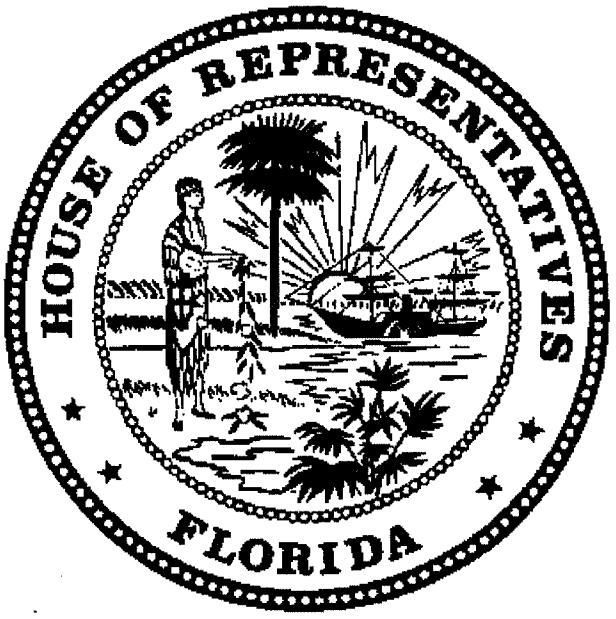


# State Affairs Committee

# MEETING PACKET

**Thursday, February 16, 2012**
**11:30 AM**
**Webster Hall (212 Knott)**

**Dean Cannon**
**Speaker**

**Seth McKeel**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

| | |
|---|---|
| **Start Date and Time:** | Thursday, February 16, 2012 11:30 am |
| **End Date and Time:** | Thursday, February 16, 2012 02:30 pm |
| **Location:** | Webster Hall (212 Knott) |
| **Duration:** | 3.00 hrs |

**Consideration of the following bill(s):**

HM 83 Congressional Term Limits by Caldwell
CS/HB 495 State University System Optional Retirement Program by Government Operations Subcommittee, Jones
HM 611 Kings Bay by Smith
CS/CS/HB 801 Emergency 911 Service by Finance & Tax Committee, Community & Military Affairs Subcommittee, Steube, Passidomo
CS/HB 1089 Pub. Rec./Investigators & Inspectors/DBPR by Government Operations Subcommittee, Adkins
HM 1281 Patient Protection and Affordable Care Act by Brodeur
CS/HB 1305 Pub. Rec./Officers-Elect by Government Operations Appropriations Subcommittee, Adkins
CS/HB 1339 Envelopes Used to Conceal the Voter's Choices by Government Operations Subcommittee, Chestnut
CS/HB 1379 Water and Wastewater Utilities by Energy & Utilities Subcommittee, Brodeur
HR 1447 Nation of Israel by Plakon
CS/HB 1465 Florida College System Personnel Records by K-20 Innovation Subcommittee, Caldwell
HB 7079 State Retirement by Government Operations Subcommittee, Patronis
HB 7103 OGSR/Florida Opportunity Fund and Institute for the Commercialization of Public Research by Government Operations Subcommittee, Mayfield
HB 7105 OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc. by Government Operations Subcommittee, Mayfield
HB 7107 OGSR/Consumer Complaints and Inquiries by Government Operations Subcommittee, Mayfield
HB 7109 OGSR/Lifeline Assistance Plan by Government Operations Subcommittee, Mayfield
HB 7115 OGSR/Economic Development Agencies by Government Operations Subcommittee, Patronis

**NOTICE FINALIZED on 02/14/2012 16:14 by Love.John**

HM 83

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 83 Congressional Term Limits
**SPONSOR(S):** Caldwell and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SM 672

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Federal Affairs Subcommittee | 10 Y, 3 N | Bennett | Camechis |
| 2) State Affairs Committee | | Camechis | Hamby |

## SUMMARY ANALYSIS

This memorial asks Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms a member of Congress may serve in the same office. The memorial does not, however, suggest a specific number of consecutive terms to which a member should be limited.

Membership in the U.S. Congress is governed by the U.S. Constitution, which specifies that members of the House serve two-year terms and members of the Senate serve six-year terms. The Constitution does not limit the number of terms or years a member may serve in the same office.

In 1992, Florida voters amended the State Constitution to prohibit members of the U.S. House and Senate from serving more than eight consecutive years in the same office. In 1995, the U.S. Supreme Court decided that state-imposed term limits on federal legislators violates the U.S. Constitution, and that any term limit for federal legislators must be imposed by amendment to the U.S. Constitution. In 1999, the Florida Supreme Court concluded that the provision in Florida's Constitution limiting terms of federal legislators is "undoubtedly void." Thus, in practice, members of Congress are not subject to a limit on the number of years they may serve, even though this State's Constitution appears to impose a limit.

During the 111th Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee. During the current 112th Congress, five joint resolutions have been filed proposing similar amendments; none have been heard in committee.

In order to be added to the U.S. Constitution, an amendment proposed by Congress must be approved by two-thirds of the members in Congress, and then ratified by three-fourths of the states. In Florida, a proposed amendment is ratified if a majority of the members present and voting in each house of the Legislature vote in favor of a concurrent resolution approving the amendment.

In 2011, an identical memorial, CS/HM 685, was adopted by Florida's House of Representatives. The memorial was sent to the Senate where it was withdrawn from consideration and died in messages.

This memorial does not have a fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

According to this memorial, "a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls...." Thus, the memorial petitions the U.S. Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that members of the U.S. House and Senate may serve. The memorial does not, however, suggest a specific number of years or terms a member may serve, or suggest a term limit that would permanently ban election to the same office after a member serves a set number of terms or years. Under a consecutive term limit approach that does not impose a permanent ban, a member could be re-elected to the same position as long as there is a break between periods of service.

***Historical Background***

The U.S. Constitution creates three branches of government: Executive, Legislative, and Judicial. The term limitations, or lack thereof, for offices within each branch are as follows:

- Executive: A person may not hold the office of the presidency for more than two four-year terms.[1]
- Judicial: Supreme Court Justices are not subject to term limits; they may serve until retirement, death, or impeachment.[2]
- Legislative: Members of the U.S. House and Senate are not subject to any term limitations.[3]

The concept of imposing term limits on members of Congress is not a new one. Prior to the ratification of the United States Constitution in 1788, delegates to the Continental Congress were subject to term limits.[4] When it was decided that the Articles of Confederation would be replaced, the Framers of the Constitution debated the issue of imposing congressional term limits, known at the time as "rotation requirements."[5] Ultimately, consensus was not reached and term limits were omitted from the U.S. Constitution.[6]

The issue remained dormant for some time because, until the 1900s, it was uncommon for members of Congress to serve more than a few terms in office.[7] At each election, new representatives were elected thirty to sixty percent of the time; thus, high political turnover made term limits a non-issue.[8] Attempts to impose term limits resurfaced in 1947 in response to Franklin D. Roosevelt's election to his fourth term as President.[9]

In 1947, Congress proposed the 22nd amendment to the U.S. Constitution to impose a two-term limit on the office of the President.[10] The amendment was ratified by the states in 1951. During the debate on presidential term limits, the first "modern" proposal seeking to impose term limits on members of Congress

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[1] U.S. Const. amend. XXII, § 1.
[2] U.S. Const. art. III, § 1.
[3] The "qualifications clauses" of the U.S. Constitution read as follows: "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the [U.S.], and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2. "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the [U.S] , and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen." U.S. Const. art. I, § 3, cl. 3.
[4] Under the Articles of Confederation members were limited to three one-year terms over a period of six years. Text for Articles of Confederation found at: www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript
[5] *See* Dwayne A. Vance, *State-Imposed Congressional Term Limits: What Would the Framers of the Constitution Say?* 1994 B.Y.U. L. Rev. 429 (1994) (for example, Hamilton and Madison opposed term limits; Jefferson supported term limits).
[6] *Id.* at 437.
[7] Tiffanie Kovacevich, *Constitutionality of Term Limitations: Can States Limit the Terms of Members of Congress?*, 23 Pac. L.J. 1677, 1680 (1992)
[8] *Id.* at 1681.
[9] *Id.* at 1682.
[10] *See* U.S. Const. amend. XXII, § 1

was introduced.[11] The proposal received one vote and the issue again remained dormant until the modern term limit movement began in the 1990s.

***Modern Congressional Term Limit Movement***

A movement within the states to enact term limits began gaining traction in the early 1990s as voters became dissatisfied with incumbent politicians. While not universally accepted,[12] a total of twenty-three states, including Florida, passed laws that attempted to impose term limits on federal legislators.[13]

In 1992, following the successful "Eight is Enough" campaign to establish eight-year term limits, 76.8% of Floridians voted to amend the State's Constitution to include article VI, section 4(b).[14] The provision provides that no person may appear on the ballot for reelection to the state or federal legislature "if, by the end of the current term of office, the person will have served . . . in that office for eight consecutive years."[15]

Florida's attempt to impose term limits on federal legislators was effectively invalidated, along with the attempts made by twenty-two other states, by the 1995 U.S. Supreme Court decision in *U.S. Term Limits, Inc. v Thornton.*[16] In that case, the Court concluded that state-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's Qualifications Clauses, and that term limits on federal legislators may only be imposed by amendment to the U.S. Constitution.[17] In 1999, the Florida Supreme Court held that Florida's constitutional provision imposing term limits on *state* legislators is valid, while the provision placing term limits on *federal* legislators is "undoubtedly void."[18] Thus, amendments to State Constitutions to limit terms of federal legislators are considered unenforceable, making federal term limits valid only if imposed through amendment to the U.S. Constitution.

In order for a proposed amendment to pass Congress, it must be approved by a two-thirds vote in both chambers (290 votes in the House and 67 votes in the Senate). If approved, the proposed amendment is sent to the states for ratification. If the legislatures or ratifying conventions of at least three-fourths of the states (38 states) approve the proposed amendment, it is ratified and becomes part of the U.S. Constitution.[19] In order for the Florida Legislature to ratify an amendment, a majority of the members present and voting in each house must vote in favor of a concurrent resolution approving the amendment.[20]

Between 1995 and the present day, about 70 joint resolutions have been filed in Congress proposing amendments to the U.S. Constitution to limit terms of federal legislators. It appears that only two were subject to a vote of the full House, one in 1995 and one in 1997, but neither received the two-thirds vote necessary to send the proposed amendments to the states for ratification. It appears that two proposed amendments have been heard by a Senate committee, one in 1995 and one in 1998, but neither was subject to a final vote of the full Senate. Since 1999, none of the proposed amendments filed in Congress have received a committee hearing. (See Appendix A)

During the 111th Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee.[21] During the current 112th Congress, five joint resolutions proposed similar amendments; none have been heard in committee.[22]

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[11] *See* Kovacevich, supra n. 4, at 1682 (Introduced by Sen. O'Daniel, bill sought to limit all federal legislators to one six-year term).
[12] *See* Kovacevich, supra n. 4, at 1685. (For example, the voters of Washington State originally rejected a term limitation proposal which would have restricted the terms of both state legislators and state representatives in Congress.)
[13] U.S. Congressional Research Service. Term Limits for Members of Congress: State Activity (No. 96-152 GOV; Nov. 22, 1996), by Sula P. Richardson. Text at: http://digital.library.unt.edu/ark:/67531/metacrs582/m1/; Accessed: September 20, 2011. (States that passed some form of congressional term limits: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.)
[14] Florida Department of State, Division of Elections, November 3, 1992 General Election Results (November 16, 1992).
[15] Fla. Const. art. VI, § 4(b), (1992)
[16] *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 881 (1995).
[17] *Id.*
[18] *Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999)
[19] U.S. Const., art. V.
[20] House Rules 5.10 (a), 10.8, and 13.6.
[21] H.J. RES. 14, H.J. RES. 63, H.J. RES. 67, S.J. RES. 1, S.J. RES. 21
[22] H.J. RES. 20, H.J. RES. 53, H.J. RES. 71, S.J. RES. 1, S.J. RES. 11

B. SECTION DIRECTORY: None.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

## APPENDIX A

## JOINT RESOLUTIONS FILED IN CONGRESS SINCE 1995 PROPOSING A CONSTITUTIONAL AMENDMENT TO LIMIT TERMS OF SERVICE IN CONGRESS[23]

| Congress | House Joint Resolutions | Senate Joint Resolutions | Total Filed |
|---|---|---|---|
| **104th 1995-1996** | Filed: HJRs 2, 3, 5, 8, 12, 24, 25, 29, 34, 38, 44, 52, 65, 66, 73, 75, 76, 77, 82, 91, 92<br><br>Heard in committee: HJRs 2, 3, 5, 8, 73<br><br>Voted on by House: HJR 73 was considered on the House floor in 1995 but failed to obtain a 2/3 vote (227-204) | Filed: SJRs 19, 21, 36<br><br>Heard in committee: SJR 21 was approved by committee in 1995 but was not submitted to a vote of the full Senate.<br><br>Voted on by Senate: None | 24<br>H-21<br>S-3 |
| **105th 1997-1998** | Filed: HJRs 2, 3, 5, 6, 8, 16, 22, 23, 27, 31, 33, 34, 42, 49<br><br>Heard in committee: None<br><br>Voted on by House: HJR 2 was considered on the House floor in 1997 but failed to obtain a 2/3 vote (217-211). | Filed: SJRs 16, 52<br><br>Heard in committee: SJR 16 was approved by committee in 1998 but was not submitted to a vote of the full Senate.<br><br>Voted on by Senate: None | 16<br>H-14<br>S-2 |
| **106th 1999-2000** | Filed: HJRs 2, 15, 16, 18<br><br>None heard in committee | Filed: SJR 45<br><br>None heard in committee | 5<br>H-4<br>S-1 |
| **107th 2001-2002** | Filed: HJRs 57, 58<br><br>None heard in committee | None filed | 2<br>H-2<br>S-0 |
| **108th 2003-2004** | Filed: HJRs 16, 43, 66, 81<br><br>None heard in committee | None filed | 4<br>H-4<br>S-0 |
| **109th 2005-2006** | Filed: HJRs 11, 80<br><br>None heard in committee | Filed: SJR 3<br><br>None heard in committee | 3<br>H-2<br>S-1 |
| **110th 2007-2008** | Filed: HJRs 24, 60, 71, 98<br><br>None heard in committee | Filed: SJR 2<br><br>None heard in committee | 5<br>H-4<br>S-1 |
| **111th 2009-2010** | Filed: HJRs 14, 63, 67<br><br>None heard in committee | Filed: SJRs 1, 21<br><br>None heard in committee | 5<br>H-3<br>S-2 |
| **112th 2011-2012** | Filed: HJRs 20, 53, 71<br><br>None heard in committee | Filed: SJRs 1, 11<br><br>None heard in committee | 5<br>H-3<br>S-2 |

**TOTAL RESOLUTIONS FILED:** **69 (57 HJRs and 12 SJRs)**

**TOTAL HJRs HEARD IN COMMITTEE:** **6**

**TOTAL VOTED ON BY THE HOUSE:** **2 (Neither obtained 2/3 approval)**

**TOTAL SJRs HEARD IN COMMITTEE:** **2**

**TOTAL VOTED ON BY THE SENATE:** **0**

[23] The information on this table was compiled on September 28, 2011, by performing searches of the Library of Congress website, www.thomas.gov.

House Memorial

A memorial to the Congress of the United States, urging Congress to propose to the states an amendment to the Constitution of the United States that would limit the consecutive terms of office which a member of the United States Senate or the United States House of Representatives may serve.

WHEREAS, Article V of the Constitution of the United States authorizes Congress to propose amendments to the Constitution which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls, NOW, THEREFORE,

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

That the Florida Legislature respectfully petitions the Congress of the United States to propose to the states an amendment to the Constitution of the United States to limit the number of consecutive terms which a person may serve in the United States Senate or the United States House of Representatives.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 495 State University System Optional Retirement Program
**SPONSOR(S):** Jones
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 198

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 15 Y, 0 N, As CS | Meadows | Williamson |
| 2) State Affairs Committee | | Meadows | Hamby |

## SUMMARY ANALYSIS

The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to membership in the Florida Retirement System for eligible State University System faculty, administrators, and administrative, professional, and executive service personnel. Currently, members of the SUSORP are authorized to choose from five companies to provide their retirement and death benefits.

The bill increases the number of provider companies that the Department of Management Services (DMS) is authorized to contract with for the SUSORP from five to six companies. The bill requires DMS to utilize a competitive procurement process if it chooses to add an additional provider company for the SUSORP. The contract with the new provider, if selected, is effective from July 1, 2012, until December 14, 2014. All companies seeking designation as a provider after January 1, 2015, must participate in a separate competitive procurement.

