~~
 995 ~~employer" means any district school board that participates in~~
 996 ~~the Florida Retirement System for the benefit of certain~~
 997 ~~employees, or a charter school or charter technical career~~
 998 ~~center that participates in the Florida Retirement System as~~
 999 ~~provided in s. 121.051(2)(d).~~

1000 ~~(e)1. With respect to an eligible employee who is employed~~

1001 ~~in a regularly established position on December 1, 2002, by a~~
 1002 ~~local employer.~~

1003 ~~a. Any such employee may elect to participate in the~~
 1004 ~~investment plan in lieu of retaining his or her membership in~~
 1005 ~~the pension plan. The election must be made in writing or by~~
 1006 ~~electronic means and must be filed with the third party~~
 1007 ~~administrator by February 28, 2003, or, in the case of an active~~
 1008 ~~employee who is on a leave of absence on October 1, 2002, by the~~
 1009 ~~last business day of the 5th month following the month the leave~~
 1010 ~~of absence concludes. This election is irrevocable, except as~~
 1011 ~~provided in paragraph (g). Upon making such election, the~~
 1012 ~~employee shall be enrolled as a participant of the investment~~
 1013 ~~plan, the employee's membership in the Florida Retirement System~~
 1014 ~~is governed by the provisions of this part, and the employee's~~
 1015 ~~membership in the pension plan terminates. The employee's~~
 1016 ~~enrollment in the investment plan is effective the first day of~~
 1017 ~~the month for which a full month's employer contribution is made~~
 1018 ~~to the investment plan.~~

1019 ~~b. Any such employee who fails to elect to participate in~~
 1020 ~~the investment plan within the prescribed time period is deemed~~
 1021 ~~to have elected to retain membership in the pension plan, and~~
 1022 ~~the employee's option to elect to participate in the investment~~
 1023 ~~plan is forfeited.~~

1024 ~~2. With respect to employees who become eligible to~~
 1025 ~~participate in the investment plan by reason of employment in a~~

1026 ~~regularly established position with a local employer commencing~~
 1027 ~~after October 1, 2002.~~

1028 ~~a. Any such employee shall, by default, be enrolled in the~~
 1029 ~~pension plan at the commencement of employment, and may, by the~~
 1030 ~~last business day of the 5th month following the employee's~~
 1031 ~~month of hire, elect to participate in the investment plan. The~~
 1032 ~~employee's election must be made in writing or by electronic~~
 1033 ~~means and must be filed with the third party administrator. The~~
 1034 ~~election to participate in the investment plan is irrevocable,~~
 1035 ~~except as provided in paragraph (g).~~

1036 ~~b. If the employee files such election within the~~
 1037 ~~prescribed time period, enrollment in the investment plan is~~
 1038 ~~effective on the first day of employment. The employer~~
 1039 ~~retirement contributions paid through the month of the employee~~
 1040 ~~plan change shall be transferred to the investment plan, and,~~
 1041 ~~effective the first day of the next month, the employer shall~~
 1042 ~~pay the applicable contributions based on the employee~~
 1043 ~~membership class in the investment plan.~~

1044 ~~c. Any such employee who fails to elect to participate in~~
 1045 ~~the investment plan within the prescribed time period is deemed~~
 1046 ~~to have elected to retain membership in the pension plan, and~~
 1047 ~~the employee's option to elect to participate in the investment~~
 1048 ~~plan is forfeited.~~

1049 ~~3. For purposes of this paragraph, "local employer" means~~
 1050 ~~any employer not included in paragraph (a) or paragraph (b).~~

1051 (c) ~~(d)~~ Contributions available for self-direction by a
 1052 member who has not selected one or more specific investment
 1053 products shall be allocated as prescribed by the state board.
 1054 The third-party administrator shall notify the member at least
 1055 quarterly that the member should take an affirmative action to
 1056 make an asset allocation among the investment products.

1057 (d) ~~(e)~~ On or after July 1, 2011, a member of the pension
 1058 plan who obtains a refund of employee contributions retains his
 1059 or her prior plan choice upon return to employment in a
 1060 regularly established position with a participating employer.

1061 (e)1. ~~(f)~~ A member of the investment plan who takes a
 1062 distribution of any contributions from his or her investment
 1063 plan account is considered a retiree. A retiree who is initially
 1064 reemployed in a regularly established position on or after July
 1065 1, 2010, through June 30, 2017, is not eligible for ~~to be~~
 1066 ~~enrolled in~~ renewed membership, except as provided in s.
 1067 121.122.

