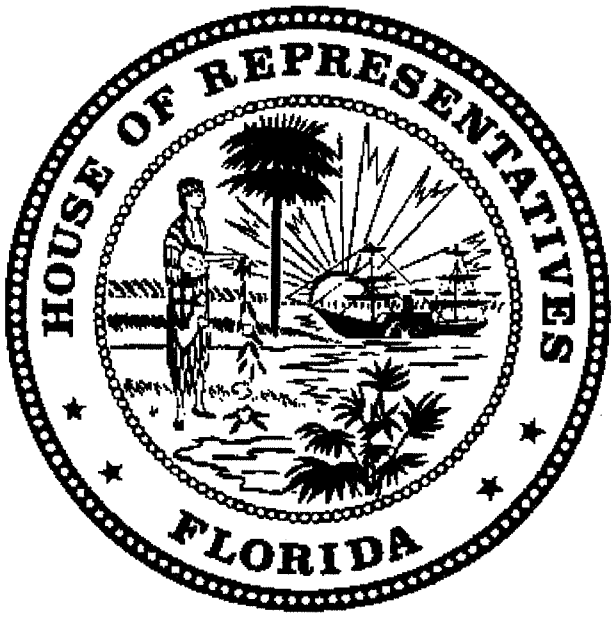

State Affairs Committee

MEETING PACKET

Thursday, January 12, 2012
11:30 AM
Morris Hall (17 HOB)

Dean Cannon
Speaker

Seth McKeel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Thursday, January 12, 2012 11:30 am
End Date and Time:	Thursday, January 12, 2012 02:30 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 75 Freeholder Voting by Government Operations Subcommittee, Davis
HB 231 Intergovernmental Cooperation by Horner
HB 4091 Governor's Private Secretary by Burgin
HB 4103 Certification of Minority Business Enterprises by Burgin
HB 7013 OGSR/U.S. Census Bureau Address Information by Government Operations Subcommittee, Stafford
HB 7015 OGSR/Donor Information/Publicly Owned House Museums by Government Operations Subcommittee, Moraitis
HB 7017 OGSR/Donor Information/Historic Preservation of City of St. Augustine by Government Operations Subcommittee, Broxson
HB 7019 OGSR/Insurance Claim Data Exchange Information by Government Operations Subcommittee, Logan

NOTICE FINALIZED on 01/10/2012 16:15 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 75 Freeholder Voting
SPONSOR(S): Government Operations Subcommittee; Davis
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Naf	Williamson
2) Community & Military Affairs Subcommittee	11 Y, 0 N	Gibson	Hoagland
3) State Affairs Committee		Naf	Hamby

SUMMARY ANALYSIS

A freeholder election is an election in which only qualified electors who own land in the jurisdiction may vote. Current law requires each freeholder voting in a freeholder election to submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

The bill removes the current freeholder's affidavit requirement and instead provides that a freeholder must submit a written declaration, which does not require notarization.

The bill provides an effective date of July 1, 2012.

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

Freeholder Elections

A freeholder election is an election in which only qualified electors[1] who own land in the jurisdiction may vote.[2] Typically, freeholder elections in counties, municipalities, and special districts concern bond issuance, district creation, or officer selection. Some issues for which freeholder elections are held in Florida are:

- issuance by a county, school district, municipality, special district or local governmental body with taxing powers of local bonds to finance or refinance capital projects;[3]
- issuance by a county of general obligations bonds;[4]
- issuance by a county of bonds to build bridges over navigable streams;[5]
- creation of a water or sewer district in unincorporated areas;[6]
- issuance of bonds for a water or sewer district;[7] and
- creation of a special neighborhood improvement district.[8]

By statute, "each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation shall be . . . considered a freeholder."[9] Currently, each freeholder voting in a freeholder election must submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.[10] Compliance with the notarization requirement may be difficult for an active duty military freeholder or other Uniformed and Overseas Citizens Absentee Voting Act freeholder.[11]

Verification of Documents

Section 92.525, F.S., provides two processes for document verification that is authorized or required by law, by rule of an administrative agency, or by rule or order of court:

- by oath or affirmation before an authorized officer, or
- by the signing of a written declaration.

The form of the written declaration is specified as follows:

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[1] Required qualifications for electors are set out in s. 97.041, F.S., and include, but are not limited to, age, citizenship, and residency requirements.
[2] *See* s. 100.241, F.S.
[3] Art. VII, s. 12, Fla. Const.
[4] S. 153.07, F.S.
[5] S. 130.18, F.S.
[6] S. 153.53, F.S.
[7] S. 153.56, F.S.
[8] S. 163.511, F.S.
[9] S. 100.241(3), F.S.
[10] S. 100.241(2), F.S.
[11] The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. 1973ff-6) was enacted by Congress in 1986. It requires states and territories to allow certain groups of citizens to register and vote absentee in elections for Federal offices. UOCAVA citizens are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their family members, and U.S. citizens residing outside the United States. Section 101.6952, F.S., contains special provisions for absentee ballots for absent uniformed services and overseas voters, including use of the federal write-in absentee ballot for federal, state, or local elections when an official absentee ballot is not received.

> A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.[12]

A person who knowingly makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.[13]

Effect of Proposed Changes

The bill removes the current affidavit requirement for an elector to establish that he or she is a freeholder qualified to vote in an election or referendum limited to freeholders, and in its place the bill provides that the elector must submit a written declaration as provided in s. 92.525, F.S., which affirms that the elector is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

B. SECTION DIRECTORY:

Section 1: amends s. 100.241, F.S., relating to freeholder voting.