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

The bill provides an effective date of upon becoming a law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

The optional retirement program for the State University System (SUSORP or program) is a retirement plan that is provided as an alternative to membership in the Florida Retirement System (FRS) for eligible State University System faculty, administrators, and administrative, professional, and executive service personnel.[1] The SUSORP is a 403(b), Internal Revenue Code, qualified defined contribution plan that provides full and immediate vesting of all contributions submitted to the participating companies on behalf of the participant.[2]

SUSORP became effective July 1, 1984, for eligible State University System faculty and administrators. The program was expanded in 1988, to include the State University System Executive Service and in 1999, to include administrative and professional staff. The program was created to offer more portability to the employees being recruited by the State University System.[3]

Through this program, participants elect coverage as an alternative to membership in the FRS.[4] Contracts providing retirement and death benefits may be purchased for eligible members of the SUSORP.[5]

The Department of Management Services (DMS) is responsible for administering the program. The Board of Governors of the State University System (board) provides recommendations on contract providers for the SUSORP to DMS.[6] The recommendations must include:

- The nature and extent of the rights and benefits in relation to the required contributions; and
- The suitability of the rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of eligible employees.[7]

After receiving and considering the recommendations of the board, DMS must designate up to five companies that may offer contracts under the SUSORP.[8] The investment products offered by provider companies are subject to review by the State Board of Administration.[9]

DMS indicates there are approximately 17,000 eligible members who have elected participation in the SUSORP, as of June 30, 2011.[10] SUSORP currently offers five investment provider choices. Those choices are:

- ING (3,042 participants);
- Jefferson National Life Insurance Company (134 participants);
- MetLife Investors USA Insurance Company (1,853 participants);

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[1] *See* s. 121.35(2)(a), F.S.
[2] *See* s. 121.35(1), F.S.
[3] Information provided by telephone on January 27, 2012, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.
[4] SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. *See* s. 121.35(2)(a), F.S. Faculty members at a college with faculty practice plans are required to participate in the program. *See* s. 121.051(1)(a)2., F.S.
[5] Section 121.35(1), F.S.
[6] Section 121.35(6)(a), F.S.
[7] Section 121.35(6)(a)1. and 2., F.S.
[8] Section 121.35(6)(b), F.S.
[9] Section 121.35 (6)(c), F.S.
[10] Analysis of HB 495, Department of Management Services, October 27, 2011, at 1 (on file with the Government Operations Subcommittee). Information confirmed by telephone on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

- Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF) (8,870 participants); and
- VALIC Retirement (4,615 participants).[11]

All contracts currently in place expire between March and December of 2014.[12]

**Effect of the Proposed Changes**

The bill authorizes DMS to increase the number of authorized companies available for inclusion in the optional retirement program for the State University System from five companies to six. The bill requires DMS to utilize a competitive procurement process if it chooses to add an additional company as a provider. The contract with the new provider, if selected, is effective from July 1, 2012, until December 14, 2014. All companies seeking designation as a provider after January 1, 2015, must participate in a separate competitive procurement.

B. SECTION DIRECTORY:

Section 1 amends s. 121.35, F.S., to increase the number of authorized companies from which contracts may be purchased under the SUSORP; to provide a procurement process for additional providers.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DMS does not anticipate an actuarial impact should this bill pass, as the number of participants and the funds available for investment remain the same.[13] In addition, the Board of Governors of the State University System does not anticipate a fiscal impact on universities.[14]

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[11] The number of participants cited is as of June 30, 2011. Information provided on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

[12] The VALIC contract expires March 2014, followed by MetLife in April 2014, with the remaining contracts all set to expire December 2014. Information provided by telephone on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

## 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2012, the Government Operations Subcommittee adopted an amendment to HB 495. The amendment requires DMS to utilize a competitive procurement process if it chooses to add an additional company as a provider. The contract with the new provider, if selected, is effective from July 1, 2012, until December 14, 2014. All companies seeking designation as a provider after January 1, 2015, must participate in a competitive procurement.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

[13] Information provided on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, Department of Management Services.

[14] Analysis of HB 495, Florida Board of Governors, November 21, 2011, at 2 (on file with the Government Operations Subcommittee).

A bill to be entitled

An act relating to the State University System optional retirement program; amending s. 121.35, F.S.; increasing to no more than six the number of companies from which contracts may be purchased under the program; providing a procurement process for additional provider companies; providing an effective date.

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

Section 1. Paragraph (b) of subsection (6) of section 121.35, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

121.35 Optional retirement program for the State University System.—

(6) ADMINISTRATION OF PROGRAM.—

(b) After receiving and considering the recommendations of the Board of Governors of the State University System, the department shall designate no more than six ~~five~~ companies from which contracts may be purchased under the program and shall approve the form and content of the optional retirement program contracts. Any domestic company that has been designated as of July 1, 2005, shall be included in the six ~~five~~ companies until expiration of its existing contract with the department. The domestic company may assign its contract with the department to an affiliated qualified company that is wholly owned by the domestic company's parent company and has assumed 100 percent of

the responsibility for the contracts purchased from the domestic company.

(7) PROCUREMENT OF ADDITIONAL PROVIDER COMPANIES.—If the department chooses to designate an additional provider company from which contracts may be purchased under the program as provided in paragraph (6)(b), the department shall conduct a competitive procurement and the designation of the additional provider company is effective from July 1, 2012, until December 31, 2014. All companies seeking a designation that is effective on or after January 1, 2015, shall participate together in a separate competitive procurement conducted by the department for the purpose of selecting the total number of provider companies authorized in paragraph (6)(b) and deemed reasonable and prudent by the department.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Taylor offered the following:

**Amendment**

Remove line 36 and insert:

provider company is effective until December

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 611 Kings Bay
**SPONSOR(S):** Smith
**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1614

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Federal Affairs Subcommittee | 8 Y, 4 N | Bennett | Camechis |
| 2) State Affairs Committee | | Camechis | Hamby |

## SUMMARY ANALYSIS

This memorial urges Congress to direct the U.S. Fish and Wildlife Service (Service) to reconsider proposed rules that designate Kings Bay as a manatee refuge and, in lieu of the rule, partner with state and local governments in seeking joint long-term solutions to manatee protection.

The Florida manatee is a native species found in all parts of the State, and is currently protected by state law and the federal Marine Mammal Protection Act and Endangered Species Act.

Kings Bay is located in Citrus County, Florida, at the headwaters of the Crystal River, and is within the City of Crystal River. Kings Bay is the primary wintering site for endangered Florida manatees in northwest Florida, and manatees have increasingly used the bay during summer months. In 1980, about 100 manatees were using the network of springs in Kings Bay and the number of people viewing manatees was estimated at 30,000 to 40,000 per year. In recent years, more than 550 manatees have used Kings Bay and the number of people viewing manatees was estimated to exceed 100,000 people each winter.

The Service has established seven federal sanctuaries in Kings Bay. Human activity is prohibited within these sanctuaries during manatee season, which runs from November 15th through March 31st each year. Outside of the sanctuaries, human activity is permitted and regulated by the state under the Florida Manatee Sanctuary Act. During manatee season, watercraft may not operate within the designated sanctuaries and may only travel at "slow speed" in the rest of Kings Bay. During off-season months, including the summer months, watercraft may travel through the sanctuaries at idle speed and up 35 mph in the designated water sports area.

According to the Service, the number of manatees using Kings Bay during the year has outgrown the capacity of existing protected areas, and human use of the bay has increased beyond the impacts originally considered when the existing protections were created. As a result, in June 2011, the Service determined that additional manatee protections are necessary and published a proposed rule that:

- Establishes a federal manatee refuge throughout Kings Bay, including its tributaries and connected waters,
- Authorizes temporary expansion of seasonal manatee "no entry" sanctuaries if needed during extremely cold winters,
- Specifically identifies prohibited activities to reduce harassment and injury of manatees, and
- Limits watercraft to "slow speeds" throughout Kings Bay throughout the year.

As of January 26, 2012, the proposed rule had not taken effect, but is expected to do so in the near future. . This memorial has no fiscal impact; however, opponents of the proposed rule assert that, if the rule takes effect, it will have a significant negative fiscal impact on local governments and private businesses in the area.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Effect of Proposed Changes**

This memorial urges Congress to direct the U.S. Fish and Wildlife Service (Service) to reconsider proposed rules that designate Kings Bay as a manatee refuge and, in lieu of the rule, partner with state and local governments in seeking joint long-term solutions to manatee protection.

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

**Present Situation**

*Background*

The West Indian Manatee (Florida manatee) became a federally protected endangered species in 1970.[1] From 1980 through 1998, the U.S. Fish & Wildlife Service (Service) designated seven manatee sanctuaries in Kings Bay, a 530 acre aquatic area located in the City of Crystal River, at the headwaters of the Crystal River in Citrus County.[2] These sanctuaries allow manatee's undisturbed access to critical warm-water resting and foraging areas, and are intended to prevent any manatee takings during manatee season (November 15 - March 31). Generally, a "taking" is the harassment, injury, or death of a manatee.[3] During manatee season, all waterborne activities, such as swimming, waterskiing, and boating are prohibited within the sanctuaries.

The Service contends that the number of manatees using Kings Bay has more than doubled since 1998 (from 250 animals to 566 animals); the number of residents, visitors, and boats has significantly increased; and the amount of space in the existing sanctuaries has became insufficient to provide this number of manatees with shelter free from harassment. In addition, the number of manatees struck and killed by boats in Kings Bay has increased since 2002, when the watersports area was created.[4]

According to the Service, the primary human-related causes of death and injury to manatees rangewide include watercraft-related strikes (impacts and/or propeller strikes), entrapment and/or crushing in water control structures (gates, locks, etc.), and entanglement in fishing lines, crab pot lines, etc. A 2005 analysis concluded that watercraft-related mortality was the leading cause of death for manatees throughout Florida. A subsequent threats analysis concluded that watercraft strikes and the potential loss of warm-water habitat pose the greatest threats to the Florida manatee population.[5]

From 1974 through 2010, collisions with watercraft killed 60 manatees in Citrus County waterways, including 16 manatees in Kings Bay. Thirteen of the 16 Kings Bay watercraft-related deaths occurred within the past 10 years. In 2008, the Florida Fish and Wildlife Commission (FWC) recorded the highest number (8) of manatees ever killed by watercraft in Citrus County and three of these carcasses were recovered in Kings Bay. While watercraft-related deaths occur throughout the year in Citrus County, 7 of the 16 watercraft-related deaths that occurred in Kings Bay took place outside of manatee season when the watersports area designated by the state of Florida in 2002 is in effect (May 1 to August 30).[6]

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[1] Endangered Species Conservation Act of 1969 (35 FR 8491), and as amended in 1973 (16 U.S.C. 1531 *et seq.*).

[2] Sanctuaries: Banana Island, Sunset Shores, Magnolia Springs, Buzzard Island, Warden Key, Tarpon Springs, and Three Sisters

[3] Endangered Species Act § 3 (19); Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish a Manatee Refuge in Kings Bay, Citrus County, FL, 76 FR 36493-01 ("proposal").

[4] Proposal at FR 36497.

[5] Proposal at FR 36495.

[6] Proposal at FR 36497.

The maximum speed at which watercraft may travel throughout Kings Bay during manatee season is "slow."[7] During summer months, watercraft may travel at various speeds, as posted throughout the bay. The maximum speed limit is 35 mph in the designated water sports zone.

*U.S. Fish and Wildlife Service Proposed Rules for Kings Bay*

In November 2010, the Service determined that the seven existing manatee sanctuaries in Kings Bay were inadequate to protect manatees due to increasing human and manatee activity in the area.[8] To prevent "manatee harassment associated with manatee viewing and other activities," the Service issued an emergency rule on November 15, 2010, designating all of Kings Bay a temporary federal manatee refuge and specifying what types of human contact with manatees was prohibited.[9] The emergency refuge overlapped the existing seasonal manatee sanctuaries and allowed establishment of additional "no-entry" areas as needed to accommodate manatee use during the winter. The emergency rule did not address speed limits for watercraft.

The Service's emergency rule expired on March 15th, 2011, and Kings Bay is no longer a designated manatee refuge. Thus, for now, the pre-November 2010 restrictions on human contact with manatees and watercraft speeds are applicable in Kings Bay.

However, in June 2011, the Service proposed a rule that would make permanent, and expand upon, the emergency refuge rule. Based upon current and historical data that document increasing numbers of manatees, waterway users, watercraft-related manatee deaths and injuries, and reports of manatee harassment in Kings Bay, the Service concluded that the take of manatees is occurring and increasing in the area. The Service further concluded that future takes would occur without additional protection measures, but there was no basis to anticipate any alternative protection measures being enacted by other agencies in sufficient time to reduce the likelihood of take. For those reasons, the Service proposed its rules.[10] In general terms, the proposed rule:[11]

- Establishes a manatee refuge including all of Kings Bay;
- Maintains the 7 existing manatee sanctuaries, where all waterborne activities are prohibited during the manatee season;
- Limits the maximum watercraft speed to "slow" throughout Kings Bay at all times;
- Specifies 13 prohibited activities that constitute manatee takings and harassment;
- Requires manatee-safe fishing lines, float lines, and mooring lines at all times;
- Allows Temporary 'no-entry' areas adjacent to existing sanctuaries and additional springs during the manatee season;
- Allows Temporary 'no-entry' areas outside of the manatee season during unusual cold events; and,
- Provides limited exceptions for adjoining property owners and their designees to provide access to the water.

The most controversial aspect of the proposed rule is the establishment of a year-round "slow speed" zone throughout Kings Bay. Currently the speed limits during the summer months are governed by state law, which allow watercraft to travel at speeds of up to 35 mph in certain areas.[12]

According to the Service, under the proposed manatee refuge designation, refuge restrictions would improve its ability to address takings associated with watercraft and with manatee viewing activities. Restrictions would require all watercraft to operate at slow speed throughout Kings Bay, except in those

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[7] Watercraft of different sizes and configurations travel at different speeds so specific speed are not assigned for "slow" or "idle." "Slow" speed means that a vessel must be fully off plane and completely settled into the water, "idle" speed permits watercraft proceed at a speed no greater than that which will maintain steerage and headway; Fla. Admin. Code Ann. r. 68C-22.002; 011.

[8] *See* proposal, supra note 3 (the number of manatees more than doubled from an estimated 250 (1998) to 566 (2010)).

[9] *Id.*

[10] Proposal at FR 36498.

[11] *Id.*

[12] Fla. Admin. Code Ann. r. 68C-22.011(k). Maximum 35 mph/25 mph nighttime zone (May 1 through August 31)

areas where more restrictive measures are in place (idle speed zones, no entry areas, and sanctuaries), to reduce the number of watercraft-related deaths and injuries occurring in Kings Bay.[13]

As of January 26th, 2012, the final rule had not taken effect, but is expected to do so in the near future.[14]

*Florida Fish and Wildlife Conservation Commission*[15]

In a letter dated September 30, 2011, the FWC communicated to the Service the FWC's perspective on the proposed federal rule for Kings Bay. The FWC noted that the proposed rule includes several provisions supported by the FWC; however, the FWC expressed concern with the portion of the proposed rule addressing summer boat speeds in Kings Bay, noting that "[t]he elimination of all high speed activity in Kings Bay is controversial with a variety of opinions expressed by a diverse set of stakeholders including dive operators, nature enthusiasts, motor boaters, paddlers, water-skiers, and fishermen. It is the FWC philosophy that agencies should work closely with all stakeholders and affected portions of the public when considering and developing regulations.... Our agency strongly believes that a thorough and transparent public engagement process leads to rules that have wider public acceptance." The FWC strongly encouraged the Service to "carefully consider public input and building stakeholder consensus." The FWC did not, however, express direct support of or opposition to provisions in the proposed rule addressing summer boat speeds.

B. SECTION DIRECTORY: Not applicable.

## 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: See Fiscal Comments.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: See Fiscal Comments.

D. FISCAL COMMENTS: Although this memorial does not have a fiscal impact on local governments or the private sector, opponents of the Service's proposed rule assert that the rule itself will have a significant negative impact on local government and private sector revenues in the affected area. However, it appears that a formal economic impact study of the proposed rules has not been performed by the Service or affected parties.

[13] Proposal at FR 36498.
[14] http://www.chronicleonline.com/content/doomsday-rule-king's-bay-subject-gov't-takeover-opponents-say
[15] Letter to Dave Hankla, Field Supervisor, U.S. Fish and Wildlife Services, from Kathy Barco, Chair, FWC (Sept. 30, 2011).

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Memorial

A memorial to the Congress of the United States, urging Congress to direct the United States Fish and Wildlife Service to reconsider the proposed rule to designate Kings Bay as a manatee refuge and in lieu of the rule partner with the state and local governments in seeking joint long-term solutions to manatee protection.