1068 2. A retiree who is reemployed on or after July 1, 2017,
 1069 shall be enrolled as a renewed member as provided in s. 121.122.

1070 (f) ~~(g)~~ After the period during which an eligible employee
 1071 had the choice to elect the pension plan or the investment plan,
 1072 or the month following the receipt of the eligible employee's
 1073 plan election, if sooner, the employee shall have one
 1074 opportunity, at the employee's discretion, to choose to move
 1075 from the pension plan to the investment plan or from the

1076 investment plan to the pension plan. Eligible employees may
 1077 elect to move between plans only if they are earning service
 1078 credit in an employer-employee relationship consistent with s.
 1079 121.021(17)(b), excluding leaves of absence without pay.
 1080 Effective July 1, 2005, such elections are effective on the
 1081 first day of the month following the receipt of the election by
 1082 the third-party administrator and are not subject to the
 1083 requirements regarding an employer-employee relationship or
 1084 receipt of contributions for the eligible employee in the
 1085 effective month, except when the election is received by the
 1086 third-party administrator. This paragraph is contingent upon
 1087 approval by the Internal Revenue Service. This paragraph does
 1088 not apply to compulsory investment plan members under paragraph
 1089 (g).

1090 1. If the employee chooses to move to the investment plan,
 1091 the provisions of subsection (3) govern the transfer.

1092 2. If the employee chooses to move to the pension plan,
 1093 the employee must transfer from his or her investment plan
 1094 account, and from other employee moneys as necessary, a sum
 1095 representing the present value of that employee's accumulated
 1096 benefit obligation immediately following the time of such
 1097 movement, determined assuming that attained service equals the
 1098 sum of service in the pension plan and service in the investment
 1099 plan. Benefit commencement occurs on the first date the employee
 1100 is eligible for unreduced benefits, using the discount rate and

1101 other relevant actuarial assumptions that were used to value the
 1102 pension plan liabilities in the most recent actuarial valuation.
 1103 For any employee who, at the time of the second election,
 1104 already maintains an accrued benefit amount in the pension plan,
 1105 the then-present value of the accrued benefit is deemed part of
 1106 the required transfer amount. The division must ensure that the
 1107 transfer sum is prepared using a formula and methodology
 1108 certified by an enrolled actuary. A refund of any employee
 1109 contributions or additional member payments made which exceed
 1110 the employee contributions that would have accrued had the
 1111 member remained in the pension plan and not transferred to the
 1112 investment plan is not permitted.

1113 3. Notwithstanding subparagraph 2., an employee who
 1114 chooses to move to the pension plan and who became eligible to
 1115 participate in the investment plan by reason of employment in a
 1116 regularly established position with a state employer after June
 1117 1, 2002; a district school board employer after September 1,
 1118 2002; or a local employer after December 1, 2002, must transfer
 1119 from his or her investment plan account, and from other employee
 1120 moneys as necessary, a sum representing the employee's actuarial
 1121 accrued liability. A refund of any employee contributions or
 1122 additional member ~~participant~~ payments made which exceed the
 1123 employee contributions that would have accrued had the member
 1124 remained in the pension plan and not transferred to the
 1125 investment plan is not permitted.

1126 4. An employee's ability to transfer from the pension plan
 1127 to the investment plan pursuant to paragraphs (a) and (b) ~~(a)~~
 1128 ~~(a)~~, and the ability of a current employee to have an option to
 1129 later transfer back into the pension plan under subparagraph 2.,
 1130 shall be deemed a significant system amendment. Pursuant to s.
 1131 121.031(4), any resulting unfunded liability arising from actual
 1132 original transfers from the pension plan to the investment plan
 1133 must be amortized within 30 plan years as a separate unfunded
 1134 actuarial base independent of the reserve stabilization
 1135 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
 1136 direct amortization payment may not be calculated for this base.
 1137 During this 25-year period, the separate base shall be used to
 1138 offset the impact of employees exercising their second program
 1139 election under this paragraph. The actuarial funded status of
 1140 the pension plan will not be affected by such second program
 1141 elections in any significant manner, after due recognition of
 1142 the separate unfunded actuarial base. Following the initial 25-
 1143 year period, any remaining balance of the original separate base
 1144 shall be amortized over the remaining 5 years of the required
 1145 30-year amortization period.