Section 2: provides an effective date of July 1, 2012.

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.

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[12] S. 92.525(2), F.S.

[13] S. 92.525(3), F.S; Ss. 775.082, 775.083, and 775.084, F.S., specify penalties, including terms of imprisonment and fines, for felony offenders.

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:

Under section 5 of the Federal Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office is subject to preclearance review before it can be legally enforced.[14] Preclearance review may be obtained through submission to the U.S. Department of Justice or through a declaratory judgment action filed in the U.S. District Court for the District of Columbia.[15] The preclearance review is conducted to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Pursuant to correspondence with House staff, the Department of State has indicated that this legislation would require preclearance since it is a change that affects voting. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, the legislation would be unenforceable in Florida's five covered jurisdictions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Government Operations Subcommittee amended and passed House Bill 75 as a committee substitute. The committee substitute differs from the original filed version in that it removes the current process by which an elector may establish that he or she is a freeholder who is qualified to vote, and does not include the original bill's duplicative penalty provision. The analysis has been updated to reflect this amendment.

[14] 42 U.S.C. s. 1973c.
[15] *Id.*

A bill to be entitled

An act relating to freeholder voting; amending s. 100.241, F.S.; deleting the current process and creating a new process by which an elector may establish that he or she is a freeholder and qualified to vote in an election or referendum limited to freeholders who are qualified to vote; providing an effective date.

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

Section 1. Section 100.241, Florida Statutes, is amended to read:

100.241 Freeholder voting; election; penalties for ineligible persons who vote as freeholders.—

(1) In any election or referendum in which only electors who are freeholders are qualified to vote, the regular registration books covering the precincts located within the geographical area in which the election or referendum is to be held shall be used.

(2) Qualification and registration of electors participating in a freeholder ~~such an~~ election or referendum subject to this section shall be the same as prescribed for voting in other elections under this code, and, in addition, each such elector shall submit a written declaration, verified pursuant to s. 92.525, affirming ~~proof by affidavit made before an inspector~~ that the elector is a freeholder who is a qualified elector residing in the county, district, or municipality in

which the election or referendum is to be held.

(3) Each registered elector who submits the written declaration ~~makes a sworn affidavit of ownership to the inspectors,~~ giving ~~either~~ a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation is ~~shall be~~ entitled to vote in the election or referendum and is ~~shall be~~ considered a freeholder.

(4) The actual costs of conducting a freeholder ~~such freeholders'~~ election or referendum subject to this section shall be paid by the county, district, or municipality requiring the election or referendum ~~same to be held~~.

(5) A ~~It is unlawful for any~~ person may not ~~to~~ vote in any county, district, or other election or referendum which is limited to a vote of the electors who are freeholders, unless the ~~such~~ person is a freeholder and a qualified elector. A ~~Any~~ person who violates ~~the provisions of~~ this subsection commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Intergovernmental Cooperation
SPONSOR(S): Horner
TIED BILLS: **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
2) Community & Military Affairs Subcommittee	11 Y, 0 N	Gibson	Hoagland
3) State Affairs Committee		Thompson	Hamby

SUMMARY ANALYSIS

Currently, state agencies are authorized to conduct public meetings, hearings, and workshops by means of "communications media technology." No such authorization exists for local governmental entities, including separate legal entities created by an interlocal agreement.

The bill authorizes a separate legal entity that administers or executes an interlocal agreement, with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. It provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop.

The bill defines the term "communications media technology" as a conference telephone, a video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

The bill requires the notice for any such meeting or workshop to state that the meeting or workshop will be conducted through the use of communications media technology, to specify how persons interested in attending may do so, and to provide a location where communications media technology facilities are available.

The bill does not have a fiscal impact on state government. The fiscal impact on local governments is indeterminate. The bill may reduce or eliminate travel and per diem expenses for members of the separate legal entity due to the use of communications media technology; however, the requirement to provide a location where communications media technology is available to the public may create an expense that is indeterminate at this time.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Open Meetings Laws

Art. I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

Public policy regarding access to public meetings is addressed further in the Florida Statutes. The Sunshine Law[1] requires that all meetings of a public board or commission be open to the public.[2] Reasonable notice of such meetings must be provided.[3]

For a meeting or hearing where notice is required, the notice must include the advice that:

> If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).[4]

The Administrative Procedure Act

The Administrative Procedure Act requires the Administration Commission to adopt uniform rules of procedure.[5] The uniform rules of procedure, which are to be used by each state agency, must provide procedures for conducting public meetings, hearings, and workshops, in person and by means of communications media technology.[6] "Communications media technology" is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.[7]

If a public meeting, hearing, or workshop is conducted by means of communications media technology, or if attendance may be provided by such means, the public notice must state how persons may attend and name locations where communications media technology facilities will be available.[8]

The uniform rules of procedure for conducting public meetings, hearings, and workshops, in person and by means of communications media technology, may not be construed to diminish the right to inspect public records under ch. 119, F.S. Limiting points of access to public meetings, hearings and workshops subject to the provisions of the Sunshine Law to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such

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[1] *See* s. 286.011, F.S.

[2] S. 286.011(1), F.S., specifically states:

> All meetings of any board or commission of a state agency or authority, or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, are declared to be public meetings open to the public at all times, and no resolution, rule or formal action is considered binding except as taken or made at such meeting.

[3] S. 286.011(1), F.S.

[4] S. 286.0105, F.S.