WHEREAS, the United States Fish and Wildlife Service established the Crystal River National Wildlife Refuge in 1983 to provide protection and sanctuary for the endangered West Indian manatee within portions of Kings Bay in Crystal River, and

WHEREAS, the rules currently in effect within the refuge have resulted in a significant increase in manatee population as evidenced by monitoring, sound science, and local data, and

WHEREAS, the United States Fish and Wildlife Service has proposed a rule to designate all of Kings Bay as a manatee refuge, and

WHEREAS, adoption of the proposed rule will have a significant adverse impact on the tourism industry, which is a critical part of the Crystal River economy, at a time when its local economy is already seriously weakened by challenges within the national economy, and

WHEREAS, adoption of the proposed rule will also have a significant adverse impact on the riparian rights of property owners adjacent to Kings Bay and the connecting waterways, and

WHEREAS, prohibiting the use of any portion of Kings Bay for recreational boating activities, such as swimming, kayaking, and water skiing, will force such activities into the channel of Crystal River, subjecting participants to significant risks associated with sharing the channel with commercial fishing boats and other large watercraft, and

WHEREAS, there are viable alternatives to the proposed rule, such as increased enforcement of the rules currently in effect, which would accomplish the desired outcome of a reduced incidence rate of manatee injury or death without unduly restricting public use of Kings Bay, a water body that has historically served as the heart of the Crystal River community, and

WHEREAS, the City Council of the City of Crystal River and the Board of County Commissioners of Citrus County passed unanimous resolutions requesting that the United States Fish and Wildlife Service reconsider the proposed rule, and

WHEREAS, adoption of the proposed rule without a proper review of the impact on the City of Crystal River and the surrounding communities would be arbitrary and capricious, NOW, THEREFORE,

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

That the Congress of the Unites States is urged to direct the United States Fish and Wildlife Service to reconsider the proposed rule to designate Kings Bay as a manatee refuge and in

lieu of the rule partner with the state and local governments in seeking joint long-term solutions to manatee protection.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 801 Emergency 911 Service
**SPONSOR(S):** Community & Military Affairs Subcommittee and Steube
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1042

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 13 Y, 0 N | Keating | Collins |
| 2) Community & Military Affairs Subcommittee | 13 Y, 0 N, As CS | Read | Hoagland |
| 3) Finance & Tax Committee | 23 Y, 0 N, As CS | Flieger | Langston |
| 4) State Affairs Committee | | Keating | Hamby |

## SUMMARY ANALYSIS

Section 365.172, F.S., established a statewide enhanced 911 ("E911") system for wireless telephone users. To fund the E911 system, the act imposes a fee, capped at 50 cents, on voice communications services.

Florida law requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis, up to a maximum of 25 access lines per account bill. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice-over-Internet Protocol ("VoIP").

The E911 Board helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The Board consists of nine members: the E911 system director (the secretary of the Department of Management Services or his or her designee) who serves as chair of the board; four county 911 coordinators; two local exchange carrier representatives; and two wireless telecommunications industry representatives recommended by the Florida Telecommunications Industry Association ("FTIA").

CS/CS/HB 801 amends provisions of the Emergency Communications Number E911 Act to do the following:

- Modify industry membership on the E911 Board by: expanding the total number of members from 9 to 11; expanding the number of local exchange carrier representatives from 2 to 3; adding a requirement that one of these 3 Board members represent a competitive local exchange telecommunications company; expanding the number of county 911 coordinators from 4 to 5 and the number of at-large county 911 coordinators from 1 to 2; and reducing the number of wireless telecommunications industry representatives on the Board from 2 to 1.
- Clarify how the E911 fee will be billed by certain voice communications services providers, including billing to customers served through certain high-capacity lines.
- Clarify that the indemnification and liability provisions related to the provision of 911 or E911 service will apply to non-voice communications (e.g., text, data, images, video) that may be utilized in Next Generation 911 applications currently being developed.
- Reflect the recent dissolution of the FTIA.

The bill also amends the Telecommunications Access System Act of 1991 to reflect the dissolution of the FTIA, which was known until 1996 as the Florida Telephone Association.

The bill allows 911 public safety telecommunicators to disclose the location of persons having a confirmed coronary emergency to private persons or entities that have automated external defibrillators nearby.

This bill has not been evaluated by the Revenue Estimating Conference but it does not appear to have a fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

The Emergency Communications Number E911 Act[1] establishes a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposes a fee, capped at $.50 per access line or service number, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location information provided for the cellular caller from the service provider.[2]

Florida law requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis, up to a maximum of 25 access lines per account bill.[3] "Service identifier" is defined as the service number, access line, or other unique identifier assigned to a customer for purposes of routing calls to the E911 system.[4] Consistent with the statutory definition for "voice communications services provider[5]," the fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice-over-Internet Protocol[6] ("VoIP").

For customers who take service through a digital transmission link that can be channelized and split into 23 or 24 voice or data grade channels for communications (such as primary rate interface service or Digital Signal 1 level service), local exchange carriers are required by rule[7] to bill the E911 fee on the basis of five access lines for each digital transmission link up to a maximum of 25 access lines per account bill. A customer using one digital transmission link for service is able to use that link for 23 or 24 voice or data channels. The rule assumes that five of those channels, on average, are used as voice lines with access to the E911 system, and the customer is billed the E911 fee for five lines. The rule does not currently apply to voice communications services providers other than local exchange carriers.

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers in accordance with s. 365.173, F.S. The Board consists of nine members: the E911 system director (the secretary of the Department of Management Services or his or her designee) who serves as chair of the board; four county 911 coordinators (one from a rural county, one from a medium county, one from a large county, and one at-large member recommended by the Florida Association of Counties); two local exchange carrier representatives; and two wireless telecommunications industry representatives recommended by the Florida Telecommunications Industry Association ("FTIA") in consultation with the wireless industry.[8] According to the Florida Department of State, Division of Corporations website, the Florida Telecommunications Industry Association was voluntarily dissolved in June 2011.

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[1] Section 365.172, F.S. Originally cited as the "Wireless Emergency Communications Act," Chapter 99-367, L.O.F., codified in s. 365.172, F.S.

[2] Florida Department of Management Services, *Florida E911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited Jan. 13, 2012).

[3] Section 365.172(8), F.S.

[4] Section 365.172(3)(z), F.S.

[5] Section 365.172(3)(bb) and (cc), F.S.

[6] Voice-over-Internet Protocol, or VoIP, is the method commonly used by traditional cable television service providers to provide voice communications service. In addition, companies referred to as "over-the-top" providers, like Vonage, use VoIP.

[7] Rule 60FF1-5.007, Florida Administrative Code.

[8] Section 365.172(5)(b), F.S.

Florida law protects voice communications services providers from liability for damages resulting from or in connection with 911 or E911 service or for identification of the telephone number, address, or name associated with any person accessing 911 or E911 service, absent malicious purpose or wanton and willful disregard of the rights, safety, or property of the person.[9] Further, the law authorizes local governments to indemnify local exchange carriers against liability in accordance with the carrier's lawfully filed tariffs. Since 2009, however, local exchange carriers have not been required to file tariffs (i.e., rate schedules) with the Public Service Commission ("PSC"). Instead, these carriers are required to publish their rate schedules through electronic or physical media and to inform customers where the schedules can be viewed.

Chapter 427, Florida Statutes, establishes the Telecommunications Access System Act of 1991 (TASA). Pursuant to TASA, the PSC is responsible for establishing, implementing, promoting, and overseeing the administration of a statewide system to provide access to telecommunications relay services by people who are deaf, hard of hearing, or speech impaired and those who communicate with them.[10] TASA establishes an advisory committee to assist the PSC. The advisory committee provides the expertise, experience, and perspective of people who are hearing impaired or speech impaired to the PSC regarding the operation of the telecommunications access system. The advisory committee consists of 10 members: two deaf persons; one hearing-impaired person; one deaf and blind person; one speech-impaired person; two representatives of telecommunications companies recommended by the Florida Telephone Association; one person with experience in providing relay services; one person recommended by the Advocacy Center for Persons with Disabilities; and one person recommended by the Florida League of Seniors.[11] According to the Florida Department of State, Division of Corporations website, the Florida Telephone Association was renamed the Florida Telecommunications Industry Association in May 1996.

**Effect of Proposed Changes**

CS/CS/HB 801 amends certain provisions of the Emergency Communications Number E911 Act to do the following:

- Modify industry membership on the E911 Board,
- Clarify the application of the E911 fee to a customer using digital transmission link and service (i.e. T-1 and Primary Rate Interface (PRI)),[12]
- Clarify the indemnification and liability provisions related to provision of 911 or E911 service with respect to non-voice communications,
- Reflect the recent dissolution of the FTIA.

The bill also amends the Telecommunications Access System Act of 1991 to reflect the dissolution of the FTIA.

*E911 Board Membership*

The bill amends s. 365.172(5)(b), F.S., to modify telecommunications industry representation on the E911 Board. The bill expands the total number of E911 Board members from 9 to 11. The bill expands the number of local exchange carrier representatives on the E911 Board from two to three. The bill retains the requirement that one of these Board members represent the local exchange company with the greatest number of access lines in the state. The bill adds a requirement that one of these three Board members represent a competitive local exchange telecommunications company (e.g., a traditional landline competitive company or a cable voice service provider.) The bill expands the number of county 911 coordinators on the Board from 4 to 5, and expands the number of at-large county 911 coordinators on the Board from one to two. Finally, the bill reduces the number of wireless

[9] Section 365.172(11), F.S.
[10] Section 427.704, F.S.
[11] Section 427.706, F.S.
[12] T-1 and PRI are defined in Rule 60-FF1-5.007(3)(a) and (b),F.A.C., respectively, as "[a] digital transmission link and service that can be channelized and split into 23 or 24 voice or data grade channels for communications."

telecommunications industry representatives on the E911 Board from two to one. The bill retains the requirement that consideration be given to wireless providers that are not affiliated with local exchange carriers. To reflect the dissolution of the FTIA in June 2011, the bill removes the requirement that the wireless industry representative be recommended by the FTIA.

*E911 Fee*

The bill amends s. 365.172(8)(a), F.S., to clarify and modernize application of the E911 fee. The bill amends subparagraph 1. to provide that all voice communications services providers other than wireless providers must bill the E911 fee to each subscriber based on the number of access lines with access to the E911 system, on a service-identifier basis. Based on the applicable definition of "voice communications services provider," this provision should encompass every voice communications technology that is required by the Federal Communications Commission ("FCC") to provide E911 service, including VoIP, other than wireless service. The bill retains the existing provisions related to collection of the E911 fee by wireless service providers. The bill also retains the existing provision that limits application of the E911 fee to a maximum of 25 access lines per account bill.

The bill creates a new provision as subparagraph 2. to establish how voice communications services providers other than wireless providers will bill the E911 fee to customers that use a digital transmission link that can be channelized and split into 23 or 24 voice or data grade channels for communications. Consistent with the existing rule of the E911 Board and FCC practice, these customers will be billed the fee for five service-identified access lines for each digital transmission link, up to a maximum of 25 access lines per account bill. The bill provides that a "digital transmission link" includes primary rate interface service or equivalent Digital Signal 1 level service. This is a codification of Rule 60FF1-5.007, F.A.C. which was enacted December 3, 2010.

The bill retains the existing provisions in s. 365.172(8)(a), F.S., that specify how wireless providers must bill the E911 fee to their customers.

The bill also retains provisions in s. 365.172(8)(a), F.S., that specify how voice communications services providers other than those previously described must bill the E911 fee. It is not clear that this provision is still necessary, as the provisions discussed above appear to address all voice communications services providers.

*Indemnification and Liability*

Section 365.172(11), F.S., provides protection to voice communications services providers from liability for damages resulting from or in connection with 911 or E911 service. The bill provides a definition for the term "911 or E911 service" for purposes of that subsection. Specifically, the bill defines the term as

> "a telecommunications service, voice or nonvoice communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined [by specified orders of the FCC]."

The bill appears to clarify application of the existing liability provisions to include services that are capable of providing access to the E911 system for nonvoice communications (e.g., text, data, images and video). These "Next Generation 911" systems are currently being developed.

Further, the bill reflects that local exchange carriers are no longer required to file tariffs with the PSC. To do this, the bill provides that local governments may indemnify a local exchange carrier against liability in accordance with the carrier's lawfully published rate schedules, rather than its filed tariffs.

*Automated External Defibrillators (AEDs)*

The bill amends s. 365.171(12), F.S., to give 911 public safety telecommunicators[13] (emergency dispatchers) the discretion to disclose the location of a confirmed coronary emergency to public persons or entities who have an AED nearby. This disclosure is limited to providing the location of the confirmed coronary emergency—under no circumstances can the name, telephone number, or personal information be disclosed to the private persons or entities.

The bill also amends s. 401.2915(2)(b), F.S., which presently encourages persons or entities in possession of an AED to notify the local emergency medical services director about the location of the AED. The bill adds that these persons or entities should also notify the local public safety answering point[14] about the location of the AED. The result of the bill should be faster response times for persons having confirmed coronary emergencies.

*Miscellaneous Provisions*

The Telecommunications Access System Act of 1991[15] establishes an advisory committee to assist the PSC in implementing, promoting, and overseeing the administration of a statewide system to provide access to telecommunications relay services by people who are deaf, hard of hearing, or speech impaired and those who communicate with them. The bill amends s. 427.706(1), F.S., to remove an obsolete reference to the role of the Florida Telephone Association ("FTA") in recommending members to be appointed to the advisory committee. The FTA was renamed the FTIA in 1996, and the FTIA has since been dissolved. The bill does not otherwise change the existing membership of the advisory committee.

The bill makes conforming changes to cross-references and makes other technical changes.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 365.171(12), F.S., relating to confidentiality of records, allowing 911 public safety telecommunicators to disclose the location of the confirmed coronary emergency to private persons or entities that have an AED nearby.

**Section 2.** Amends s. 365.172, F.S., relating to the Emergency Communications Number E911 Act.

**Section 3.** Amends s. 401.2915, F.S., relating to AED, encouraging private owners to notify local emergency medical services directors or local public safety answering points about the location of their AED.

**Section 4.** Amends s. 427.706, F.S., relating to the advisory committee created to assist the Public Service Commission in implementing the Telecommunications Access System Act of 1991.

**Section 5.** Provides an effective date of July 1, 2012.

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[13] Section 401.465(1)(a), F.S. defines "911 public safety telecommunicator" as "a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls . . ."

[14] Section 365.172(3)(a), F.S. defines "answering point" as " the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls."

[15] Sections 427.701-.708, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill has not been evaluated by the Revenue Estimating Conference but it does not appear to have a fiscal impact.

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: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill retains provisions in s. 365.172(8)(a), F.S., that specify how voice communications services providers other than those already identified in the law must bill the E911 fee. It is not clear that this provision is still necessary, as the provisions of the bill appear to apply to all voice communications services providers.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2011, the Community & Military Affairs Subcommittee adopted five amendments. Four of the amendments were technical; the other amendment gives 911 public safety telecommunicators the discretion to contact persons or entities that own automated external defibrillators and inform them of the location of a confirmed coronary emergency if they are within a reasonable distance.

On February 7, 2012, the Finance & Tax Committee adopted an amendment that further modified the bill's changes to the E911 Board. These changes expand the number of county 911 coordinators on the Board from 4 to 5, expand the number of at-large county 911 coordinators on the Board from 1 to 2, and expand the total membership of the Board from 9 to 11.

The analysis above reflects these changes.

A bill to be entitled

An act relating to emergency 911 service; amending s. 365.171, F.S.; providing an exception to certain confidentiality provisions for a 911 public safety telecommunicator when a confirmed coronary emergency call is taking place; amending s. 365.172, F.S.; increasing the membership of the E911 Board and revising the qualifications required for the members; requiring that a voice communications service provider, other than a wireless service provider, impose a fee based on the number of access lines to the E911 system and on the basis of certain access lines for each digital transmission link, up to a specified number of access lines per account bill rendered; revising the criteria that a local government may use in order to indemnify a local carrier; expanding the types of providers that may be indemnified and that are not liable for certain damages; revising cross-references; defining the term "911 or E911 service"; amending s. 401.2915, F.S.; providing for a person or entity in possession of an automated external defibrillator to notify the local public safety answering point regarding the location of the defibrillator; amending s. 427.706, F.S.; removing the requirement that the Florida Telephone Association recommend certain representatives to an advisory committee to the Public Service Commission; providing an effective date.

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

Section 1. Subsection (12) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political

subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

(b) Notwithstanding paragraph (a), a 911 public safety telecommunicator, as defined in s. 401.465, may contact any private person or entity that owns an automated external defibrillator who has notified the local emergency medical services medical director or public safety answering point of such ownership if a confirmed coronary emergency call is taking place and the location of the coronary emergency is within a reasonable distance from the location of the defibrillator, and may provide the location of the coronary emergency to that person or entity.

Section 2. Paragraphs (a) and (b) of subsection (5), paragraphs (a) and (e) of subsection (8), and subsection (11) of section 365.172, Florida Statutes, are amended to read:

365.172 Emergency communications number "E911."—

(5) THE E911 BOARD.—

(a) The E911 Board is established to administer, with oversight by the office, the fee imposed under subsection (8), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for

submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state. In order to advise and assist the office in implementing ~~carrying out~~ the purposes of this section, the board, which has ~~shall have~~ the power of a body corporate, has the powers enumerated in subsection (6).

(b) The board shall consist of eleven ~~nine~~ members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining ten ~~eight~~ members of the board shall be appointed by the Governor and must be composed of five ~~four~~ county 911 coordinators, consisting of a representative from a rural county, a representative from a medium county, a representative from a large county, and two ~~an~~ at-large representatives ~~representative~~ recommended by the Florida Association of Counties in consultation with the county 911 coordinators; three ~~two~~ local exchange carrier member representatives ~~members~~, one of whom ~~which~~ must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and two member representatives ~~members~~ from the wireless telecommunications industry, with ~~recommended by the Florida Telecommunications Industry Association in consultation with the wireless telecommunications industry. In recommending members from the wireless telecommunications industry,~~ consideration ~~must be~~ given to wireless providers that ~~who~~ are not affiliated with local

exchange carriers. Not more than one member may be appointed to represent any single provider on the board.

(8) E911 FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection. Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider ~~local exchange carrier~~ shall bill the fee to a subscriber based on the number of access lines having access to the E911 system, ~~the local exchange subscribers~~ on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.