1146 5. If the employee chooses to transfer from the investment
 1147 plan to the pension plan and retains an excess account balance
 1148 in the investment plan after satisfying the buy-in requirements
 1149 under this paragraph, the excess may not be distributed until
 1150 the member retires from the pension plan. The excess account

1151 balance may be rolled over to the pension plan and used to
 1152 purchase service credit or upgrade creditable service in the
 1153 pension plan.

1154 (g)1. A member initially enrolled on or after July 1,
 1155 2018, in a position covered by the Elected Officers' Class is a
 1156 compulsory member of the investment plan, except an employee who
 1157 withdraws from the system under s. 121.052(3)(d). A member
 1158 initially enrolled in the investment plan before July 1, 2018,
 1159 who is eligible to withdraw from the system under s.
 1160 121.052(3)(d) may elect to withdraw from the system or
 1161 participate in the investment plan as provided in s. 121.052.
 1162 Investment plan membership continues if there is subsequent
 1163 employment in a position covered by another membership class.
 1164 Membership in the pension plan for an employee initially
 1165 enrolled on or after July 1, 2018, is not permitted except as
 1166 provided in s. 121.591(2) and (4). A member initially enrolled
 1167 in the Florida Retirement System before July 1, 2018, may retain
 1168 his or her membership in the pension plan or investment plan and
 1169 may use the election opportunity specified in paragraph (f).

1170 2. A member initially enrolled on or after July 1, 2018,
 1171 in a position covered by the Elected Officers' Class may use the
 1172 election opportunity specified in paragraph (f).

1173 3. The amount of retirement contributions paid by the
 1174 employee and employer, as required under s. 121.72, shall be
 1175 placed in a default fund as designated by the state board, until

1176 an account is activated in the investment plan, at which time
 1177 the member may move the contribution from the default fund to
 1178 other funds provided in the investment plan.

1179 (5) CONTRIBUTIONS.—

1180 (c) The state board, acting as plan fiduciary, must ensure
 1181 that all plan assets are held in a trust, pursuant to s. 401 of
 1182 the Internal Revenue Code. The fiduciary must ensure that such
 1183 contributions are allocated as follows:

1184 1. The employer and employee contribution portion
 1185 earmarked for member accounts shall be used to purchase
 1186 interests in the appropriate investment vehicles as specified by
 1187 the member, or in accordance with paragraph (4) (c) ~~(4) (d)~~.

1188 2. The employer contribution portion earmarked for
 1189 administrative and educational expenses shall be transferred to
 1190 the state board's Administrative Trust Fund.

1191 3. The employer contribution portion earmarked for
 1192 disability benefits and line-of-duty death benefits shall be
 1193 transferred to the Florida Retirement System Trust Fund.

1194 (10) EDUCATION COMPONENT.—

1195 (a) The state board, in coordination with the department,
 1196 shall provide for an education component for eligible employees
 1197 ~~system members~~ in a manner consistent with ~~the provisions of~~
 1198 this subsection ~~section~~. ~~The education component must be~~
 1199 ~~available to eligible employees at least 90 days prior to the~~
 1200 ~~beginning date of the election period for the employees of the~~

1201 ~~respective types of employers.~~

1202 (b) The education component must provide system members
 1203 with impartial and balanced information about plan choices
 1204 except for members initially enrolled on or after July 1, 2018,
 1205 as provided in paragraph (4) (g). The education component must
 1206 involve multimedia formats. Program comparisons must, to the
 1207 greatest extent possible, be based upon the retirement income
 1208 that different retirement programs may provide to the member.
 1209 The state board shall monitor the performance of the contract to
 1210 ensure that the program is conducted in accordance with the
 1211 contract, applicable law, and the rules of the state board.

1212 (c) The state board, in coordination with the department,
 1213 shall provide for an initial and ongoing transfer education
 1214 component to provide system members except for members initially
 1215 enrolled on or after July 1, 2018, as provided in paragraph
 1216 (4) (g), with information necessary to make informed plan choice
 1217 decisions. The transfer education component must include, but is
 1218 not limited to, information on:

1219 1. The amount of money available to a member to transfer
 1220 to the defined contribution program.

1221 2. The features of and differences between the pension
 1222 plan and the defined contribution program, both generally and
 1223 specifically, as those differences may affect the member.

1224 3. The expected benefit available if the member were to
 1225 retire under each of the retirement programs, based on

1226 appropriate alternative sets of assumptions.