[5] *See* ch. 120, F.S.

[6] *See* ch. 28-109, F.A.C.

[7] S. 120.54(5)(b)2., F.S.

[8] *Id.*

circumstances is void and of no effect.[9] Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, apply to public meetings, hearings, and workshops conducted by means of communications media technology, and are to be liberally construed in their application.[10]

The Legislature has provided further limited authorization for the use of communications technology in conducting public meetings. The governing board of a water management district, a basin board, a committee, or an advisory board is authorized to conduct meetings by means of communications media technology in accordance with the Administration Commission's uniform rules of procedure.[11] The Department of Business and Professional Regulation is specifically authorized to use communications media technology in conducting meetings of the Florida Building Commission or in any meeting held in conjunction with a meeting of the commission.[12] Further, the Legislature, in 2006, approved a one-year "test program" that allowed county commissioners in Monroe County, spread apart by a 120-mile chain of islands, to use teleconferencing equipment for special meetings and be deemed in attendance for purposes of establishing a quorum.[13]

Interlocal Agreements

Section 163.01(2), F.S., provides that the purpose behind the enactment of the Florida Interlocal Cooperation Act of 1969 (Act)[14] was to allow local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage to provide services and facilities that will best address the geographic, economic, population, and other factors that affect the needs and development of local communities. The Act authorizes public agencies[15] to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.[16] An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.[17]

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- make and enter into contracts;
- employ agencies or employees;
- acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- acquire, hold, or dispose of property; and
- incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.[18]

Florida courts have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.[19] Consequently, meetings of a separate legal or

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[9] *Id.*
[10] *Id.*
[11] S. 373.079(7), F.S.
[12] S. 553.75(3), F.S.
[13] *See* ch. 2006-350, L.O.F. The special law was automatically repealed one year after it took effect. It was reported to House staff, in conversations with Monroe County officials, that the use of the teleconferencing equipment was largely ineffective due to problems at the time with the technology.
[14] *See* s. 163.01, F.S.
[15] S. 163.01(3)(b), F.S., defines "public agency" as:

> A political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity [that is authorized to administer or execute the agreement], an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

[16] S. 163.01(4) and (5), F.S.
[17] S. 163.01(7)(a), F.S.
[18] S. 163.01(7)(b), F.S.

administrative entity and its governing board are subject to Florida's public meetings requirements.[20] The Act does not include an authorization to conduct public meetings, hearings, or workshops by means of communications media technology.

Effect of Proposed Changes

The bill authorizes a separate legal entity created under the Florida Interlocal Cooperation Act of 1969 (Act), with member public agencies located in at least 10 counties, to conduct public meetings and workshops by means of communications media technology. Separate legal entities that would qualify under the bill often have member public agencies spread throughout the state, which makes travel to one location and the establishment of a quorum both difficult and costly. The bill defines the term "communications media technology" as a conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate. The exact wording of the definition of "communications media technology" in the bill differs from the definition provided in s. 120.54(5)(b)2., F.S., however the definition provided in the bill may provide greater flexibility to encompass future advances in communications technology.

The bill requires the notice for any such meeting or workshop to:

- state that the meeting or workshop will be conducted through the use of communications media technology;
- specify how persons interested in attending may do so; and
- provide a location where communications media technology facilities are available.

The bill provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop. As such, members of the separate legal entity would no longer be required to be physically present at meetings or workshops in order to meet quorum requirements. This could allow a quorum to be obtained more readily, allowing for greater efficiency and ease of operations for such entity conducting business.

B. SECTION DIRECTORY:

Section 1: amends s. 163.01, F.S., to authorize certain separate legal entities created under the Florida Interlocal Cooperation Act of 1969 to conduct public meetings and workshops by means of communications media technology.

Section 2: provides an effective date of July 1, 2012.

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:

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[19] *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission).

[20] Op. Att'y Gen. Fla. 82-66 (1982).

None.

2. Expenditures:

Indeterminate. *See* Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual's expenses associated with traveling to public meetings may be reduced or eliminated based on the location where the communications media technology is made available.

D. FISCAL COMMENTS:

The bill may reduce or eliminate travel and per diem expenses for members of the separate legal entity due to the use of communications media technology; however, the requirement to provide a location where communications media technology is available to the public may create an expense that is indeterminate at this time.

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 expenditures 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:

Art. 1, s. 24(b) of the State Constitution provides:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Attorney General has issued numerous advisory opinions regarding the participation of local government board members in public meetings through the use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In one opinion, it was concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her.[21] The opinion recognized that s. 125.001, F.S., required meetings of the county commission to be held in a public place in the county, and therefore, since a quorum of the members of the county commission would actually be meeting in a public place the statute would be satisfied.[22] A similar conclusion was reached in a later opinion, which stated a district school board could use electronic media technology in order to allow a

[21] Op. Att'y Gen. Fla. 92-44 (1992).
[22] *Id.*

physically absent member to attend a public meeting if a quorum of the members of the board were physically present at the meeting site.[23]

To further this point, in 2009, the Attorney General issued an advisory opinion stating:

> For meetings where a quorum is required, this office, in a number of formal and informal opinions, has stated that concerns about the validity of official actions taken by a public body when less than a quorum is present suggest a very conservative reading of the statute. This office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum. While a quorum is not required for a meeting to be subject to the Government in the Sunshine Law, to the extent that any advisory body is required to have a quorum in order to conduct official business, it appears that the members of these bodies must, *in the absence of a statute to the contrary*, be physically present in order to constitute a quorum.[24] [emphasis added].