3.~~2.~~ Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. Before July 1, 2013, the fee shall not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a

prepaid calling arrangement that is subject to s. 212.05(1)(e).

a. An ~~No~~ E911 fee shall not be collected from the sale of prepaid wireless service before ~~prior to~~ July 1, 2013.

b. For purposes of this section, the term:

(I) "Prepaid wireless service" means the right to access telecommunications services, which ~~that~~ must be paid for in advance and ~~is~~ sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount.

(II) "Prepaid wireless service providers" includes those persons who sell prepaid wireless service regardless of its form, ~~either~~ as a retailer or reseller.

4.~~3.~~ The ~~All~~ voice communications services providers not addressed under subparagraphs 1., 2., and 3. ~~2.~~ shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

(e) Effective September 1, 2007, voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end

of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. ~~(a)3.~~ shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(11) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local government may ~~governments are authorized to undertake to~~ indemnify local exchange carriers against liability in accordance with the published schedules ~~lawfully filed tariffs~~ of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or other service provider that provides 911 or E911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911 or E911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911 or E911 service, unless the carrier or ~~voice communications services~~ provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or ~~voice communications~~

~~services~~ provider is not liable for damages to any person resulting from or in connection with the carrier's or provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term "911 or E911 service" means a telecommunications service, voice or nonvoice communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined in the order.

Section 3. Paragraph (b) of subsection (2) of section 401.2915, Florida Statutes, is amended to read:

401.2915 Automated external defibrillators.—It is the intent of the Legislature that an automated external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to achieve that goal, the Legislature intends to encourage training in lifesaving first aid and set standards for and encourage the use of automated external defibrillators.

(2) In order to promote public health and safety:

(b) Any person or entity in possession of an automated external defibrillator is encouraged to notify the local emergency medical services medical director or the local public safety answering point, as defined in s. 365.172(3), of the location of the automated external defibrillator.

Section 4. Paragraph (e) of subsection (1) and subsection (3) of section 427.706, Florida Statutes, are amended to read:

427.706 Advisory committee.—

(1) The commission shall appoint an advisory committee to assist the commission with the implementation of the provisions of this part. The committee shall be composed of no more than 10 persons and shall include, to the extent practicable, the following:

(e) Two representatives of telecommunications companies~~,~~ ~~one representing a local exchange telecommunications company and one representing an interexchange telecommunications company, recommended by the Florida Telephone Association~~.

(3) Members of the committee shall not be compensated for their services but are ~~shall be~~ entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. The commission shall use funds from the Florida Public Service Regulatory Trust Fund to cover the costs incurred by members of the advisory committee.

Section 5. This act shall take effect July 1, 2012.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1089 Pub. Rec./Investigators & Inspectors/DBPR
**SPONSOR(S):** Government Operations Subcommittee; Adkins
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 906

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 14 Y, 0 N, As CS | Williamson | Williamson |
| 2) State Affairs Committee | | Williamson | Hamby |

## SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain current and former public employees and their spouses and children. Examples of protected information include:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by children of the public employees.

The bill expands the public record exemptions for such public employees to include current or former investigators or inspectors of the Department of Business and Professional Regulation and of their spouses and children. The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] 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.

Public Record Exemptions for Identification and Location Information

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.[3] Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;[4]
- Firefighters;[5]
- Justices and judges;[6]
- Local and statewide prosecuting attorneys;[7]
- Magistrates, administrative law judges, and child support hearing officers;[8]
- Local government agency and water management district human resources administrators;[9]
- Code enforcement officers;[10]
- Guardians ad litem;[11]

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[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.
[3] *See* s. 119.071(4)(d), F.S.
[4] *See* s. 119.071(4)(d)1.a., F.S.
[5] *See* s. 119.071(4)(d)1.b., F.S.
[6] *See* s. 119.071(4)(d)1.c., F.S.
[7] *See* s. 119.071(4)(d)1.d., F.S.
[8] *See* s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.
[9] *See* s. 119.071(4)(d)1.f., F.S.
[10] *See* s. 119.071(4)(d)1.g., F.S.
[11] *See* s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

- Specified Department of Juvenile Justice Personnel;[12] and
- Public defenders and criminal conflict and civil regional counsel.[13]

Although the types of exempt information vary, the following information is exempt[14] from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers[15] of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency[16] that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.[17]

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) is delegated responsibility for both professional regulation and business regulation. The department's division of regulation monitors more than 20 professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the department. Department inspectors and investigators are required to investigate any complaint that is received in writing, to determine if it is legally sufficient, to review whether it is either signed by the complainant or, if not signed, to determine if it is believed to be true after an initial inquiry by the agency.[18] In addition, department inspectors and investigators are required to complete other routine inspections by the department.[19] In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.[20] The department not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession by the department.[21]

Presently, the home addresses, telephone numbers, and photographs of current or former investigators and inspectors of the department; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are not exempt from public disclosure.[22] The department's Alcoholic Beverages and Tobacco division employs sworn officers

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[12] *See* s. 119.071(4)(d)1.i., F.S.

[13] *See* s. 119.071(4)(d)1.j., F.S.

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

[15] "Telephone number" is not currently defined in these public record exemptions.

[16] Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

[17] Section 119.071(4)(d)2., F.S.

[18] Section 455.225(1)(a), F.S.

[19] *See* Rule 61G5-30.001, F.A.C.

[20] *See* Rule 61G5-30.004, F.A.C.

[21] Section 455.2277, F.S.

[22] The Department of Business and Professional Regulation does not routinely collect the names and locations of the schools and day care facilities attended by the children of department investigators and inspectors. However, the department has expressed an interest in having this information part of the exemption in the event that the information has been made part of the personnel file or case file inadvertently. Otherwise, the department is concerned that this information could be available to the public when completing a public record request.

(agents) to conduct investigations for that division. Agents can complete investigations in cooperation with investigators or inspectors or with other agents. However, only the agents who are sworn law enforcement officers are protected under the current exemption for law enforcement personnel in s. 119.017(4)(d)1.a., F.S.

The department's inspectors and investigators have reported incidents of threats and abuse. According to the department, after issuing a citation in an Orlando salon, an investigator received numerous threatening phone calls to her home telephone number. The threats did not cease until the investigator reported the threats to local law enforcement.

In 2006, an Orlando area investigator was verbally abused when a licensee told her that he wished harm upon her before the end of the day.[23] In 2007, and then again in 2008, another Orlando investigator had her state vehicle vandalized while it was parked outside her home at night.[24]

Two Jacksonville investigators received threatening calls to their home numbers after conducting investigations. In 2008, a Jacksonville inspector had to have his personal cell phone number changed after it had been compromised by a private investigator. Both investigators have since had their telephone numbers changed to unlisted. In 2007, an inspector in Ft. Myers arrived home to find a subject of one of her investigations sitting on her front doorstep. Another inspector from the same regional office had a convicted felon call her at home in late 2008.[25]

The department's Miami regional office has reported multiple incidents as well. On one occasion, an investigator noticed one of the subject's of his investigation, an investigation that resulted in the subject's arrest, driving slowly past his house. Another had numerous subjects of investigations knock on their front door after their home address had been posted at the department. Another had several threatening phone calls on her cell phone, and threats to both her family and children.[26]

**Effect of Bill**

The bill expands the current public record exemption for identification and location information of certain public employees to include current or former investigators or inspectors of the Department of Business and Professional Regulation (department). The following information is exempt from public record requirements if such investigator or inspector has made reasonable efforts to protect the information from being accessible through other means available to the public:

- The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the department.
- The names, home addresses, telephone numbers, and places of employment of the spouses and children of such investigators or inspectors.
- The names and locations of schools and day care facilities attended by the children of such investigators or inspectors.

If exempt information is held by an agency that is not the employer of such investigator or inspector, then the investigator or inspector must submit to that agency a written request to maintain the public record exemption.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[27]

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[23] *See* Recommended Order in *Dept. Business and Professional Regulation v. Tony's Hair Styling*, DOAH Case No. 05-007711, where the formal hearing found the licensee guilty of interfering with an agency inspection.

[24] The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 906 by the Regulated Industries Committee, January 26, 2012, at 6.

[25] *Id.* at 6.

[26] *Id.* at 6 and 7.

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

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the public record exemption for identification and location information of certain public employees and their spouses and children.

Section 2 provides a public necessity statement.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

*See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

*See* FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to the changes in the public record exemptions. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

## 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:

Vote Requirement

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

The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment changes the effective date of the bill to provide that it will take effect upon becoming a law.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for personal identifying and location information of current and former investigators and inspectors of the Department of Business and Professional Regulation and the spouses and children of such investigators and inspectors; providing a condition to the exemption; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1.a. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and

personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

b. The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state

attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has

made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

h. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses,

telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

2. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, and photographs of current and former investigators and inspectors of the Department of Business and Professional Regulation, the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors, and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors be made exempt from public records requirements. The Legislature finds that the release of such identifying and location information might place the department's investigators and inspectors and their family members in danger of physical and emotional harm from disgruntled individuals whose business or professional practice have come under the scrutiny of investigators and inspectors of the department. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

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Committee/Subcommittee hearing bill: State Affairs Committee

Representative Adkins offered the following:

**Amendment (with title amendment)**

Remove lines 29-192 and insert:

personnel of the Department of Revenue, county tax collectors, or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1). This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home

addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative

Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water

management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

h. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless

reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review

Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

2. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, and

photographs of personnel of county tax collectors whose responsibilities include revenue collection and enforcement or child support enforcement, the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel be made exempt from public records requirements. It is also the finding of the Legislature that it is a public necessity that the home addresses, telephone numbers, and photographs of current and former investigators and inspectors of the Department of Business and Professional Regulation, the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors, and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors be made exempt from public records requirements. The Legislature finds that the release of such identifying and location information might place personnel of county tax collectors and investigators and inspectors of the Department of Business and Professional Regulation and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to revenue collection or enforcement actions or child support enforcement actions of a county tax collector, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Business and Professional Regulation. The Legislature further finds that the harm that

Amendment No.

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

Remove line 3 and insert:

119.071, F.S.; providing an exemption from public records requirements for personal identifying and location information of specified personnel of county tax collectors and the spouses and children of such personnel; providing for future review and repeal of the exemption; providing an exemption from public

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1281 Patient Protection and Affordable Care Act
**SPONSOR(S):** Brodeur
**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1854

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Federal Affairs Subcommittee | 10 Y, 4 N | Camechis | Camechis |
| 2) State Affairs Committee | | Camechis | Hamby |

## SUMMARY ANALYSIS

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA"). The PPACA consists of 2,562 pages of text and several hundred sections of law, which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

In response to the enactment of the PPACA, many state legislatures have considered statutory or constitutional measures that attempt to remove or lessen the impact of the PPACA's policy provisions. State constitutional amendments are pending a vote by the electorate in at least three states, including Wyoming, Montana, and Florida.

The PPACA has also been the subject of various legal challenges in the federal courts. A joint lawsuit filed by twenty-six states, including Florida, is challenging the constitutionality of the law. As a result of these challenges, some federal courts have upheld the PPACA in whole or in part, while others have invalidated part or all of the law as an unlawful exercise of Congressional power. Due to the conflicting decisions issued by federal appellate courts, the United States Supreme Court has agreed to review the law and determine the constitutionality of several sections of the PPACA. The Court will hear oral arguments over a three-day period in March 2012.

This memorial has no fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Effect of Proposed Changes**

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

**Current Situation**

*A. Patient Protection and Affordable Care Act*

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA").[1] The PPACA consists of 2,562 pages of text and several hundred sections of law[2], which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

Effective for health plan years that begin after September 23, 2010:

- All new private health insurance plans are required to cover immunizations, preventive care for infants, children and adolescents, and additional preventive care and screenings for women.
- Health insurers are prohibited from rescinding insurance coverage from members of a health insurance plan, except in case of fraud or material misrepresentation.
- Denial of coverage by health insurers for children with pre-existing conditions is prohibited.
- Lifetime limits on the amount paid out by the health insurance plan are prohibited.
- Copayments or deductibles for certain preventative services are prohibited.
- Coverage is required for dependents up to 26 years of age.

In 2011, health insurance companies are required to spend at least 85 percent of premium dollars on medical services in large group policy markets and 80 percent of premium dollars on medical services in small group and individual policy markets. The failure of insurers to reach the new medical loss ratio targets will result in the issuing of rebates to policyholders.

Effective in 2014:

- Health insurance coverage will be mandatory for almost all U.S. citizens. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from $95 in 2014 to $750 in 2016, and is indexed for subsequent years.[3] Exemptions for mandatory health insurance coverage will be granted for American Indians, in cases of extreme financial hardship, for those objecting to the mandatory provision for religious reasons, individuals without health insurance for less than three months, and individuals in prison.[4]
- Health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.

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[1] P.L. 111-148, 124 Stat. 119 (2010); P.L. 111-152, 124 Stat. 1029 (2010).
[2] Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf.
[3] The federal government expects to raise $17 billion from penalties by 2019. *See* Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than $1,000. *See* Congressional Budget Office and the staff of the Joint Committee on Taxation, *"Payments of Penalties for Being Uninsured under PPACA"*, April 22, 2010.
[4] Hinda Chaikind, et al., *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*, CRS Report R40942

- Companies with 50 or more full time employees that do not provide health insurance coverage to its workers, resulting in at least one worker qualifying for a subsidy to purchase health insurance coverage through an exchange, must pay a tax penalty of $2,000 for every full time employee, less 30 workers.[5]
- An excise tax will be imposed on health care plans costing more than $10,200 for individual coverage and $27,500 for family coverage.
- Denials of coverage to anyone with a pre-existing condition will be prohibited.
- All plans must cover federally defined "essential benefits".
- Plan rating factors will be set by federal law, which limits the degree of pricing differential among differently situated people.

Other provisions of PPACA include:

- Medicaid eligibility is expanded to include those individuals with incomes up to 138 percent of the federal poverty level, resulting in coverage of 32 million previously uninsured Americans by 2019.
- Medicare payment rates for certain services will be permanently reduced.
- Various additional changes will be made to the federal tax code, Medicare, Medicaid, and other social programs necessary to fully implement the new law.

Nearly 1 in 4 Americans are receiving Medicaid benefits.[6] Over the next ten years, the federal government will spend $4.4 trillion on the Medicaid program.[7] The Congressional Budget Office (CBO) originally estimated new state spending on Medicaid, as a result of the provisions of PPACA, at $20 billion between 2017 and 2019. More recently, the CBO has estimated a cost to the states of $60 billion through 2021.[8] However, a report issued by the Senate Finance Committee estimates that PPACA will cost state taxpayers at least $118.04 billion through 2023.[9]

The Florida Agency for Health Care Administration has estimated the financial impact of added Medicaid costs to the state, under the provisions of PPACA, to be $12.944 billion from FY 2013 through FY 2023.[10]

*B. State Reaction to Federal Health Care Reform*[11]

After PPACA was enacted, members of at least 45 state legislatures proposed legislation to limit, alter, or oppose selected state or federal actions, including single-payer provisions and mandates that require the purchase of insurance. In general, many of the opposing measures considered in 2010 and 2011:

- Focus on not permitting, implementing or enforcing mandates (federal or state) that would require purchase of insurance by individuals or by employers and impose fines or penalties for those who fail to do so.

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[5] S. 4908H(a), PPACA, as amended by the Reconciliation Act, s. 1003 (2010). The Congressional Budget Office estimates that company penalties will cost businesses $52 billion from 2014 through 2019. *See* Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010. At least 728 waivers have been issued to employers by the Obama administration as of February 2011, exempting the employers from the provisions of PPACA. The list is available at http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html (last viewed March 25, 2011).

[6] Congressional Budget Office, *Spending and Enrollment Detail for CBO's August 2010 Baseline: Medicaid*, August 2010; available at http://www.cbo.gov/budget/factsheets/2010d/MedicaidAugust2010FactSheet.pdf.

[7] Office of Management and Budget, *FY 2012 Budget of the U.S. Government*, February 2011; available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf.

[8] *Medicaid Expansion in the New Health Law: Costs to the States*, Joint Congressional Report by Senate Finance Committee, U.S. Congress, March 1, 2011, at page 1; available at http://energycommerce.house.gov/media/file/PDFs/030111MedicaidReport.pdf.

[9] *Id.* at pg. 2.

[10] *Overview of Federal Affordable Care Act*, Florida Agency for Health Care Administration, January 4, 2011; available at http://ahca.myflorida.com/Medicaid/Estimated_Projections/medicaid_projections.shtml.

[11] See State Legislation and Actions Challenging Certain Health Reforms, 2011, National Conference of State Legislatures, http://www.ncsl.org/IssuesResearch/Health/StateLegislationampActionsChallengingCertai/tabid/18906/Default.aspx?tabid=18906, last accessed January 12, 2012.

- Seek to keep in-state health insurance optional, allowing citizens to purchase any type of health services or coverage they choose.
- Contradict or challenge policy provisions contained in the 2010 federal law.