1227 4. The rate of return from investments in the defined
 1228 contribution program and the period of time over which such rate
 1229 of return must be achieved to equal or exceed the expected
 1230 monthly benefit payable to the member under the pension plan.

1231 5. The historical rates of return for the investment
 1232 alternatives available in the defined contribution programs.

1233 6. The benefits and historical rates of return on
 1234 investments available in a typical deferred compensation plan or
 1235 a typical plan under s. 403(b) of the Internal Revenue Code for
 1236 which the employee may be eligible.

1237 7. The program choices available to employees of the State
 1238 University System and the comparative benefits of each available
 1239 program, if applicable.

1240 8. Payout options available in each of the retirement
 1241 programs.

1242 ~~(h) Pursuant to subsection (8), all Florida Retirement~~
 1243 ~~System employers have an obligation to regularly communicate the~~
 1244 ~~existence of the two Florida Retirement System plans and the~~
 1245 ~~plan choice in the natural course of administering their~~
 1246 ~~personnel functions, using the educational materials supplied by~~
 1247 ~~the state board and the Department of Management Services.~~

1248 Section 8. Subsection (4) of section 121.591, Florida
 1249 Statutes, is amended to read:

1250 121.591 Payment of benefits.—Benefits may not be paid

1251 under the Florida Retirement System Investment Plan unless the
 1252 member has terminated employment as provided in s.
 1253 121.021(39)(a) or is deceased and a proper application has been
 1254 filed as prescribed by the state board or the department.
 1255 Benefits, including employee contributions, are not payable
 1256 under the investment plan for employee hardships, unforeseeable
 1257 emergencies, loans, medical expenses, educational expenses,
 1258 purchase of a principal residence, payments necessary to prevent
 1259 eviction or foreclosure on an employee's principal residence, or
 1260 any other reason except a requested distribution for retirement,
 1261 a mandatory de minimis distribution authorized by the
 1262 administrator, or a required minimum distribution provided
 1263 pursuant to the Internal Revenue Code. The state board or
 1264 department, as appropriate, may cancel an application for
 1265 retirement benefits if the member or beneficiary fails to timely
 1266 provide the information and documents required by this chapter
 1267 and the rules of the state board and department. In accordance
 1268 with their respective responsibilities, the state board and the
 1269 department shall adopt rules establishing procedures for
 1270 application for retirement benefits and for the cancellation of
 1271 such application if the required information or documents are
 1272 not received. The state board and the department, as
 1273 appropriate, are authorized to cash out a de minimis account of
 1274 a member who has been terminated from Florida Retirement System
 1275 covered employment for a minimum of 6 calendar months. A de

1276 | minimis account is an account containing employer and employee
 1277 | contributions and accumulated earnings of not more than \$5,000
 1278 | made under the provisions of this chapter. Such cash-out must be
 1279 | a complete lump-sum liquidation of the account balance, subject
 1280 | to the provisions of the Internal Revenue Code, or a lump-sum
 1281 | direct rollover distribution paid directly to the custodian of
 1282 | an eligible retirement plan, as defined by the Internal Revenue
 1283 | Code, on behalf of the member. Any nonvested accumulations and
 1284 | associated service credit, including amounts transferred to the
 1285 | suspense account of the Florida Retirement System Investment
 1286 | Plan Trust Fund authorized under s. 121.4501(6), shall be
 1287 | forfeited upon payment of any vested benefit to a member or
 1288 | beneficiary, except for de minimis distributions or minimum
 1289 | required distributions as provided under this section. If any
 1290 | financial instrument issued for the payment of retirement
 1291 | benefits under this section is not presented for payment within
 1292 | 180 days after the last day of the month in which it was
 1293 | originally issued, the third-party administrator or other duly
 1294 | authorized agent of the state board shall cancel the instrument
 1295 | and credit the amount of the instrument to the suspense account
 1296 | of the Florida Retirement System Investment Plan Trust Fund
 1297 | authorized under s. 121.4501(6). Any amounts transferred to the
 1298 | suspense account are payable upon a proper application, not to
 1299 | include earnings thereon, as provided in this section, within 10
 1300 | years after the last day of the month in which the instrument

1301 was originally issued, after which time such amounts and any
 1302 earnings attributable to employer contributions shall be
 1303 forfeited. Any forfeited amounts are assets of the trust fund
 1304 and are not subject to chapter 717.