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[23] Op. Att'y Gen. Fla. 98-28 (1998).

[24] Op. Att'y Gen. Fla. 09-56 (2009) *citing* Op. Att'y Gen. Fla. 83-100 (1983) and Op. Att'y Gen. Fla. 89-39 (1989) *citing* 20 C.J.S. *Counties* s. 99b. & c.; 62 C.J.S. *Municipal Corporations* s. 399, for the principle that in order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone.

A bill to be entitled

An act relating to intergovernmental cooperation; amending s. 163.01, F.S.; authorizing certain parties to an interlocal agreement to conduct public meetings and workshops by means of communications media technology; providing notice requirements; providing a definition; providing an effective date.

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

Section 1. Subsection (18) is added to section 163.01, Florida Statutes, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(18) Any separate legal entity created under subsection (7) that has member public agencies located in at least 10 counties may conduct public meetings and workshops by means of communications media technology. The notice for any such public meeting or workshop shall state that the meeting or workshop will be conducted through the use of communications media technology; specify how persons interested in attending may do so; and provide a location where communications media technology facilities are available. The participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop. As used in this subsection, the term "communications media technology" means conference telephone, video conference, or other communications technology by which

all persons attending a public meeting or workshop may audibly communicate.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4091 Governor's Private Secretary
SPONSOR(S): Burgin
TIED BILLS: **IDEN./SIM. BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
2) State Affairs Committee		Thompson JWT	Hamby JH

SUMMARY ANALYSIS

Current law allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. However, staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. Administrative services personnel staff of the Executive Office of the Governor and state personnel system staff of the Department of Management Services are not aware of when this provision might have been used.

As such, the bill repeals this archaic provision which was enacted in 1845.

The bill has no fiscal impact.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Enacted in 1845, s. 14.03, F.S., allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. This person is to serve at the pleasure of the Governor in that capacity and as "clerk for the executive department." The person is to work daily at the capitol during office hours and is to perform other duties as directed by the Governor. In order to qualify for the position, the person "must be fit and proper to hold office."

In 1995, the law was amended, as part of a larger bill, to remove gender bias references in the Florida Statutes.[1]

Present Situation

The staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15.[2] Employees of the Executive Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor. According to the Executive Office of the Governor, currently one staff person who is in a senior management position provides services as private secretary to the Governor. The use of two staff had been the practice for the past three Governors, one staff in a select exempt service position and the other in a senior management service position.[3]

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of when the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, might have been used.[4]

Effect of Proposed Changes

The bill removes this archaic provision of law. It is not used in the state personnel system governing the Executive Office of the Governor. The repeal also removes references to positions and departments that are not recognized or known in those terms today.[5]

B. SECTION DIRECTORY:

Section 1 repeals s. 14.03, F.S., relating to the Governor's appointment and commission of a person to be his or her private secretary and to serve as clerk for the executive department.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[1] *See* s. 35, Chapter 95-147, L.O.F.

[2] Information received from Mr. Phil Spooner, Workforce Design and Compensation Manager, Division of Human Resource Management, Department of Management Services, on November 8, 2011. Pay plan 15 is a hybrid Senior Management Service pay plan with only two persons in that plan.

[3] House bill analysis for HB 7035 (2011) by the State Affairs Committee, March 21, 2011, at 2.

[4] Information received from Mr. Phil Spooner and Ms. Diane Moulten on November 8, 2011. In further discussion with Mr. Spooner, he was not aware of the last time the provision in law had been used; but, that in the 31 years he had been involved in the state personnel system the provision had never been used.

[5] The statute refers to the private secretary serving as "clerk for the executive department."

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:

   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.

A bill to be entitled

An act relating to the Governor's private secretary; repealing s. 14.03, F.S., relating to the Governor's authority to appoint and commission a private secretary; providing an effective date.

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

Section 1. Section 14.03, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4103 Certification of Minority Business Enterprises
SPONSOR(S): Burgin
TIED BILLS: **IDEN./SIM. BILLS:** SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Meadows	Williamson
2) State Affairs Committee		Meadows	Hamby

SUMMARY ANALYSIS

The bill deletes provisions that provide for the establishment and responsibilities of the Minority Business Certification Task Force (Task Force). The Task Force is a statutorily created advisory group attached to the Office of Supplier of Diversity within the Department of Management Services (DMS). The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago. According to the Office of Supplier Diversity, the Task Force has not met in recent years, because use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2006.

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

The statutory authority of the Florida Advisory Council on Small and Minority Business Development permits this group to assist the Office of Supplier Diversity regarding reciprocal agreements. The Council has already provided input and guidance on these issues to the Office of Supplier Diversity.