The language varies from state to state and includes statutory changes and constitutional amendments, as well as binding and non-binding state resolutions. In 2011, there were several new approaches:

- Several states considered bills that would prohibit state agencies or officials from applying for federal grants or using state resources to implement provisions of the PPACA, unless authorized to do so by state legislation.
- Sixteen states considered measures to create an "Interstate Freedom Compact," joining forces across state lines to coordinate or enforce opposition (four states now have enacted laws).
- Several states considered bills that propose the power of "nullification," seeking to label the federal law "null and void" within state boundaries.

*C. 2010 Florida Legislation: CS/CS/HJR 37*

During the 2010 Regular Session, the Florida Legislature passed CS/CS/HJR 37 by the required three-fifths vote in each chamber. The joint resolution proposed an amendment to the Florida Constitution to create Section 28 of Article I relating to health care services. Specifically, the proposed constitutional amendment:

- Prohibited persons and employers from compelled participation in a heath care system;
- Allowed direct payment of health care services and prohibits penalizing persons, employers and health care providers from utilizing a direct payment system;
- Allowed the purchase or sale of health insurance in the private market, subject to certain conditions;
- Exempted from the prohibition any general law passed by a 2/3 vote of the membership of each house of the Legislature, passed after the effective date of the Amendment, provided that such law stated with specificity the public necessity justifying such exception; and
- Exempted laws enacted prior to March 1, 2010, from requirements of the amendment.

Following passage of CS/CS/HJR 37, it was filed with the Department of State for inclusion on the statewide ballot for the 2010 general election, and the proposed amendment was designated as Amendment 9 by the Division of Elections.

Thereafter, a group of citizens filed a lawsuit in the Second Judicial Circuit Court in Tallahassee asking the court to determine whether the legislative ballot summary contained in the joint resolution proposing Amendment 9 complied with the legal requirements for ballot summaries.[12] Ultimately, the Florida Supreme Court, upholding the Circuit Court's decision, removed the proposed amendment from the ballot after finding the ballot summary provided by the Legislature contained misleading and ambiguous language.[13]

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[12] *See Fl. Dept. of State v. Mangat*, 43 So.3d 642, 646 (Fla. 2010); *see also* s. 101.161(1), F.S., states, "Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no', and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

[13] *Id.*

### D. 2011 Florida Legislation: CS/SJR 2

During the 2011 Regular Session, the Florida Legislature passed CS/SJR 2 by the required three-fifths vote in each chamber. CS/SJR 2 proposes an amendment to the Florida Constitution to create Section 28 of Article I relating to health care. Specifically, the proposed constitutional amendment:

- Prohibits a law or rule from compelling, directly or indirectly, any person or employer to purchase, obtain, or otherwise provide health care coverage;
- Allows a person or employer to pay directly for lawful health care services and allows a health care provider to accept direct payment for lawful health care services;
- Prohibits the imposition of taxes or penalties on health care providers who choose to participate in a direct payment system;
- Provides that the purchase or sale of health insurance in private health care systems may not be prohibited by rule or law; and
- Exempts laws or rules in effect as of March 1, 2010.

Following adoption, CS/SJR 2 was filed with the Secretary of State and the proposed amendment was designated as Amendment 1 by the Division of Elections. If approved by 60 percent of the voters in the 2012 general election, the amendment will take effect on January 8, 2013.

To date, CS/SJR 2 has not been challenged in court.

### E. Legal Challenges to PPACA

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.[14] At the time suit was filed, Florida was joined by twelve states, by and through their individual Attorneys General. Currently, twenty six states and several private parties are plaintiffs in the federal action.[15]

The lawsuit argues that the PPACA violates the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. In addition, the lawsuit targets the expansion of eligibility for Medicaid as an infringement on states' rights. The choice given the states by the new law, according to the lawsuit, is to fully shoulder the costs of health care or forfeit federal Medicaid funding by opting out of the system. Finally, the lawsuit contends that the expansion of Medicaid eligibility to include individuals within 138 percent of the federal poverty level "commandeers" states and their resources to complete federal tasks and achieve federal goals, all in violation of the Tenth Amendment to the Constitution.[16] Most of the counts raised in the plaintiffs' Amended Complaint were dismissed through a pre-trial motion, but the claims alleging violation of the Commerce Clause, regarding the individual mandate, and alleging the Medicaid program under PPACA essentially "commandeers" state resources, were allowed to stand.[17]

On January 31, 2011, Judge Vinson of the District Court for the Northern District of Florida in Pensacola entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.[18] Judge Vinson also ruled that, because the remaining provisions of PPACA were rendered ineffective without the individual mandate and the law lacked a severability clause, the entire Act was void.

The federal government complied with conditions established by Judge Vinson that were necessary to stay his order, and appealed the order to the U.S. Appeals Court for the 11th Circuit. On August 12, 2011, the U.S. Appeals Court for the 11th Circuit decided by a 2 to 1 vote that Congress exceeded its

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[14] *State of Florida v. U.S. Dept. of Health and Human Services*, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)
[15] In addition, Virginia filed its own federal lawsuit challenging the constitutionality of PPACA. *State of Virginia v. Kathleen Sebelius*, Case No.: 3:10-cv-188-HEH (E.D. Va.).
[16] Kathleen S. Swendiman, *Health Care: Constitutional Rights and Legislative Powers*, CRS Report R40846, page 10, FN 66.
[17] Florida v. U.S. Dept. of HHS, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.
[18] *Florida v. U.S. Dept. of HHS*, ---F.Supp.2d---, 2011 WL 285683 (N.D. Fla.)

constitutional authority by requiring individuals to buy coverage; however, the court unanimously reversed the lower court's decision to invalidate the entire law. Because the court's decision conflicted with decisions of other federal appellate courts that upheld part or all of the PPACA, the case was appealed to the United States Supreme Court for resolution.

On November 14, 2011, the Supreme Court agreed to hear arguments regarding the constitutionality of certain provisions of the PPACA.[19] Oral arguments are scheduled to take place over three days beginning on March 28, 2012.

B. SECTION DIRECTORY: Not applicable.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[19] *Florida et al v. U.S. Dept. of Health and Human Services,* U.S., No. 11- 400 (docketed Sept. 29, 2011).

House Memorial

A memorial to the Congress of the United States, urging Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

WHEREAS, the health insurance mandate within the Patient Protection and Affordable Care Act is a form of government interference in the free market and an all-out assault on personal liberties, and

WHEREAS, the mandate for individuals to purchase health insurance exceeds the scope and authority of Congress, and

WHEREAS, as the United States economy continues to struggle and the unemployment rate holds steadfast at alarming percentages, the employer mandate to provide health insurance to employees will raise the cost of hiring new employees and have an adverse effect on the state of our economy, and

WHEREAS, as the cost of employing workers rises, it will become increasingly vital that employers get more production out of their more highly paid employees, which will lead to higher and more sustained unemployment for the lower skilled workforce, NOW, THEREFORE,

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

That the Florida Legislature urges the United States Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

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Committee/Subcommittee hearing bill: State Affairs Committee

Representative Brodeur offered the following:

**Amendment (title amendment)**

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

Remove lines 17-21 and insert:

an adverse effect on the state of our economy,

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1305 Pub. Rec./Officers-Elect
**SPONSOR(S):** Government Operations Appropriations Subcommittee; Adkins
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1464

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 15 Y, 0 N | Williamson | Williamson |
| 2) Government Operations Appropriations Subcommittee | 12 Y, 0 N, As CS | Topp | Topp |
| 3) State Affairs Committee | | Williamson | Hamby |

## SUMMARY ANALYSIS

The State Constitution and the Florida Statutes set forth the state's public policy regarding access to government records and meetings. However, current law does not specifically address if officers-elect are subject to the Public Records Act or the Government in the Sunshine Law. The Third District Court of Appeal has ruled on the issue providing that members-elect of boards, commissions, and agencies are within the scope of the Government in the Sunshine Law. Although the Public Records Act was not addressed by the Third District Court of Appeal, the Department of State has routinely archived transition records for incoming governors.

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office. The term "officer-elect" only applies to the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records. Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such public office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by any person elected to a specific board or commission who has not yet taken office, during which official acts are to be taken, is deemed a public meeting. Reasonable notice of such meeting must be provided.

The Department of State indicates no fiscal impact as a result of the bill.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

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

Florida Statutes: Public Records and Open Meetings
Public policy regarding access to government records and meetings also is addressed in the Florida Statutes.

*Public Records Act*[1]
Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. "Public record" is defined to mean

> [A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[2]

"Agency" is defined to mean

> [A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.[3]

The Public Records Act does not apply to legislative[4] or judicial[5] records.

*Government in the Sunshine Law*
Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[6] The board or commission must provide reasonable notice of all public meetings.[7] Public meetings may not be held at any location that discriminates on the basis of

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[1] *See* chapter 119, F.S.
[2] Section 119.011(12), F.S.
[3] Section 119.011(2), F.S.
[4] *See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992) (definition of "agency" in the Public Records Act does not include the Legislature or its members).
[5] Relying on separation of powers principles, the courts have consistently held that the judiciary is not an agency for purposes of chapter 119, F.S. *See, e.g., Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government).
[6] Section 286.011(1), F.S.
[7] *Id.*

sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[8] Minutes of a public meeting must be promptly recorded and be open to public inspection.[9]

Officers-elect

Officers-elect have been held subject to public record and public meeting requirements upon certification of their election.[10] Although not specifically addressed in current law, this principle has been adopted through case law. In *Hough v. Stembridge*,[11] the Third District Court of Appeal held that "members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law."[12] Although the Public Records Act was not addressed in *Hough*, the Department of State has routinely archived transition records for incoming governors.

**Effect of Bill**

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office. The term "officer-elect" only applies to the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records.

Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such public office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by any person elected to a specific board or commission who has not yet taken office, during which official acts are to be taken, is deemed a public meeting. Reasonable notice of such meeting must be provided.

B. SECTION DIRECTORY:

Section 1 creates s. 119.035, F.S., relating to officers-elect.

Section 2 amends s. 286.011, F.S., to include officers-elect under the provisions of the Sunshine Law.

Section 3 reenacts s. 112.3215, F.S., for purposes of incorporating changes made to s. 286.011, F.S.

Section 4 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[8] Section 286.011(6), F.S.
[9] Section 286.011(2), F.S.
[10] *See* Attorney General Opinion 74-40.
[11] 278 So.2d 288 (Fla. 3rd DCA 1973).
[12] *Hough* at 289.

1. Revenues:

   None.

2. Expenditures:

   *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State indicates there will be no fiscal impact on the department.[13]

The bill could create a minimal fiscal impact on the office of an officer-elect complying with public record requests. The costs would be absorbed, however, as they would be part of the day-to-day responsibilities of the person responsible for responding to records in such office.

## 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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority. It merely requires that an officer-elect comply with the policies and procedures of the public office to which he or she has been elected.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[13] Department of State Bill Analysis on HB 1305, January 30, 2012, on file with the Government Operations Appropriations Subcommittee.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2012, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The amendment provided that the term "Officer-Elect" applies only to the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. In addition, the amendment provides that a meeting with or attended by any person elected to a specific board or commission who has not yet taken office, during which official acts are to be taken, is deemed a public meeting and that reasonable notice of such meeting must be provided.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 119.035, F.S.; declaring that it is the policy of this state that the provisions of ch. 119, F.S., apply to certain constitutional officers upon their election to public office; requiring that such officers adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in ch. 119, F.S.; requiring that the public records of such officers be maintained in accordance with the policies and procedures of the public offices to which the officers have been elected; requiring that online and electronic communication and recordkeeping systems preserve the records on such systems so as to not impair the ability of the public to inspect or copy such public records; requiring that such officers, as soon as practicable upon taking the oath of office, deliver to the person or persons responsible for records and information management, all public records kept or received in the transaction of official business during the period following election to public office; defining the term "officer-elect" as used in the section; amending s. 286.011, F.S.; revising public meeting requirements to apply the requirements to meetings with or attended by newly elected members of boards and commissions; reenacting s. 112.3215(8)(b), F.S., relating to lobbying before the executive branch or the Constitution Revision

Commission, to incorporate the amendment made to s. 286.011, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 119.035, Florida Statutes, is created to read:

119.035 Officers-elect.—

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public

office.

(5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

Section 2. Subsection (1) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 3. For the purpose of incorporating the amendment made by this act to section 286.011, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 112.3215, Florida Statutes, is reenacted to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(8)

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

Section 4. This act shall take effect July 1, 2012.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1339 Envelopes Used to Conceal the Voter's Choices
**SPONSOR(S):** Chestnut IV
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1720

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Government Operations Subcommittee | 13 Y, 0 N, As CS | Naf | Williamson |
| 2) State Affairs Committee | | Naf | Hamby |

## SUMMARY ANALYSIS

Current law allows supervisors of elections to mail ballots to absentee voters and to voters in mail ballot elections. In most instances, mailed ballots are sent with a secrecy envelope and a return mailing envelope.

This bill creates a definition for "security-enhanced envelope" and authorizes supervisors of elections to send out only security-enhanced envelopes with such ballots, instead of secrecy envelopes and return mailing envelopes.

The bill makes changes to conform to such authorization.

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

The bill may have an indeterminate fiscal impact on state and local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Absentee Voting

Current law allows a voter to vote with an absentee ballot in lieu of voting at the polls.[1] A voter may request an absentee ballot from his or her supervisor of elections[2] in person, in writing, or via telephone call.[3] Absentee ballots are mailed to those voters who request them within a specified time frame.[4]

When an absentee ballot is mailed to a voter, it is generally sent[5] with a secrecy envelope[6], a mailing envelope, and instructions to the voter.[7] The voter must enclose the completed ballot in the secrecy envelope, and then enclose the secrecy envelope in the mailing envelope for return to the supervisor of elections.[8]

Mail Ballot Elections

Certain elections may be conducted only by mail ballot and are not required to include polling places.[9] In mail ballot elections, the supervisor of elections mails all official ballots with a secrecy envelope, a mailing envelope, and instructions to the voter.[10] The voter must enclose the completed ballot in the secrecy envelope, and then enclose the secrecy envelope in the mailing envelope for return to the supervisor of elections.[11]

**Effect of Proposed Changes**

The bill creates a definition for "security-enhanced envelope" in the Electronic Voting Systems Act to mean a device with a tinted pattern on the inside, used in lieu of a secrecy envelope for enclosing a marked ballot, which conceals the voter's choices.

The bill authorizes[12] supervisors of elections to send out only security-enhanced envelopes instead of both secrecy envelopes and mailing envelopes with:

- Absentee ballots; and
- Ballots for mail ballot elections.

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[1] *See* s. 101.62, F.S.

[2] Supervisors of elections are county constitutional elected officers whose duties include, but are not limited to, registration and education of voters, and administration of elections. *See* art. VIII, s. 1(d) of the Fla. Const., and ch. 98-105, F.S. (responsibilities of supervisors of elections are delineated throughout those chapters).

[3] *See* s. 101.62(1), F.S.

[4] *See* s. 101.62(4), F.S.

[5] A slightly different process applies to certain first-time voters. Voters who have never voted in the state and who have not been issued a current and valid Florida driver's license, Florida identification card, or social security number must provide one of other specified forms of identification before voting. If such voter does not provided the required identification by the time his or her absentee ballot is mailed, the supervisor of elections must include with the ballot a secrecy envelope (into which the voter must enclose his or her marked ballot), an envelope containing the Voter's Certificate (into which the voter must place the secrecy envelope), and a mailing envelope (into which the voter must place the envelope containing the Voter's Certificate and a copy of the required identification). *See* s. 101.6921, F.S.

[6] Section 101.5603(6), F.S., defines "secrecy envelope" to mean an opaque device, used for enclosing a marked ballot, which conceals the voter's choices. Although that definition is contained in the Electronic Voting Systems Act (ss. 101.5601-101.5614, F.S.), the term is used throughout the Election Code (ch. 97-106, F.S.).

[7] *See* ss. 101.64(1) and 101.65, F.S.

[8] *Id.*

[9] Such elections include referendums in which only qualified electors of certain local governments may vote, and annexation referendums in which only qualified electors of one county may vote. *See* s. 101.6102(1), F.S.

[10] *See* s. 101.6103(1), F.S.

[11] *See* s. 101.6103(2), F.S.

[12] Such authorization does not impose a requirement on the supervisors of elections to use security-enhanced envelopes.

The bill makes changes to conform to such authorization in provisions relating to:

- The challenge of votes;
- Instructions to absentee voters;
- The canvassing of absentee ballots; and
- The return of an absentee ballot when the voter elects to vote in person.

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

B. SECTION DIRECTORY:

Section 1 amends s. 101.5603, F.S., relating to definitions for the Electronic Voting Systems Act.

Section 2 amends s. 101.6103, F.S., relating to mail ballot election procedures.

Section 3 amends s. 101.6104, F.S., relating to the challenge of votes.

Section 4 amends s. 101.64, F.S., relating to the delivery of absentee ballots.

Section 5 amends s. 101.65, F.S., relating to instructions to absent electors.

Section 6 amends s. 101.68, F.S., relating to the canvassing of absentee ballots.

Section 7 amends s. 101.69, F.S., relating to the return of an absentee ballot when the voter elects to vote in person.

Section 8 amends s. 101.6921, F.S., relating to the delivery of special-absentee ballots to certain first-time voters.

Section 9 amends s. 101.6923, F.S., relating to special absentee ballot instructions for certain first-time voters.