1305 (4) LINE-OF-DUTY DEATH BENEFITS FOR INVESTMENT PLAN
 1306 ~~SPECIAL RISK CLASS~~ MEMBERS.—Benefits are provided under this
 1307 subsection to the spouse and child or children of members in the
 1308 investment plan ~~Special Risk Class~~ when such members are killed
 1309 in the line of duty and are payable in lieu of the benefits that
 1310 would otherwise be payable under subsection (1) or subsection
 1311 (3). Benefits provided by this subsection supersede any other
 1312 distribution that may have been provided by the member's
 1313 designation of beneficiary. Such benefits must be funded from
 1314 employer contributions made under s. 121.571, transferred
 1315 employee contributions and funds accumulated pursuant to
 1316 paragraph (a), and interest and earnings thereon.

1317 (a) *Transfer of funds.*—To qualify to receive monthly
 1318 benefits under this subsection:

1319 1. All moneys accumulated in the member's account,
 1320 including vested and nonvested accumulations as described in s.
 1321 121.4501(6), must be transferred from such individual accounts
 1322 to the division for deposit in the survivor benefit account of
 1323 the Florida Retirement System Trust Fund. Moneys in the survivor
 1324 benefit account must be accounted for separately. Earnings must
 1325 be credited on an annual basis for amounts held in the survivor

1326 benefit account of the Florida Retirement System Trust Fund
 1327 based on actual earnings of the trust fund.

1328 2. If the member has retained retirement credit earned
 1329 under the pension plan as provided in s. 121.4501(3), a sum
 1330 representing the actuarial present value of such credit within
 1331 the Florida Retirement System Trust Fund shall be transferred by
 1332 the division from the pension plan to the survivor benefit
 1333 retirement program as implemented under this subsection and
 1334 shall be deposited in the survivor benefit account of the trust
 1335 fund.

1336 (b) *Survivor retirement; entitlement.*—An investment plan
 1337 member who is ~~in the Special Risk Class at the time the member~~
 1338 ~~is~~ killed in the line of duty on or after July 1, 2002 ~~2013~~,
 1339 regardless of length of creditable service, may have survivor
 1340 benefits paid as provided in s. 121.091(7)(d) and (i) to:

- 1341 1. The surviving spouse for the spouse's lifetime; or
- 1342 2. If there is no surviving spouse or the surviving spouse
- 1343 dies, the member's child or children under 18 years of age and
- 1344 unmarried until the 18th birthday of the member's youngest
- 1345 child. Such payments may be extended until the 25th birthday of
- 1346 any child of the member if the child is unmarried and enrolled
- 1347 as a full-time student as provided in s. 121.091(7)(d) and (i).

1348 (c) *Survivor benefit retirement effective date.*—

- 1349 1. The effective retirement date for the surviving spouse
- 1350 or eligible child of a Special Risk Class member who is killed

1351 in the line of duty is:

1352 a.1. The first day of the month following the member's
1353 death if the member dies on or after July 1, 2016.

1354 b.2. July 1, 2016, for a member of the Special Risk Class
1355 when killed in the line of duty on or after July 1, 2013, but
1356 before July 1, 2016, if the application is received before July
1357 1, 2016; or the first day of the month following the receipt of
1358 such application.

1359 2. Except as provided in subparagraph 1., the effective
1360 retirement date for the surviving spouse or eligible child of an
1361 investment plan member who is killed in the line of duty is:

1362 a. The first day of the month following the member's death
1363 if the member dies on or after July 1, 2017.

1364 b. July 1, 2017, if the member is killed in the line of
1365 duty on or after July 1, 2002, but before July 1, 2017, if the
1366 application is received before July 1, 2017; or the first day of
1367 the month following the receipt of such application.

1368
1369 If the investment plan account balance has already been paid out
1370 to the surviving spouse or the eligible unmarried dependent
1371 child or children, the benefit payable shall be actuarially
1372 reduced by the amount of the payout.