There is no fiscal impact associated with the abolishment of the non-operational Minority Business Certification Task Force.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

During the 2010 Regular Session, the Department of Management Services was among the departments that the Legislature reviewed under the Florida Government Accountability Act[1]. [2] The Florida Government Accountability Act previously subjected most state agencies to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. Part of that review included an examination of agency advisory committees.[3]

Two statutorily created advisory entities, the Florida Small and Minority Business Advisory Council and the Minority Business Certification Task Force, are assigned to the Office of Supplier Diversity within the Department of Management Services (DMS) to assist in specified responsibilities.[4]

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.[5,6] The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The Task Force is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member Task Force appointed by the Secretary of DMS is intended to be regionally balanced and comprised of officials representing governmental entities who administer programs to assist minority businesses procure or develop government-sponsored programs. Six organizations (Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and Florida Association of Government Purchasing Officials) are authorized to appoint up to two members to the Task Force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members. The chairperson of the Legislative Committee on Intergovernmental Relations or designee is to serve as an ex officio member.[7]

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago.[8] According to the Office of Supplier Diversity, the Task Force has not met in recent years primarily because the use

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[1] *See* ss. 11.901-11.920, F.S. (2010). The Florida Government Accountability Act was repealed during the 2011 Regular Session. *See* chapter 2011-34, L.O.F. (2011).
[2] *See* s. 11.905, F.S. (2010).
[3] *See* s. 11.906, F.S. (2010).
[4] The Office of Supplier Diversity's function is to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises. To accomplish this goal the office's primary functions include certification of business enterprises, advocacy and outreach, and matchmaking activities. *See* the DMS website for information on the responsibilities of the office.
[5] *See* chapter 94-322, L.O.F.
[6] Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, "limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."
[7] The Florida Legislative Committee on Intergovernmental Relations (LCIR) was not funded in the FY 2010-11 General Appropriations Act, and the Committee ceased operations on June 30, 2010.
[8] Office of Program Policy Analysis & Government Accountability Sunset Review Report, at 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11 (December 2008).

of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2006.[9]

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

Effect of Proposed Changes

The bill abolishes the Minority Business Certification Task Force. Abolishment will have no effect since the statutory responsibility of the Task Force has been fulfilled, the Task Force has not been functional for several years, and the statutory authority of the Florida Advisory Council on Small and Minority Business Development permits the council to provide guidance and assistance to the Office of Supplier Diversity relating to the efforts of that office related to reciprocal agreements.[10]

B. SECTION DIRECTORY:

Section 1. Amends s. 287.0943, F.S., deleting provisions which establish and reference the Minority Business Certification Task Force.

Section 2. Provides an effective date of July 1, 2012.

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.

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[9] Information provided on November 21, 2011, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

[10] According to the Office of Supplier Diversity, the office has begun reaching out to local governments for reciprocal agreements, now referred to as certification agreements. The office has already received some guidance from the Florida Advisory Council on Small and Minority Business Development relating to reciprocal agreements. Information first provided on January 26, 2010, by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, DMS. Mr. Alston is no longer with DMS. The information, in part, was confirmed by Mr. Thad Fortune, Certification Administrator, Office of Supplier Diversity on November 21, 2011. Mr. Fortune did state the renewal of use of the Task Force had been discussed; however, it had not been pursued by DMS.

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.

A bill to be entitled

An act relating to the certification of minority business enterprises; amending s. 287.0943, F.S.; deleting provisions establishing the Minority Business Certification Task Force, requiring that criteria for the certification of minority business enterprises be approved by the task force, and authorizing the task force to amend the statewide and interlocal agreement for the certification of minority business enterprises; conforming provisions; providing an effective date.

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

Section 1. Subsection (2) and paragraph (e) of subsection (3) of section 287.0943, Florida Statutes, are amended to read:

287.0943 Certification of minority business enterprises.—

(2) ~~(a) The office is hereby directed to convene a "Minority Business Certification Task Force." The task force shall meet as often as necessary, but no less frequently than annually.~~

~~(b) The task force shall be regionally balanced and comprised of officials representing the department, counties, municipalities, school boards, special districts, and other political subdivisions of the state who administer programs to assist minority businesses in procurement or development in government-sponsored programs. The following organizations may appoint two members each of the task force who fit the~~

~~description above:~~

~~1. The Florida League of Cities, Inc.~~

~~2. The Florida Association of Counties.~~

~~3. The Florida School Boards Association, Inc.~~

~~4. The Association of Special Districts.~~

~~5. The Florida Association of Minority Business Enterprise Officials.~~

~~6. The Florida Association of Government Purchasing Officials.~~

~~In addition, the Office of Supplier Diversity shall appoint seven members consisting of three representatives of minority business enterprises, one of whom should be a woman business owner, two officials of the office, and two at-large members to ensure balance. A quorum shall consist of one-third of the current members, and the task force may take action by majority vote. Any vacancy may only be filled by the organization or agency originally authorized to appoint the position.~~

~~(c) The purpose of the task force will be to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises in accordance with the certification criteria established by law.~~

~~(d) A final list of the criteria and procedures proposed by the task force shall be considered by the secretary. The task force may seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the~~

~~reliability of the certification criteria developed.~~

(a) ~~(e)~~ In assessing the status of ownership and control, certification criteria shall, at a minimum:

1. Link ownership by a minority person as defined in s. 288.703, or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to demonstrated expertise or licensure of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified. Businesses must comply with all state licensing requirements before becoming certified as a minority business enterprise.

2. If present ownership was obtained by transfer, require the minority person on whom eligibility is based to have owned at least 51 percent of the applicant firm for a minimum of 2 years, when any previous majority ownership interest in the firm was by a nonminority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement does not apply to minority persons who are otherwise eligible who take a 51-percent-or-greater interest in a firm that requires professional licensure to operate and who will be the qualifying licenseholder for the firm when certified. A transfer made within a related immediate family group from a nonminority person to a minority person in order to establish ownership by a minority person is ~~shall be~~ deemed to be ~~have been~~ made solely for purposes of satisfying certification criteria and renders ~~shall render~~ such ownership invalid for purposes of qualifying for such certification if the

combined total net asset value of all members of such family group exceeds $1 million. For purposes of this subparagraph, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

3. Require that prospective certified minority business enterprises be currently performing or seeking to perform a useful business function. For purposes of this subparagraph, the term ~~A~~ "useful business function" means ~~is defined as~~ a business function that ~~which~~ results in the provision of materials, supplies, equipment, or services to customers. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function unless it is done so in a normal industry practice. As used in this section, the term "acting as a conduit" means, in part, not acting as a regular dealer by making sales of material, goods, or supplies from items bought, kept in stock, and regularly sold to the public in the usual course of business. Brokers, manufacturer's representatives, sales representatives, and nonstocking distributors are considered as conduits that do not perform a useful business function, unless normal industry practice dictates.