Section 10 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:

   *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   *See* FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State may incur costs associated with rule changes to conform to statutory changes made by the bill. However, such costs are likely to be insignificant and would probably be absorbed within existing agency resources.

The office of the Miami-Dade County Supervisor of Elections (supervisor) states the authorization to mail absentee ballots with only security-enhanced envelopes instead of both secrecy envelopes and return mailing envelopes would allow the use of machines for automated separation of ballots from envelopes.[13] A cost estimate for such machines was not provided. The supervisor estimates that the total reduction in costs for Miami-Dade County from reduced envelope supplies and, if machines were used, from reduced labor needs, would be approximately $82,000 per election.[14]

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill would require the Department of State (department) to amend current rules to conform to the bill's statutory changes.[15] The department appears to have sufficient authority to do so.[16]

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Comments

The bill creates a definition for "security-enhanced envelope" in the section of law that contains definitions for the Electronic Voting Systems Act.[17] The Electronic Voting Systems Act does not contain the provisions governing absentee voting and mail ballot elections. However, the only definition for "secrecy envelope" is in the Electronic Voting Systems Act, and that term is used throughout the provisions governing absentee voting and mail ballot elections. The Legislature may wish to consider locating both terms within the general definitions for the Election Code[18] contained in s. 97.021, F.S.

The Legislature also may wish to consider adding conforming language about the use of security-enhanced envelopes to provisions relating to the public inspection of ballots[19] and to referendums to implement a special residential or business neighborhood improvement district.[20]

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[13] *See* "Memorandum: Security-Enhanced Envelopes for Absentee Ballots," Office of the Miami-Dade County Supervisor of Elections (on file with the Government Operations Subcommittee).
[14] *Id.*
[15] *See*, for example, Rule 1S-2.022 (Mail Ballot Elections), and Rule 1S-2.030 (Electronic Transmission of Absentee Ballots).
[16] *See* general authority in s. 97.012(1), F.S., to implement ch. 97-102 and 105, F.S., as well as specific authority in, for example, ss. 101.6107 and 101.697, F.S.
[17] The Electronic Voting Systems Act contains ss. 101.5601-101.5614, F.S. Definitions for the Electronic Voting Systems Act are contained in s. 101.5603, F.S.
[18] The Election Code consists of ch. 97-106, F.S.
[19] Section 101.572, F.S.
[20] Section 163.511, F.S.

Other Comments: Voting Systems

Current law requires voting systems to meet certain certification requirements prior to use.[21] Department of State staff states machines used to separate ballots from envelopes would not require such certification.[22]

Other Comments: Preclearance

Under section 5 of the 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.[23] 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.[24] 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. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, legislation that implements a voting change is unenforceable in Florida's five covered jurisdictions.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Government Operations Subcommittee adopted a strike-all amendment and passed HB 1339 as a committee substitute. The strike-all amendment differs from the originally-filed bill in that instead of amending the definition for "secrecy envelope," it explicitly authorizes supervisors of elections to send out only security-enhanced envelopes with mailed ballots, instead of both secrecy envelopes and return mailing envelopes.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

[21] The Department of State is required to adopt and routinely update rules containing minimum standards for hardware and software for electronic and electromechanical voting systems. *See* s. 101.015, F.S. An "electronic or electromechanical voting system" is a system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment. *See* s. 101.5603, F.S.

[22] Phone call between Government Operations Subcommittee staff and Department of State staff (February 2, 2012).

[23] 42 U.S.C. s. 1973c.

[24] *Id.*

A bill to be entitled

An act relating to envelopes used to conceal the voter's choices; amending s. 101.5603, F.S.; defining the term "security-enhanced envelope" for purposes of the Electronic Voting Systems Act; amending s. 101.6103, F.S.; revising mail ballot election procedures to include the use of a security-enhanced envelope; amending s. 101.6104, F.S.; making conforming changes to procedures for the challenge of votes; amending s. 101.64, F.S.; revising procedures for the delivery of absentee ballots to include the use of a security-enhanced envelope; amending s. 101.65, F.S.; making conforming changes to the instructions to absent electors; amending s. 101.68, F.S.; making conforming changes to the procedures for the canvassing of absentee ballots; amending s. 101.69, F.S.; making conforming changes to procedures for voting in person after returning an absentee ballot; amending s. 101.6921, F.S.; making conforming changes to procedures for the delivery of special absentee ballots to certain first-time voters; amending s. 101.6923, F.S.; making conforming changes to special absentee ballot instructions for certain first-time voters; providing an effective date.

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

Section 1. Subsections (7) and (8) of section 101.5603,

Florida Statutes, are renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to that section to read:

101.5603 Definitions relating to Electronic Voting Systems Act.—As used in this act, the term:

(7) "Security-enhanced envelope" means a device with a tinted pattern on the inside, used in lieu of a secrecy envelope for enclosing a marked ballot, which conceals the voter's choices.

Section 2. Subsections (1), (2), (3), (5), and (7) of section 101.6103, Florida Statutes, are amended to read:

101.6103 Mail ballot election procedure.—

(1) Except as otherwise provided in subsection (7), the supervisor of elections shall mail all official ballots with either a secrecy envelope and~~,~~ a return mailing envelope or a security-enhanced envelope, and instructions sufficient to describe the voting process to each elector entitled to vote in the election not sooner than the 20th day before the election and not later than the 10th day before the date of the election. All such ballots shall be mailed by first-class mail. Ballots shall be addressed to each elector at the address appearing in the registration records and placed in an envelope which is prominently marked "Do Not Forward."

(2)(a) In any county in which secrecy envelopes and return mailing envelopes are used, upon receipt of the ballot the elector shall mark the ballot, place it in the secrecy envelope, sign the return mailing envelope supplied with the ballot, and comply with the instructions provided with the ballot.

(b) In any county in which security-enhanced envelopes are used, upon receipt of the ballot the elector shall mark the ballot, place it in the security-enhanced envelope, sign the security-enhanced envelope supplied with the ballot, and comply with the instructions provided with the ballot.

(c) The elector shall mail, deliver, or have delivered the marked ballot so that it reaches the supervisor of elections no later than 7 p.m. on the day of the election. The ballot must be returned in the return mailing envelope or security-enhanced envelope.

(3) The return mailing envelope or security-enhanced envelope shall contain a statement in substantially the following form:

VOTER'S CERTIFICATE

I, ...(Print Name)..., do solemnly swear (or affirm) that I am a qualified voter in this election and that I have not and will not vote more than one ballot in this election.

I understand that failure to sign this certificate and give my residence address will invalidate my ballot.

...(Signature)...

...(Residence Address)...

(5) A ballot shall be counted only if:

(a) It is returned in the return mailing envelope or security-enhanced envelope;

(b) The elector's signature has been verified as provided in this subsection; and

(c) It is received by the supervisor of elections not later than 7 p.m. on the day of the election.

The supervisor of elections shall verify the signature of each elector on the return mailing envelope or security-enhanced envelope with the signature on the elector's registration records. Such verification may commence at any time prior to the canvass of votes. The supervisor of elections shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. If the supervisor of elections determines that an elector to whom a replacement ballot has been issued under subsection (4) has voted more than once, the canvassing board shall determine which ballot, if any, is to be counted.

(7) With respect to absent electors overseas entitled to vote in the election, the supervisor of elections shall mail an official ballot with either a secrecy envelope and~~,~~ a return mailing envelope or a security-enhanced envelope, and instructions sufficient to describe the voting process to each such elector on a date sufficient to allow such elector time to vote in the election and to have his or her marked ballot reach the supervisor by 7 p.m. on the day of the election.

Section 3. Section 101.6104, Florida Statutes, is amended to read:

101.6104 Challenge of votes.—If any elector present for the canvass of votes believes that any ballot is illegal due to any defect apparent on the voter's certificate, the elector may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of such ballot, specifying the reason he or she believes the ballot to

be illegal. A ~~No~~ challenge based upon any defect on the voter's certificate may not ~~shall~~ be accepted after the ballot has been removed from the return mailing envelope or security-enhanced envelope.

Section 4. Subsections (1) and (2) of section 101.64, Florida Statutes, are amended to read:

101.64 Delivery of absentee ballots; envelopes; form.—

(1)(a) The supervisor may: ~~shall~~

1. Enclose with each absentee ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot, ~~,~~ and a return mailing envelope, into which the absent elector shall then place the secrecy envelope; or~~,~~

2. Enclose with each absentee ballot a security-enhanced envelope, into which the absent elector shall enclose his or her marked ballot.

(b) Return mailing envelopes and security-enhanced envelopes ~~which~~ shall be addressed to the supervisor and shall also bear on the back side a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I, ...., do solemnly swear or affirm that I am a qualified and registered voter of .... County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more

than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

...(Date)... ...(Voter's Signature)...

(2) The certificate shall be arranged on the back of the return mailing envelope or security-enhanced envelope so that the line for the signature of the absent elector is across the seal of the envelope; however, no statement may ~~shall~~ appear on the envelope which indicates that a signature of the voter must cross the seal of the envelope. The absent elector shall execute the certificate on the envelope.

Section 5. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor shall enclose with each absentee ballot separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your absentee ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote

for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope or security-enhanced envelope, whichever is provided.

5. If you received a secrecy envelope, insert the secrecy envelope into the enclosed return mailing envelope which is addressed to the supervisor.

6. Seal the return mailing envelope or security-enhanced envelope and completely fill out the Voter's Certificate on the back of the return mailing envelope or security-enhanced envelope.

7. VERY IMPORTANT. In order for your absentee ballot to be counted, you must sign your name on the line above (Voter's Signature). An absentee ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

8. VERY IMPORTANT. If you are an overseas voter, you must include the date you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

9. Mail, deliver, or have delivered the completed return

mailing envelope or security-enhanced envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 6. Paragraphs (c) and (d) of subsection (2) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of absentee ballot.—

(2)

(c)1. The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books to see that the elector is duly registered in the county and to determine the legality of that absentee ballot. The ballot of an elector who casts an absentee ballot shall be counted even if the elector dies on or before election day, as long as, prior to the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by common carrier, or already in the possession of the supervisor of elections. An absentee ballot shall be considered illegal if it does not include the signature of the elector, as shown by the registration records. However, an absentee ballot shall not be considered illegal if the signature of the elector does not cross the seal of the return mailing envelope or security-enhanced envelope. If the canvassing board determines that any ballot is illegal, a member

of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The envelope and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

2. If any elector or candidate present believes that an absentee ballot is illegal due to a defect apparent on the voter's certificate, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate may not be accepted after the ballot has been removed from the return mailing envelope or security-enhanced envelope.

(d)1. The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor.

2.a. In any county in which secrecy envelopes and mailing envelopes are used, the return mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed return mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the return mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style.

b. In any county in which security-enhanced envelopes are used, the supervisor shall separate the marked ballots from the

security-enhanced envelopes so as to make it impossible to determine which ballot came out of which signed security-enhanced envelope.

3. The votes on absentee ballots shall be included in the total vote of the county.

Section 7. Subsection (2) of section 101.69, Florida Statutes, is amended to read:

101.69 Voting in person; return of absentee ballot.—The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested an absentee ballot for that election. An elector who has returned a voted absentee ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received an absentee ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the election official:

(2) Confirms that the supervisor has not received the elector's absentee ballot, the elector shall be allowed to vote in person as provided in this code. The elector's absentee ballot, if subsequently received, shall not be counted and shall remain in the return mailing envelope or security-enhanced

envelope, and the envelope shall be marked "Rejected as Illegal."

Section 8. Subsection (2) of section 101.6921, Florida Statutes, is amended to read:

101.6921 Delivery of special absentee ballot to certain first-time voters.—

(2)(a) In any county in which secrecy envelopes and return mailing envelopes are used, the supervisor shall enclose with each absentee ballot three envelopes: a secrecy envelope, into which the absent elector will enclose his or her marked ballot; an envelope containing the Voter's Certificate, into which the absent elector shall place the secrecy envelope; and a return mailing envelope, which shall be addressed to the supervisor and into which the absent elector will place the envelope containing the Voter's Certificate and a copy of the required identification.

(b) In any county in which security-enhanced envelopes are used, the supervisor shall enclose with each absentee ballot two envelopes: a security-enhanced envelope containing the Voter's Certificate, into which the absent elector shall place the marked ballot, and a return mailing envelope, which shall be addressed to the supervisor and into which the absent elector will place the envelope containing the Voter's Certificate and a copy of the required identification.

Section 9. Subsection (2) of section 101.6923, Florida Statutes, is amended to read:

101.6923 Special absentee ballot instructions for certain first-time voters.—

(2) A voter covered by this section shall be provided with printed instructions with his or her absentee ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your absentee ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope <u>or security-enhanced envelope, whichever is provided,</u> and seal the envelope.

5. <u>If you received a secrecy envelope,</u> insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's Signature).

b. If you are an overseas voter, you must include the date

you signed the Voter's Certificate on the line above (Date) or your ballot may not be counted.

c. An absentee ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of canvassing of absentee ballots, which occurs no earlier than the 15th day before election day.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or

b. Identification which shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the <u>return</u> mailing envelope addressed to the supervisor. Insert a copy of your identification in the <u>return</u> mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed <u>return</u> mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 10. This act shall take effect July 1, 2012.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1379 Water and Wastewater Utilities
**SPONSOR(S):** Energy & Utilities Subcommittee and Brodeur
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1244

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 15 Y, 0 N, As CS | Keating | Collins |
| 2) State Affairs Committee | | Keating | Hamby |

## SUMMARY ANALYSIS

In 2011, the Public Service Commission (PSC) conducted workshops to address challenges facing the water and wastewater industry, with a focus on small water and wastewater utility systems that struggle to achieve economies of scale, financial stability, and technical proficiency. The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The bill requires this study committee to "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions." In addition, the bill requires the committee to consider:

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately-owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.
- Other issues that the committee identifies during its investigation.

The committee is composed of 17 members and is comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.

The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and any appropriate agencies, a report detailing its findings and making specific legislative and rulemaking recommendations. The bill provides for termination of the committee on June 30, 2013.

The bill has no impact on state or local revenues or on local expenditures. The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

## FULL ANALYSIS

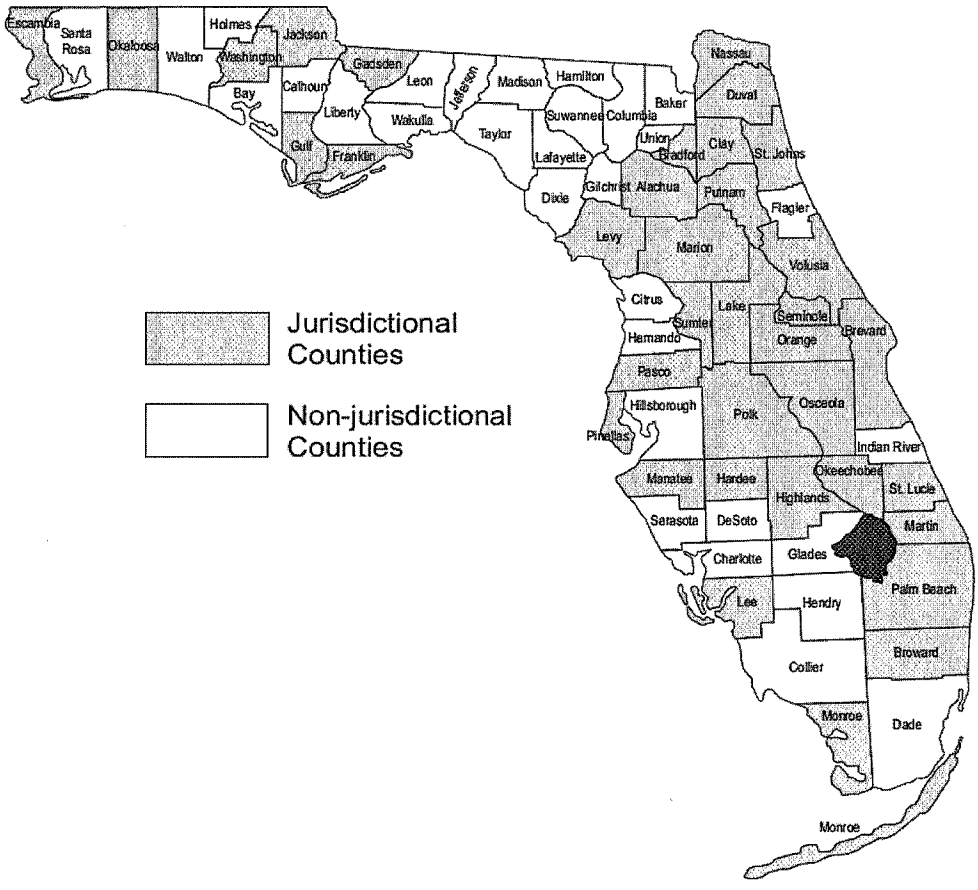
## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.[1] With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[2] The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[3] Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.[4]

The map below identifies those counties in which the PSC currently exercises jurisdiction and can be found at http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf.




[1] Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.
[2] Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.
[3] *Id.*
[4] Section 367.022(2), F.S.

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:[5]

- Class A – Operating revenues greater than $1,000,000
- Class B – Operating revenues greater than $200,000 but less than $1,000,000
- Class C – Operating revenues less than $200,000

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.[6] The letter stated, in part:

> As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would "provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities" and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, "to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates."[7] In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.[8]

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.[9] This proposal, drafted by the PSC's staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2012.