1373 (d) *Line-of-duty death benefit.*—

1374 1. The following individuals are eligible to receive a
1375 retirement benefit under s. 121.091(7)(d) and (i) if the

1376 member's account balance is surrendered and an application is
 1377 received and approved:
 1378 a. The surviving spouse.
 1379 b. If there is no surviving spouse or the surviving spouse
 1380 dies, the member's child or children under 18 years of age and
 1381 unmarried until the 18th birthday of the member's youngest
 1382 child, or until the 25th birthday of the member's child if the
 1383 child is unmarried and enrolled as a full-time student.
 1384 2. Such surviving spouse or such child or children shall
 1385 receive a monthly survivor benefit that begins accruing on the
 1386 first day of the month of survivor benefit retirement, as
 1387 approved by the division, and is payable on the last day of that
 1388 month and each month thereafter during the surviving spouse's
 1389 lifetime or on behalf of the unmarried children of the member
 1390 until the 18th birthday of the youngest child, or until the 25th
 1391 birthday of any of the member's unmarried children who are
 1392 enrolled as full-time students. Survivor benefits must be paid
 1393 out of the survivor benefit account of the Florida Retirement
 1394 System Trust Fund established under this subsection.
 1395
 1396 If the investment plan account balance has already been paid out
 1397 to the surviving spouse or the eligible unmarried dependent
 1398 child or children, the benefit payable shall be actuarially
 1399 reduced by the amount of the payout.
 1400 (e) *Computation of survivor benefit retirement benefit.*-

1401 The amount of each monthly payment must be calculated as
 1402 provided under s. 121.091(7)(d) and (i).

1403 (f) *Death of the surviving spouse or children.*—

1404 1. Upon the death of a surviving spouse, the monthly
 1405 benefits shall be paid through the last day of the month of
 1406 death and shall terminate or be paid on behalf of the unmarried
 1407 child or children until the 18th birthday of the youngest child,
 1408 or the 25th birthday of any of the member's unmarried children
 1409 who are enrolled as full-time students.

1410 2. If the surviving spouse dies and the benefits are being
 1411 paid on behalf of the member's unmarried children as provided in
 1412 subparagraph 1., benefits shall be paid through the last day of
 1413 the month until the later of the month the youngest child
 1414 reaches his or her 18th birthday, the month of the 25th birthday
 1415 of any of the member's unmarried children enrolled as full-time
 1416 students, or the month of the death of the youngest child.

1417 Section 9. Section 121.5912, Florida Statutes, is amended
 1418 to read:

1419 121.5912 Survivor benefit retirement program; qualified
 1420 status; rulemaking authority.—It is the intent of the
 1421 Legislature that the survivor benefit retirement program for
 1422 ~~Special Risk Class~~ members of the Florida Retirement System
 1423 Investment Plan meet all applicable requirements for a qualified
 1424 plan. If the state board or the division receives notification
 1425 from the Internal Revenue Service that this program or any

1426 portion of this program will cause the retirement system, or any
 1427 portion thereof, to be disqualified for tax purposes under the
 1428 Internal Revenue Code, the portion that will cause the
 1429 disqualification does not apply. Upon such notice, the state
 1430 board or the division shall notify the presiding officers of the
 1431 Legislature. The state board and the department may adopt any
 1432 rules necessary to maintain the qualified status of the survivor
 1433 benefit retirement program.

1434 Section 10. Subsections (4) and (5) of section 121.71,
 1435 Florida Statutes, are amended to read:

1436 121.71 Uniform rates; process; calculations; levy.—

1437 (4) Required employer retirement contribution rates for
 1438 each membership class and subclass of the Florida Retirement
 1439 System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, <u>2017</u> 2016
1441	
1442	
1443	<u>2.90</u> 2.97%

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1444	Special Risk Class	<u>11.86</u> 11.80%
	Special Risk	
	Administrative	
1445	Support Class	<u>3.83</u> 3.87%
	Elected Officers' Class—	
	Legislators, Governor,	
	Lt. Governor,	
	Cabinet Officers,	
	State Attorneys,	
1446	Public Defenders	<u>6.47</u> 6.63%
	Elected Officers' Class—	
	Justices, Judges	<u>10.66</u> 11.68%
1447	Elected Officers' Class—	
	County Elected Officers	<u>8.56</u> 8.55%
1448	Senior Management Class	<u>4.29</u> 4.38%
1449	DROP	<u>4.17</u> 4.23%

1450

1451 (5) In order to address unfunded actuarial liabilities of

1452 the system, the required employer retirement contribution rates

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1453 for each membership class and subclass of the Florida Retirement
 1454 System for both retirement plans are as follows:

1455

Percentage of
 Gross
 Compensation,
 Effective
 July 1, 2017 ~~2016~~

Membership Class

1456

Regular Class

3.30 ~~2.83%~~

1457

Special Risk Class

9.69 ~~9.05%~~

1458

Special Risk

Administrative

Support Class

29.08 ~~22.47%~~

1459

Elected Officers' Class—

Legislators, Governor,

Lt. Governor,

Cabinet Officers,

State Attorneys,

Public Defenders

42.69 ~~33.75%~~

1460

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1461	Elected Officers' Class— Justices, Judges	<u>25.83</u> 23.30%
1462	Elected Officers' Class— County Elected Officers	<u>35.24</u> 32.20%
1463	Senior Management Service Class	<u>16.70</u> 15.67%
1464	DROP	<u>7.43</u> 7.10%
1465	Section 11. Section 238.072, Florida Statutes, is amended	
1466	to read:	
1467	238.072 Special service provisions for extension	
1468	personnel.—All state and county cooperative extension personnel	
1469	holding appointments by the United States Department of	
1470	Agriculture for extension work in agriculture and home economics	
1471	in this state who are joint representatives of the University of	
1472	Florida and the United States Department of Agriculture, as	
1473	provided in s. <u>121.051(8)</u> 121.051(7) , who are members of the	
1474	Teachers' Retirement System, chapter 238, and who are prohibited	
1475	from transferring to and participating in the Florida Retirement	
1476	System, chapter 121, may retire with full benefits upon	
1477	completion of 30 years of creditable service and shall be	
1478	considered to have attained normal retirement age under this	
1479	chapter, any law to the contrary notwithstanding. In order to	

1480 | comply with the provisions of s. 14, Art. X of the State
 1481 | Constitution, any liability accruing to the Florida Retirement
 1482 | System Trust Fund as a result of the provisions of this section
 1483 | shall be paid on an annual basis from the General Revenue Fund.

1484 | Section 12. Subsection (11) of section 413.051, Florida
 1485 | Statutes, is amended to read:

1486 | 413.051 Eligible blind persons; operation of vending
 1487 | stands.—

1488 | (11) Effective July 1, 1996, blind licensees who remain
 1489 | members of the Florida Retirement System pursuant to s.
 1490 | 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated
 1491 | retirement costs from their net profits or from program income.
 1492 | Within 30 days after the effective date of this act, each blind
 1493 | licensee who is eligible to maintain membership in the Florida
 1494 | Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but
 1495 | who elects to withdraw from the system as provided in s.
 1496 | 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31,
 1497 | 1996, notify the Division of Blind Services and the Department
 1498 | of Management Services in writing of his or her election to
 1499 | withdraw. Failure to timely notify the divisions shall be deemed
 1500 | a decision to remain a compulsory member of the Florida
 1501 | Retirement System. However, if, at any time after July 1, 1996,
 1502 | sufficient funds are not paid by a blind licensee to cover the
 1503 | required contribution to the Florida Retirement System, that
 1504 | blind licensee shall become ineligible to participate in the

1505 Florida Retirement System on the last day of the first month for
 1506 which no contribution is made or the amount contributed is
 1507 insufficient to cover the required contribution. For any blind
 1508 licensee who becomes ineligible to participate in the Florida
 1509 Retirement System as described in this subsection, no creditable
 1510 service shall be earned under the Florida Retirement System for
 1511 any period following the month that retirement contributions
 1512 ceased to be reported. However, any such person may participate
 1513 in the Florida Retirement System in the future if employed by a
 1514 participating employer in a covered position.

1515 Section 13. The Legislature finds that a proper and
 1516 legitimate state purpose is served when employees and retirees
 1517 of the state and its political subdivisions, and the dependents,
 1518 survivors, and beneficiaries of such employees and retirees, are
 1519 extended the basic protections afforded by governmental
 1520 retirement systems. These persons must be provided benefits that
 1521 are fair and adequate and that are managed, administered, and
 1522 funded in an actuarially sound manner, as required by s. 14,
 1523 Article X of the State Constitution and part VII of chapter 112,
 1524 Florida Statutes. Therefore, the Legislature determines and
 1525 declares that this act fulfills an important state interest.

1526 Section 14. This act shall take effect July 1, 2017.



Government Accountability Committee

March 29, 2017
8:00 AM
Morris Hall

Amendment Packet



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Government Accountability
 2 Committee

3 Representative Caldwell offered the following:

4

5 **Amendment**

6 Remove line 1171 and insert:

7 in a position covered by the Elected Officers' Class may not use

8 the