(b) ~~(f)~~ When a business receives payments or awards exceeding $100,000 in any one fiscal year, a review of its certification status or an audit must ~~will~~ be conducted within 2 years. In addition, the Office of Supplier Diversity may, as it deems appropriate, require that random reviews or audits ~~will~~ be conducted ~~as deemed appropriate by the Office of Supplier~~

~~Diversity~~.

(c) ~~(g)~~ The certification criteria ~~approved by the task force and~~ adopted by the Department of Management Services shall be included in a statewide and interlocal agreement as defined in s. 287.09431 and, in accordance with s. 163.01, shall be executed according to the terms included therein.

(d) ~~(h)~~ The certification procedures should allow an applicant seeking certification to designate on the application form the information the applicant considers to be proprietary, confidential business information. As used in this paragraph, "proprietary, confidential business information" includes, but is not limited to, any information that would be exempt from public inspection pursuant to the provisions of chapter 119; trade secrets; internal auditing controls and reports; contract costs; or other information the disclosure of which would injure the affected party in the marketplace or otherwise violate s. 286.041. The executor in receipt of the application shall issue written and final notice of any information for which noninspection is requested but not provided for by law.

(e) ~~(i)~~ A business that is certified under ~~the provisions of~~ the statewide and interlocal agreement is ~~shall be~~ deemed a certified minority enterprise in all jurisdictions or organizations where the agreement is in effect, and that business is deemed available to do business as such within any such jurisdiction or with any such organization statewide. All state agencies must accept minority business enterprises certified in accordance with the statewide and interlocal agreement of s. 287.09431, and that business is ~~shall~~ also ~~be~~

deemed a "certified minority business enterprise" as defined in s. 288.703. However, any governmental jurisdiction or organization that administers a minority business purchasing program may reserve the right to establish further certification procedures necessary to comply with federal law.

~~(j) The statewide and interlocal agreement shall be guided by the terms and conditions found therein and may be amended at any meeting of the task force and subsequently adopted by the secretary of the Department of Management Services. The amended agreement must be enacted, initialed, and legally executed by at least two-thirds of the certifying entities party to the existing agreement and adopted by the state as originally executed in order to bind the certifying entity.~~

~~(k) The task force shall meet for the first time no later than 45 days after the effective date of this act.~~

(3)

(e) Any participating program receiving three or more challenges to its certification decisions pursuant to subsection (4) from other organizations that are executors to the statewide and interlocal agreement, is ~~shall be~~ subject to a review by the office, as provided in paragraphs (a) and (b), of the organization's capacity to perform under such agreement and in accordance with the certification core criteria ~~established by the task force~~. The office shall submit a report to the secretary of the Department of Management Services regarding the results of the review.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB GVOPS 12-01 OGSR/U.S. Census Bureau Address Information
SPONSOR(S): Government Operations Subcommittee, Stafford
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	10 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson	Hamby

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.

The Local Update of Census Addresses program (LUCA program) was a decennial census geographic partnership program that allowed the United States Census Bureau to benefit from local knowledge in developing its master address file for the 2010 census.

Current law provides a public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program. The LUCA program officially ended as of March 31, 2010. As such, there is no need to continue the public record exemption.

The bill repeals the public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.

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[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.

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:

- 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.

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.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Local Update of Census Addresses Program

The Local Update of Census Addresses program (LUCA program) was a decennial census geographic partnership program that allowed the Census Bureau to benefit from local knowledge in developing its master address file for the 2010 census. The LUCA program was made possible by the Census Address List Improvement Act of 1994,[4] which provides an opportunity for designated representatives of local, state, and tribal governments to review addresses contained in the master address file.[5]

Governments that opted to participate in the LUCA program were required to designate a LUCA liaison to review the portion of the census address list covering the area under their jurisdiction. The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.[6] LUCA program participants were required to review a set of security guidelines and sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.[7] Address information includes maps

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] Public Law 103-430.

[5] U.S. Census Bureau, 2010 Decennial Census Local Update of Census Addresses program, www.census.gov/geo/www/luca2010/luca.html (last viewed November 14, 2011).

[6] Pursuant to Title 13 U.S.C., the address list is confidential.

[7] Chapter 2007-250, L.O.F.; codified as s. 119.071(1)(g), F.S.

showing structure location points, agency records verifying addresses, and agency records identifying address errors or omissions.[8] Confidential and exempt address information[9] may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the LUCA program.[10] Also, agencies are authorized to access any other confidential or exempt information held by another agency if access is necessary for the receiving agency to perform its duties and responsibilities under the LUCA program.[11]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.

The LUCA program officially ended as of March 31, 2010.[12] As such, there is no need to continue the public record exemption.

Effect of Bill

The bill repeals the public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to repeal the public record exemption for United State Census Bureau address information.

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.