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[5] Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.
[6] http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf
[7] http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf
[8] Workshop Transcript, pp.2-3. http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf
[9] http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf

**Effect of Proposed Changes**

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The committee will consist of 17 members, 13 of which are voting members. The voting members consist of:

- Two Senators appointed by the President of the Senate, one of whom will be appointed as the chair of the study committee.
- Two Representatives appointed by the Speaker of the House of Representatives.
- A representative of a water management district, appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a municipal government, appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a county government, appointed by the Governor.
- A representative of the Florida Rural Water Association, appointed by the Governor.
- A representative of a small investor-owned water or wastewater utility, appointed by the Governor.
- A representative of a large investor-owned water or wastewater utility, appointed by the Governor.
- The Public Counsel or his or her designee.
- A customer of a Class C water or wastewater utility, appointed by the Governor.
- A representative of a government authority that was created pursuant to chapter 367, Florida Statutes, appointed by the Governor.

The four remaining, nonvoting members are:

- The Secretary of the Department of Environmental Protection, or his or her designee.
- The chair of the Public Service Commission, or his or her designee.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems, appointed by the Governor.
- A representative of a county health department appointed by the Governor.

The appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The bill provides that the study committee must "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions." In addition, the bill requires the committee to consider:

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately-owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.
- Other issues that the committee identifies during its investigation.

The bill requires that the study committee shall meet a minimum of four times at a time and place determined by the chair. At least two meetings must be held in an area "centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates." The bill provides that the public shall be given the opportunity to speak at these meetings.

The bill requires the PSC to provide staff, information, assistance, and facilities as deemed necessary by the study committee to perform its duties. Funding for the committee will come from the Florida

Public Service Regulatory Trust Fund. Members of the committee will not be compensated but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report detailing its findings and making specific legislative recommendations, including proposed legislation. If the committee finds that an issue may effectively be addressed through agency rulemaking, the committee must submit its report and recommendations, including proposed rules, to the appropriate agencies. The bill provides for termination of the committee on June 30, 2013.

B. SECTION DIRECTORY:

**Section 1.** Creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems.

**Section 2.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

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: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a 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

On January 31, 2012, the Energy & Utilities Subcommittee adopted a proposed committee substitute for HB 1379. HB 1379 includes provisions that prohibit tiered utility rates based on customer consumption, address recovery of utility rate case expenses, require a county to take operational control of a utility system whose certificate is revoked or suspended, establish a mechanism for penalizing utilities that fail to meet certain service quality standards, and establish a study committee to address issues related to investor-owned water and wastewater utilities. The proposed committee substitute removes all of these provisions except for the establishment of a study committee. The Energy & Utilities Subcommittee adopted two amendments to the proposed committee substitute. These amendments:

- Identify the Governor as the authority responsible for appointing to the study committee a chair of a county commission that regulates investor-owned water or wastewater utility systems.
- Require the study committee to prepare and submit its report by February 15, 2013.

A bill to be entitled

An act relating to water and wastewater utilities; creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems; providing for membership and terms of service; prohibiting compensation of the members; providing for reimbursement of the members for certain expenses; providing for removal or suspension of members by the appointing authority; requiring the Public Service Commission to provide staff, information, assistance, and facilities that are deemed necessary for the committee to perform its duties; providing for funding from the Florida Public Service Regulatory Trust Fund; providing duties of the committee; providing for public meetings; requiring the committee to report its findings to the Governor, the Legislature, and appropriate agencies and make certain recommendations; providing for future termination of the committee; providing an effective date.

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

Section 1. Study Committee on Investor-Owned Water and Wastewater Utility Systems.—

(1) There is created a Study Committee on Investor-Owned Water and Wastewater Utility Systems, which shall be composed of 17 members designated and appointed as follows:

(a) Two Senators appointed by the President of the Senate,

one of whom shall be appointed as chair by the President of the Senate.

(b) Two Representatives appointed by the Speaker of the House of Representatives.

(c) The Secretary of Environmental Protection or his or her designee, who shall be a nonvoting member of the committee.

(d) The chair of the Public Service Commission or his or her designee, who shall be a nonvoting member of the committee.

(e) A representative of a water management district appointed by the Governor.

(f) A representative of a water or wastewater system owned or operated by a municipal government appointed by the Governor.

(g) A representative of a water or wastewater system owned or operated by a county government appointed by the Governor.

(h) The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor, who shall be a nonvoting member of the committee.

(i) A representative of a county health department appointed by the Governor, who shall be a nonvoting member of the committee.

(j) A representative of the Florida Rural Water Association appointed by the Governor.

(k) A representative of a small investor-owned water or wastewater utility appointed by the Governor.

(l) A representative of a large investor-owned water or wastewater utility appointed by the Governor.

(m) The Public Counsel or his or her designee.

(n) A customer of a Class C water or wastewater utility

appointed by the Governor.

(o) A representative of a governmental authority that was created pursuant to chapter 163, Florida Statutes, appointed by the Governor.

(2) The members shall serve until the work of the committee is complete and the committee is terminated, except that if a member no longer serves in the position required for appointment, the member shall be replaced by the individual who serves in such position.

(3) Members of the committee shall serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties as provided in s. 112.061, Florida Statutes.

(4) An appointing authority may remove or suspend a member appointed by it for cause, including, but not limited to, failure to attend two or more meetings of the committee.

(5) The Public Service Commission shall provide the staff, information, assistance, and facilities as are deemed necessary for the committee to carry out its duties under this section. Funding for the committee shall be paid from the Florida Public Service Regulatory Trust Fund.

(6) The committee shall identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions. In addition, the committee shall consider:

(a) The ability of a small investor-owned water or wastewater utility to achieve economies of scale when purchasing

equipment, commodities, or services.

(b) The availability of low interest loans to a small, privately owned water or wastewater utility.

(c) Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.

(d) The impact on customer rates if a utility purchases an existing water or wastewater utility system.

(e) The impact on customer rates of a utility providing service through the use of a reseller.

(f) Other issues that the committee identifies during its investigation.

(7) The committee shall meet at the time and location as the chair determines, except that the committee shall meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public shall be given the opportunity to speak at the meetings.

(8) By February 15, 2013, the committee shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings pursuant to subsection (6) and making specific legislative recommendations, including proposed legislation intended to implement its recommendations. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, the committee shall submit to the appropriate agencies its report and recommendations, including

proposed rules.

(9) This section expires and the committee terminates June 30, 2013.

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

Amendment No.

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | ____ |

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Brodeur offered the following:

**Amendment**

Remove lines 25-60 and insert:

(1) There is created a Study Committee on Investor-Owned Water and Wastewater Utility Systems, which shall be composed of 18 members designated and appointed as follows:

(a) The chair of the Public Service Commission, or a commissioner of the Public Service Commission designated by the chair, who shall serve as chair of the committee and shall be a nonvoting member of the committee.

(b) The Secretary of Environmental Protection, or his or her designee, who shall be a nonvoting member of the committee.

(c) The Public Counsel, or his or her designee, who shall be a nonvoting member of the committee.

(d) One Senator appointed by the President of the Senate.

(e) One Representative appointed by the Speaker of the House of Representatives.

(f) Two representatives of Class A investor-owned water or wastewater utilities, appointed by the Governor.

(g) One representative of a Class B investor-owned water or wastewater utility, appointed by the Governor.

(h) One representative of a Class C investor-owned water or wastewater utility, appointed by the Governor.

(i) One customer of a Class A investor-owned water or wastewater utility, appointed by the Governor.

(j) One customer of a Class B or C investor-owned water or wastewater utility, appointed by the Governor.

(k) One representative of a water management district, appointed by the Governor.

(l) One representative of the Florida Section of the American Water Works Association, appointed by the Governor.

(m) One representative of the Florida Rural Water Association, appointed by the Governor.

(n) One representative of a water or wastewater system owned or operated by a municipal or county government, appointed by the Governor.

(o) One representative of a governmental authority created pursuant to chapter 163, Florida Statutes, appointed by the Governor.

(p) The chair of a county commission that regulates investor-owned water or wastewater utility systems, appointed by the Governor.

(q) A representative of a county health department, appointed by the Governor.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HR 1447 Nation of Israel
**SPONSOR(S):** Plakon
**TIED BILLS:** **IDEN./SIM. BILLS:** SR 1396

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Federal Affairs Subcommittee | 15 Y, 0 N | Bennett | Camechis |
| 2) State Affairs Committee | | Camechis | Hamby |

## SUMMARY ANALYSIS

This resolution resolves that the members of the Florida House of Representatives commend Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida and support Israel in its legal, historical, moral, and God-given right of self-governance and self-defense upon the entirety of its own lands, recognizing that Israel is neither an attacking force nor an occupier of the lands of others, and that peace can be afforded the region only through a whole and united Israel governed under one law for all people.

Israel declared its Independence on May 14, 1948. On that same day, the President of the United States recognized the provisional government as the de facto authority of the new State of Israel. Since then, the relationship between the U.S. and Israel has been a cornerstone of U.S. policy in the Middle East. The two nations have developed a close alliance based on common democratic values, religious affinities, and security interests. These relations have evolved through legislation; memoranda of understanding; economic, scientific, military agreements; and trade. The U.S. demonstrates its commitment to Israel's security and well-being through continued economic and security assistance.

This resolution has no fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Effect of Proposed Changes**

This resolution resolves that the members of the Florida House of Representatives commend Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida and support Israel in its legal, historical, moral, and God-given right of self-governance and self-defense upon the entirety of its own lands, recognizing that Israel is neither an attacking force nor an occupier of the lands of others, and that peace can be afforded the region only through a whole and united Israel governed under one law for all people.

**Present Situation**

History

The birthplace of the Jewish people is the Land of Israel. There, a significant part of the nation's long history was enacted, of which the first thousand years are recorded in the Bible; there, its cultural, religious, and national identity was formed; and there, its physical presence has been maintained through the centuries, even after the majority was forced into exile. During the many years of dispersion, the Jewish people never severed its bond with Israel. With the establishment of the State of Israel in 1948, Jewish independence, lost 2,000 years earlier, was renewed.[1]

The State of Israel proclaimed its independence on May 14, 1948. Subsequent to Israel's declaration of independence, a state of hostility has existed, varying in degree and intensity, between Israel and its neighboring Arab countries: Egypt, Jordan, Lebanon, and Syria. Peace treaties between Israel and neighbors Egypt and Jordan were reached in 1977 and 1994, respectively, but there are currently no peace treaties between Israel and Syria or Lebanon. Israel has given high priority to gaining wide acceptance as a sovereign state with an important international role, and today Israel has diplomatic relations with 163 states.[2]

Relations with the United States

On the date of its independence, President Harry Truman issued a signed press release stating that, "This Government has been informed that a Jewish state has been proclaimed in Palestine, and recognition has been requested by the provisional Government thereof. The United States recognizes the provisional government as the de facto authority of the new State of Israel."[3] Since that time, the U.S. and Israel have developed a close alliance, based on common democratic values, religious affinities, and security interests.[4] Relations have evolved through legislation; memoranda of understanding; economic, scientific, military agreements; and trade. The relationship between the U.S. and Israel has been a cornerstone of U.S. policy in the Middle East, and the U.S. commitment to Israel's security and well-being is demonstrated by its continued economic and security assistance to Israel.

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[1] Information in this paragraph was obtained from the website of the Israel Ministry of Foreign Affairs, located at http://www.mfa.gov.il/MFA/Facts+About+Israel/History/Facts+about+Israel-+History.htm.

[2] Bureau of Near Eastern Affairs, Background Note: Israel, December 1, 2011. Available at: http://www.state.gov/r/pa/ei/bgn/3581.htm

[3] Press Release: Recognition of Israel, President, Harry S. Truman. Available at: http://www.archives.gov/global-pages/larger-image.html?i=/education/lessons/us-israel/images/recognition-press-release-l.jpg&c=/education/lessons/us-israel/images/recognition-press-release.caption.html

[4] Congressional Research Service, *Israel: Background and U.S. Relations*, at 22 (February 14, 2011; RL33576) by Casey L. Addis.

*Peace Process*

The U.S. has been the principal international proponent of the Arab-Israeli peace process since President Jimmy Carter mediated the Israeli-Egyptian talks at Camp David, which resulted in the 1979 peace treaty between the two nations. President George H.W. Bush and President Clinton helped facilitate a series of agreements between Israel and the Palestinians, as well as the Israeli-Jordanian peace treaty of 1994. In the 2000's, both President George W. Bush and current President Barack Obama attempted to advance the peace process, but the administrations were unable to reach material progress in peace talks between Israel and Syria, Lebanon, or the Palestinians.[5] President Obama has continued to encourage and negotiate the peace process between Israel and its Arab neighbors.[6]

*Trade and Defense*

The U.S. and Israel signed a free trade agreement (FTA) in 1985 that, over the next 10 years, progressively eliminated tariffs on most goods traded between the two countries. A subsequent trade accord was signed in November 1996 and addressed the remaining goods not covered in the 1985 FTA, but some trade barriers remain in the agricultural sector. The U.S. is currently Israel's largest single trading partner, accumulating $22.3 billion in bilateral trade in 2009.[7]

In 1983, the U.S. and Israel established the Joint Political Military Group, which meets twice a year. Both the U.S. and Israel participate in military planning and combined exercises, and have collaborated on military research and weapons development. In 2009, U.S. military aid to Israel totaled $2.55 billion; this has increased to $3 billion in 2012, and will total $3.15 billion per year from 2013 to 2018.[8]

*Other Bilateral Relations*

In addition to the bilateral relations described above, the U.S. and Israel have worked together on: "bilateral science and technology efforts (including the Binational Science Foundation and the Binational Agricultural Research and Development Foundation); the U.S.-Israeli Education Foundation, which sponsors educational and cultural programs; the Joint Economic Development Group, which maintains a high-level dialogue on economic issues; the Joint Counterterrorism Group, designed to enhance cooperation in fighting terrorism; and a high-level Strategic Dialogue."[9]

Relationship with Florida

*Previous Legislative Resolutions*

In the recent past, the Florida Legislature has approved various resolutions regarding Israel, including:

- In 2003, the Florida Legislature adopted without objection HR 9021, by Representative Hasner and others, expressing solidarity with Israel in its fight against terrorism.
- In 2006, the Legislature unanimously adopted HR 1637 by Representative Gelber and others, reiterating its abhorrence of terrorism and reaffirming its affinity with and support of the people and State of Israel.
- In 2008, the Legislature unanimously adopted HR 9081, by Representative Hasner and others, recognizing the 60th anniversary of the State of Israel's independence.
- In 2009, the Legislature unanimously adopted HR 1A by Representative Hasner and HR 66-A by Senator Deutch, expressing solidarity with Israel in its defense against terrorism in the Gaza Strip.

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[5] *Id.*
[6] *Obama promises to consult Jordan on Israeli-Palestinian peace talk issues*, by Avi Issacharoff and Natasha Mozgovaya, January 18th, 2012. Available at: http://www.haaretz.com/print-edition/news/obama-promises-to-consult-jordan-on-israeli-palestinian-peace-talk-issues-1.407872
[7] *See* Background Note: Israel, *supra* note 1.
[8] *See* Background Note: Israel, *supra* note 1.
[9] *Id.*

*Florida-Israel Linkage Institute*

The Florida Legislature created several linkage institutes in s. 288.8175, F.S., including the Florida-Israel Institute, which is jointly administered by Florida Atlantic University and Broward College.

According to the statute, the primary purpose of linkage institutes is to assist in the development of stronger economic, cultural, educational, and social ties between this state and strategic foreign countries through the promotion of expanded public and private dialogue on cooperative research and technical assistance activities, increased bilateral commerce, student and faculty exchange, cultural exchange, and the enhancement of language training skills between the postsecondary institutions in this state and those of selected foreign countries.

As required by statute, each linkage institute is governed by an agreement between the Board of Governors of the State University System for a state university and the State Board of Education for a community college with the counterpart organization in a foreign country. Each institute must report to the Department of Education (DOE) regarding its program activities, expenditures, and policies, and must ensure that minority students are afforded an equal opportunity to participate in the exchange programs. A linkage institute may not be created or funded except upon the recommendation of the DOE and except by amendment to s. 288.8175, F.S.

Each institute may offer up to 25 full-time scholarships to students per year from the host countries to study in any of the state universities or community colleges in this state as resident students. The institute directors develop criteria, to be approved by the DOE, for the selection of these students. Students must return home within 3 years after their tenure of graduate or undergraduate study for a length of time equal to their exemption period.

According to the Florida-Israel Institute, its primary purpose "is achieved through the formation of cooperative initiatives in research, academic development, student and faculty exchange, cultural exchange, and technical assistance between Florida and Israeli institutions of higher learning as well as private sector commercial endeavors. The Institute acts as a facilitator forging collaborative efforts between Israel's world renowned academic institutions and Israel's highly innovative hi-tech industry with Florida's higher-education institutions and Florida industry in areas essential to both states. Two groups assist FII in carrying out its mission: an all-purpose advisory committee consisting of members from academics, government and private industry; and a faculty committee that focuses exclusively on the academic activities of FII."[10] The Florida-Israel Institute offers 25 full-time scholarships each semester to Israeli students, asserting that it is the only program of its kind in the United States. [11]

B. SECTION DIRECTORY: Not applicable.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

[10] Florida-Israel Institute website at http://www.floridaisrael.org/.
[11] *Id.*

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.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Resolution

A resolution commending the nation of Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida.