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[8] Section 119.071(1)(g)1., F.S.

[9] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985)

[10] Section 119.071(1)(g)2., F.S.

[11] Section 119.071(1)(g)3., F.S.

[12] U.S. Census Bureau, LUCA Closeout Phase, http://www.census.gov/geo/www/luca2010/luca_co.html, (last viewed November 14, 2011).

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; repealing s. 119.071(1)(g), F.S., which provides an exemption from public records requirements for United States Census Bureau address information; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) of section 119.071, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7015 PCB GVOPS 12-02 OGSR/Donor Information/Publicly Owned House Museums
SPONSOR(S): Government Operations Subcommittee, Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson	Hamby

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.

Current law provides a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

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[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.

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:

- 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.

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.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Publicly Owned House Museums Designated as National Historic Landmarks

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and to encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. The National Park Service administers the National Historic Landmarks Program on behalf of the Secretary of the Interior.[4]

Currently, there are two publicly owned house museums in Florida that are designated by the United States Department of the Interior as National Historic Landmarks.[5] The two houses are the Marjorie Kinnan Rawlings Historic State Park (Park) in Cross Creek, which is owned by the Florida Department of Environmental Protection, and the Vizcaya Museum and Gardens (Museum), which is owned by Miami-Dade County.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.[6]

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] *See* 36 C.F.R. 65.

[5] Information received from Dr. Barbara Mattick, Ph.D., Survey & Registration Supervisor, National Register, National Historic Landmarks Coordinator, Bureau of Historic Preservation, Florida Department of State, on November 18, 2011.

[6] Chapter 2007-213, L.O.F.; codified as s. 267.076, F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.

Donors and prospective donors to the Park have never requested to have their information protected from public disclosure.[7] However, Park staff have been unaware of the exemption and, therefore, have never attempted to offer application of the exemption to donors or prospective donors.[8] The donations to the Park between 2007 and 2010 totaled approximately $13,000 and, in 2011, the park received two donations totaling approximately $15,000.[9]

Conversely, donors and prospective donors to the Museum have requested that their information be protected from public disclosure.[10] The Museum informs donors and prospective donors as a part of the solicitation process that the option for anonymity is available.[11] According to the Museum, anonymity for donors and prospective donors is necessary for the development of a robust, charitable, support program.[12] In 2010-2011, Vizcaya received approximately eight donations totaling $483,941.[13]

If reenacted, the Park would likely begin to use the exemption, and the Museum would continue to use it.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

B. SECTION DIRECTORY:

Section 1 amends s. 267.076, F.S., to reenact the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[7] Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from the Department of Environmental Protection on June 21, 2011, at question 2. (On file with the Government Operations Subcommittee).

[8] *Id.* at question 4.

[9] *Id.* at question 1.

[10] Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from Lynn Summers, Executive Director for the Vizcayans, Inc., July 1, 2011, at question 2. (On file with the Government Operations Subcommittee).

[11] *Id.* at question 5.

[12] *Id.* at question 11.

[13] *Id.* at question 1.

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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.076, F.S., which provides an exemption from public records requirements for information that identifies a donor or prospective donor to publicly owned house museums designated by the United States Department of Interior as National Historic Landmarks who desires to remain anonymous; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 267.076, Florida Statutes, is amended to read:

267.076 Confidentiality of certain donor information related to publicly owned house museums designated as National Historic Landmarks.—Information that would identify a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7017 PCB GVOPS 12-03 OGSR/Donor Information/Historic Preservation of City of St. Augustine
SPONSOR(S): Government Operations Subcommittee, Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson	Hamby

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.

Current law provides a public record exemption for the identity of a donor or prospective donor to the University of Florida direct-support organization for the City of St. Augustine, who desires to remain anonymous, and all information identifying such donor or prospective donor.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It also removes superfluous language, which restates the type of information that is confidential and exempt from public records requirements.

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[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.

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:

- 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.

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.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Historic Preservation, City of St. Augustine

Current law provides for the long-term historic preservation of state-owned historic properties in St. Augustine through a contract with the University of Florida (UF). The goal of the contract is to enhance existing educational programs in historic preservation, archaeology, and cultural resource management at UF while simultaneously meeting the needs for historic preservation in St. Augustine.[4] UF is authorized to contract with a direct-support organization (DSO) in carrying out its historic preservation and historic preservation education activities.[5]

The UF DSO for the City of St. Augustine is organized to assist UF in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine by:

- Raising money;
- Submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals;
- Receiving, holding, investing, and administering property; and
- Making expenditures to or for the benefit of UF.[6]

The DSO must be incorporated under chapter 617, F.S., approved by the Department of State as a not-for-profit,[7] and governed by a board of directors.[8]

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Section 267.1735(1), F.S.
[5] Section 267.1735(4), F.S.
[6] Section 267.1736(1), F.S.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous, and all information identifying such donor or prospective donor.[9] The anonymity of the donor or prospective donor must be maintained in the auditor's report.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.[10]

According to UF, the DSO was incorporated on June 28, 2010, and held its first board meeting on February 11, 2011.[11] The DSO has not conducted any fundraising activities since its existence.[12] Consequently, the exemption has not yet been utilized; however, UF fully anticipates that the use of the exemption will prove beneficial to future fundraising efforts of the DSO.[13]

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous. It also removes superfluous language, which restates the type of information that is confidential and exempt[14] from public records requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 267.1736, F.S., to reenact the public record exemption for the identity of a donor or prospective donor to the UF DSO for the City of St. Augustine.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[7] Section 267.1736(1)(a), F.S.
[8] Section 267.1736(2), F.S.
[9] Chapter 2007-77, L.O.F.; codified as s. 267.1736(9), F.S.
[10] Section 267.1736(9)(b), F.S.
[11] Open Government Sunset Review of s. 267.1736(9), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 29, 2011, at question 2. (On file with the Government Operations Subcommittee).
[12] *Id.* at question 4.
[13] *Id.* at questions 6, 8, 9, and 13.
[14] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

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.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.1736, F.S., which provides an exemption from public records requirements for information identifying a donor or prospective donor to the direct-support organization established to assist the University of Florida in the historic preservation of the City of St. Augustine; removing superfluous language; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (9) of section 267.1736, Florida Statutes, is amended to read:

267.1736 Direct-support organization.—

(9) ~~(a)~~ Any information identifying ~~The identity of~~ a donor or prospective donor to the direct-support organization who desires to remain anonymous~~, and all information identifying such donor or prospective donor,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

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

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

~~repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7019 PCB GVOPS 12-04 OGSR/Insurance Claim Data Exchange Information
SPONSOR(S): Government Operations Subcommittee, Logan
TIED BILLS: **IDEN./SIM. BILLS:** SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson	Hamby

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.

The Department of Revenue (DOR) is required to develop and operate a data match system that identifies noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim. The data can be used only for purposes of child support enforcement.

Current law provides that information obtained by DOR pursuant to the insurance claim data exchange is confidential and exempt from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

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[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.

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:

- 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.

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.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Insurance Claim Data Exchange

Current law requires the Department of Revenue (DOR) to develop and operate a data match system that identifies noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim.[4] The data can be used only for purposes of child support enforcement.[5]

An insurer may provide DOR with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to DOR electronically so it can conduct a data match;
- An insurer may receive or access data from DOR and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit to DOR the match data regarding each noncustodial parent; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.[6]

Due to the variety of insurance claim data submission methods, it is possible for DOR to receive information on individuals who have a claim with an insurer and who do not owe child support.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Section 409.25659(2), F.S.
[5] Section 409.25659(5), F.S.
[6] Section 409.25659(2)(a) – (c), F.S.

Implementation of the Insurance Claim Data Exchange

In 2004, DOR contacted most of the top 25 insurers in the state. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, DOR decided to postpone working on the insurance claim data exchange initiative at the request of those insurers.[7]

In February 2006, Congress passed the Deficit Reduction Act of 2005 (DRA). The DRA authorizes the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. It also allows HHS to furnish information resulting from data matches to state agencies responsible for child support enforcement. [8]

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.[9] For the period of November 2008 through October 2009, DOR received 2,996 data matches from the federal program. Of those matches, 422 already had been made by DOR through other means.[10] According to DOR, more than $1.6 million has been collected since DOR implemented the federal matching program.[11]

During the 2009 Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. As such, DOR sent 84 letters to Florida based insurance companies, from November 2009 through February 2010, inviting them to participate in the voluntary state program. DOR received only two responses, both indicating the company does not handle personal liability insurance. DOR sent an additional 135 letters to Florida based insurance companies in February 2011. As of June 1, 2011, DOR had received three responses including one from Citizens Property Insurance Corporation.[12]

To date, DOR has not begun using the state data match system, but it is working with Citizens Property Insurance Corporation to begin data matching by 2012.[13] Upon full implementation, the state program will work similarly to the federal program. DOR reports that as of May 2011, the number of noncustodial parents eligible to be matched using the insurance claim data exchange is 448,965.[14]

Public Record Exemption Review

Current law provides that information obtained by the Department of Revenue (DOR) pursuant to the insurance claim data exchange is confidential and exempt[15] from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.[16]

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[7] Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 3.
[8] Pub. L. No. 109-171.
[9] Senate Interim Report 2012-301 by the Committee on Children, Families, and Elder Affairs (September 2011), at 3.
[10] Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 4.
[11] Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).
[12] *Id.*
[13] Citizens Property Insurance Corporation currently is not participating in the federal matching program.
[14] Meeting with staff of DOR, July 12, 2011.
[15] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).
[16] Section 409.25661(1), F.S.

Pursuant to the Open Government Sunset Review Act, the exemption was scheduled to repeal on October 2, 2009, and again on October 2, 2010; however, as a result of the Open Government Sunset Review during the 2008 and 2009 interims, the exemption repeal date was eventually delayed until October 2, 2012, in order to allow DOR time to determine the success of the federal data match program.

DOR has requested that the exemption be reenacted. According to DOR, maintaining the exemption for personal information obtained from insurers would allow data matching efforts to continue while keeping the information confidential and exempt for a limited period of time. Without the public record exemption, insurance providers would be less inclined to participate in any matching.[17]

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

B. SECTION DIRECTORY:

Section 1 amends s. 409.25661, F.S., to reenact the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

Section 2 provides an effective date of October 1, 2012.

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:

[17] Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 409.25661, F.S., which provides an exemption from public records requirements for insurance claim data exchange information obtained by the Department of Revenue and used for identifying parents who owe past due child support; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 409.25661, Florida Statutes, is amended to read:

409.25661 Public records exemption for insurance claim data exchange information.—

~~(1)~~ Information obtained by the Department of Revenue pursuant to s. 409.25659 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the department determines whether a match exists. If a match exists, such information becomes available for public disclosure. If a match does not exist, the nonmatch information shall be destroyed as provided in s. 409.25659.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2012.