WHEREAS, Israel has been granted her lands under and through the oldest recorded deed, as recorded in the Old Testament, a tome of scripture held sacred and revered by Jews and Christians, alike, as presenting the acts and words of God, and

WHEREAS, the claim and presence of the Jewish people in Israel has remained constant throughout the past 4,000 years of history, and

WHEREAS, the legal basis for the establishment of the State of Israel was a binding resolution under international law, which was unanimously adopted by the League of Nations in 1922 and subsequently affirmed by both houses of the United States Congress, and

WHEREAS, this resolution affirmed the establishment of a national home for the Jewish people in the historical region of the Land of Israel, including areas of Judea, Samaria, and Jerusalem, and

WHEREAS, Article 80 of the United Nations charter recognized the continued validity of the rights granted to states or peoples which already existed under international instruments, and, therefore, the 1922 League of Nations resolution remains valid, and the 650,000 Jews currently

residing in the areas of Judea, Samaria, and eastern Jerusalem reside there legitimately, and

WHEREAS, Israel declared its independent control and governance of these lands on May 14, 1948, with the goal of reestablishing its God-given and legally recognized lands as a homeland for the Jewish people, and

WHEREAS, the United States, having been the first country to recognize Israel as an independent nation and as Israel's principal ally, has enjoyed a close and mutually beneficial relationship with Israel and her people, and

WHEREAS, Israel is the greatest friend and ally of the United States in the Middle East and the values of our two nations are so intertwined that it is impossible to separate one from the other, and

WHEREAS, there are those in the Middle East who have continually sought to destroy Israel, from the time of its inception as a state, and those who demonstrate animosity toward Israel also demonstrate animosity toward, and seek to destroy, the United States, and

WHEREAS, the State of Florida and Israel have enjoyed cordial and mutually beneficial relations since 1948, a friendship that continues to strengthen with each passing year, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the members of the Florida House of Representatives commend Israel for its cordial and mutually beneficial relationship with the United States and with the State of Florida and support Israel in its legal, historical, moral, and God-given right of self-governance and self-defense upon the entirety of its own lands, recognizing that Israel is neither an attacking force nor an occupier of the lands of others, and that peace can be afforded the region only through a whole and united Israel governed under one law for all people.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1465 Florida College System Personnel Records
**SPONSOR(S):** K-20 Innovation Subcommittee; Caldwell
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 878

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) K-20 Innovation Subcommittee | 10 Y, 0 N, As CS | Valenstein | Sherry |
| 2) State Affairs Committee | | Thompson | Hamby |
| 3) Education Committee | | | |

## SUMMARY ANALYSIS

Currently, limited-access records maintained by an FCS institution are afforded a broad exemption from public records requests. The law exempts these records to the extent the records contain information reflecting evaluations of employee performance. The limited-access records are only open to inspection by the employee and by officials of the college who are responsible for supervision of the employee.

The bill amends the public records exemption for Florida College System (FCS) institution limited-access personnel records to mirror the public records exemption for State University System institution limited-access personnel records. The bill limits an existing public records exemption; therefore, more records will be available to the public. The bill does not create a public records exemption or expand an existing exemption; therefore, the constitutionally required 2/3 vote is not applicable. Likewise, the bill does not need a statement of public necessity.

The bill maintains the current public records exemption for limited-access records; therefore, limited-access records maintained by a FCS institution remain confidential and exempt. However, the bill restricts the contents of limited-access records to include only the following:

- Records containing information reflecting academic evaluations of employee performance; however, the employee and institution officials responsible for supervision of the employee have access to such records.
- Records relating to an investigation of employee misconduct; however, these records become public at the conclusion of the investigation or the investigation ceases to be active as defined by law.
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract; however, these records shall be open to inspection by the employee and become public after a final decision is made.

The bill may create a need for the State Board of Education to amend its rules prescribing the content and custody of limited-access records maintained by an FCS institution.

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

The bill takes effect July 1, 2012.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

**Public Records Law**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review 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.[2]

**Personnel Records**

Limited-access records maintained by a Florida College System (FCS) institution on its employees are currently afforded a broad exemption from public records requests. The law provides these records are confidential and exempt[3] from the provisions of s. 119.07(1), F.S., to the extent the records contain information reflecting evaluations of employee performance. The limited-access records are only open to inspection by the employee and by officials of the college who are responsible for supervision of the employee.[4]

The law requires the State Board of Education (state board), through rule, to prescribe the content and custody of limited-access records. The rule adopted by the state board does not prescribe the content of limited-access records; instead it provides an expansive general definition of what is confidential and

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[1] Art. I, s. 24(c), Fla. Const.

[2] Section 119.15(6)(b), F.S.

[3] 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).

[4] Section 1012.81, F.S.

exempt.[5] This allows FCS institutions wide latitude in determining if a document is exempt from public records.

Prior to 1995, State University System (SUS) institutions had an identical exemption. The broad exemption authorized state universities to prescribe the content and custody of the limited-access records maintained on their employees, provided the records were limited to information reflecting evaluations of employee performance. Courts held this exemption applied to copies of minutes and other documentation indicating votes on tenure or promotion applications of university employees and also to investigative reports about university athletic staff.[6]

In 1995, the Legislature restricted the contents of limited-access records maintained by a SUS institution as follows:

- Records containing information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee;
- Records relating to an investigation of employee misconduct which are confidential until the conclusion of the investigation or the investigation ceases to be active as defined by law;
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made.
- For sexual harassment investigations, portions of the records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records.
- Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records.[7]

**Effect of Proposed Changes**

The bill amends the public records exemption for limited-access records maintained by a FCS institution on its employees to mirror the public records exemption for limited-access records maintained by a SUS institution on its employees. The bill limits an existing public records exemption; therefore, more records will be available to the public. The bill does not create a public records exemption or expand an existing exemption; therefore, the constitutionally required 2/3 vote is not applicable. Likewise, the bill does not need a statement of public necessity.

The bill maintains the current public records exemption for limited-access records; therefore, limited-access records maintained by a FCS institution remain confidential and exempt. However, the bill restricts the contents of limited-access records to include only the following:

- Records containing information reflecting academic evaluations of employee performance; however, the employee and institution officials responsible for supervision of the employee have access to such records.
- Records relating to an investigation of employee misconduct; however, these records become public at the conclusion of the investigation or the investigation ceases to be active as defined by law.
- Records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract; however, these records shall be open to inspection by the employee and become public after a final decision is made.[8]

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[5] According to Rule 6A-14.047, F.A.C., personnel records must contain information for efficient personnel administration, which must include, but not be limited to, dates of appointment, periods of employment, contract status, duties performed, records of leave, and evidence of factors used to calculate salary, retirement system records, and related documentation as determined by the college.

[6] *See Cantanese v. Ceros-Livingston*, 599 So.2d 1021 (Fla. 4th DCA 1992), *review denied*, 613 So.2d 2 (Fla. 1992); *Tallahassee Democrat, Inc. v. Florida Board of Regents*, 314 So.2d 164 (Fla. 1st DCA 1975).

[7] Section 1, ch. 95-246, L.O.F.; codified as s. 1012.91, F.S.

[8] While the law related to SUS personnel files includes records maintained for the purposes of any sexual harassment investigations that identify the complainant or witness, this exemption is unnecessary as it is already provided in law. Section 119.071(2)(g), F.S.,

By limiting the existing public records exemption, the bill allows the public to access records of investigations, disciplinary proceedings, and grievance proceedings, once completed. Additionally, the bill allows the public to access personnel performance evaluations, except for those records reflecting academic evaluations.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 1012.81, F.S., relating to personnel records; to specify records which constitute limited-access records.

**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:

According to the Department of Education, Florida College System institutions may incur minor expenses relating to the provision of public records; however, current law[9] authorizes agencies to charge modest fees for copies of public records.[10]

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

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provides an exemption for all complaints and other records in the custody of any agency which relate to a complaint of discrimination. *See also* s. 110.1221, F.S. (establishes "sexual harassment" as a form of discrimination).

[9] *See* s. 119.07(4), F.S.

[10] Department of Education, HB 1465 Analysis (Jan. 15, 2012) at 3; on file with the House Government Operations Subcommittee.

B. RULE-MAKING AUTHORITY:

Current law requires the State Board of Education (state board), through rule, to prescribe the content and custody of limited-access records.[11] The rule adopted by the state board provides an expansive general definition of what is confidential and exempt.[12] The bill provides a statutory restriction for the contents of limited-access records. This may create a need for the state board to conform related rules.[13]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the K-20 Innovation Subcommittee of the Education Committee reported the proposed committee substitute (PCS) for HB 1465 favorably as a committee substitute. The K-20 Innovation Subcommittee adopted two technical amendments to the proposed committee substitute. The first amendment narrowed the scope of the title to better reflect the scope of the bill and the second amendment removed an unnecessary cross-reference to the State Constitution. The cross-reference was not needed because the PCS does not create or expand a public records exemption, but merely narrows an exemption that was established before 1993.

The amended PCS differs from HB 1465 in that it narrows the public records exemption for Florida College System (FCS) personnel records to mirror the exemption for State University System personnel records. Rather than just providing, upon request, public access to the performance evaluations of FCS institution presidents, as in HB 1465, the PCS provides greater public access to personnel records, including performance evaluations of FCS presidents, and also investigations, disciplinary proceedings, and grievance proceedings, once completed.

[11] Section 1012.81, F.S.

[12] According to Rule 6A-14.047, F.A.C., personnel records must contain information for efficient personnel administration, which must include, but not be limited to, dates of appointment, periods of employment, contract status, duties performed, records of leave, and evidence of factors used to calculate salary, retirement system records, and related documentation as determined by the college.

[13] Department of Education, HB 1465 Analysis (Jan. 15, 2012) at 2, provides Rules 6A-14.026: Employment of a President, and 6A-14.047: Personnel Records will need to be amended; on file with the House Government Operations Subcommittee.

A bill to be entitled

An act relating to Florida College System personnel records; amending s. 1012.81, F.S.; specifying records which constitute limited-access records; providing an effective date.

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

Section 1. Section 1012.81, Florida Statutes, is amended to read:

1012.81 Personnel records.—

(1) ~~Rules of~~ The State Board of Education shall adopt rules prescribing ~~prescribe~~ the content and custody of limited-access records that ~~which~~ a Florida College System institution may maintain on its employees. ~~Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the college who are responsible for supervision of the employee. Such~~ Limited-access employee records are confidential and exempt from the provisions of s. 119.07(1). Limited-access records include only the following:

(a) Records containing information reflecting academic evaluations of employee performance; however, the employee and officials of the institution responsible for supervision of the employee shall have access to such records.

(b) Records maintained for the purposes of any investigation of employee misconduct, including, but not limited to, a complaint against an employee and all information obtained

pursuant to the investigation of such complaint; however, these records become public after the investigation ceases to be active or when the institution provides written notice to the employee who is the subject of the complaint that the institution has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action;

2. Concluded the investigation with a finding to proceed with disciplinary action; or

3. Issued a letter of discipline.

For the purpose of this paragraph, an investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that a finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding is made within 90 days after the complaint is filed.

(c) Records maintained for the purposes of any disciplinary proceeding brought against an employee; however, these records shall be open to inspection by the employee and shall become public after a final decision is made in the proceeding.

(d) Records maintained for the purposes of any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract; however, these records shall be open to inspection by the employee and by officials of the institution conducting the grievance proceeding and shall become public after a final decision is made in the

proceeding.

(2) Except as required for use by the president in the discharge of his or her official responsibilities, the custodian of limited-access employee records may release information from such records only upon authorization in writing from the employee or the president or upon order of a court of competent jurisdiction.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7079 PCB GVOPS 12-10 State Retirement
**SPONSOR(S):** Government Operations Subcommittee, Patronis
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2024

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 9 Y, 3 N | Meadows | Williamson |
| 1) State Affairs Committee | | Meadows | Hamby |

## SUMMARY ANALYSIS

During the 2011 Session, the Legislature passed Senate Bill 2100. Senate Bill 2100 made several changes to the Florida Retirement System (FRS), including the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP), and the State Community College System Optional Retirement Program (SCCSORP).

The bill corrects drafting errors and makes other conforming and clarifying changes that are necessary as a result of the passage of Senate Bill 2100. The bill:

- Clarifies that the provisions of part I of the Florida Retirement System Act, are applicable to parts II and III of the act, provided the provisions are not duplicative or inconsistent.
- Revises the definition of "vesting" and "normal retirement date" to make clarifying changes.
- Clarifies that the current prohibition on hardship loans, for purposes of the SMSOAP, the SUSORP, and the SCCSORP, does not apply to a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.
- Conforms the deferral age for participants of the Deferred Retirement Option Program initially enrolled in the FRS on or after July 1, 2011, to changes made in Senate Bill 2100.
- Makes it clear that a retiree of the FRS investment plan, the SMSOAP, the SUSORP, and the SCCSORP, who is reemployed on or after July 1, 2010, is prohibited from being reenrolled as a renewed member of a state-administered retirement system.
- Clarifies that members of the SUSORP may receive payment of benefits from either annuity contracts or investment contracts.
- Provides that the term "benefit" for purposes of the SUSORP means a distribution taken by the member, or surviving beneficiary, funded in part or in whole by employer and employee contributions. A rollover distribution to another qualified plan qualifies as a distribution.
- Provides that members of the SUSORP may not receive benefits funded by voluntary personal contributions until after termination from employment for 3 calendar months. The change conforms the provision governing the payout of voluntary contributions with those for the payout of mandatory employee contributions.

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

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Florida Retirement System

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

The Florida Retirement System Act[2] governs the FRS, which is a multi-employer, contributory plan that provides retirement income benefits to 643,746 active members,[3] 319,689 retired members and beneficiaries,[4] and 45,092 members of the Deferred Retirement Option Program.[5] It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 182 cities and 231 independent special districts that have elected to join the system.[6]

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

- Regular Class[7] has 561,192 members;
- Special Risk Class[8] has 72,675 members;
- Special Risk Administrative Support Class[9] has 63 members;
- Elected Officers' Class[10] has 2,218 members; and
- Senior Management Service Class[11] has 7,598 members.[12]

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

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

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

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[1] The Florida Retirement System Annual Report, July 1, 2009 – June 30, 2010, at 60 (on file with the Government Operations Subcommittee).

[2] *See* Chapter 121, F.S.

[3] As of June 30, 2011, the FRS pension plan, which is a defined benefit plan, had 540,701 members, and the investment plan, which is a defined contribution plan, had 103,045 members. Information provided by telephone on December 16, 2011, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.

[4] Information provided by telephone on December 16, 2011, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.

[5] *Id.*

[6] *Id.*

[7] Regular Class members are those members who do not qualify for membership in the other classes within the FRS. *See* s. 121.021(12), F.S.

[8] Members include law enforcement officers, firefighters, correctional officers, correctional probation officers, paramedics, emergency medical technicians, certain professional health care workers within the Department of Corrections and the Department of Children and Family Services, and certain forensic employees. *See* s. 121.0515, F.S.

[9] Members are former members of the special risk class who are transferred or reassigned to an administrative support position in certain circumstances. *See* s. 121.0515(8), F.S.

[10] Membership is comprised of those participants who hold specified elective offices in either state or local government. *See* s. 121.052, F.S.

[11] Members generally are high level executive and legal staff or as specifically provided in law. *See* s. 121.055, F.S.

[12] Information provided by telephone on December 16, 2011, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.

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

Benefits under the investment plan accrue in individual member accounts funded by employer and employee contributions and earnings.[15] Benefits are provided through employee-directed investments offered by approved investment providers.

A member is immediately vested in all employee contributions paid to the investment plan.[16] With respect to the employer contributions, the member vests upon the completion of one year of work.[17] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[18] In addition to normal benefits and death benefits, the investment plan also provides disability coverage.[19]

*Pension Plan*
The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.[20] Investment management is handled by the SBA.

The pension plan provides retirement income expressed as a percent of final pay. The member receives a monthly benefit which begins to accrue on the first day of the month of retirement and is payable on the last day of the month the for member's lifetime.[21] Years of creditable service multiplied by average final salary multiplied by the accrual rate for the membership class, plus up to 500 hours of annual leave, yield the monthly annuity benefit at normal retirement.[22]

*Deferred Retirement Option Program*
The Deferred Retirement Option Program (DROP) allows a member of the pension plan to retire while continuing employment for up to 60 months.[23] Certain instructional personnel may participate in DROP up to an additional 36 months.[24] Current law provides that members who reach their normal retirement date based on service before they reach age 62, or age 55 for Special Risk members, may defer participation in DROP to the 12 months immediately following the attainment of age 57, or 52 for Special Risk members.[25]

Optional Retirement Programs

*State University System Optional Retirement Program*
The optional retirement program for the State University System (SUSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State University System faculty, administrators, and administrative professionals, and executive service personnel.[26,27] As of June 30, 2011, there were 16,999 SUSORP participants.[28]

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[13] *See* s. 121.4501(8), F.S.
[14] Established by Article IV, s. 4(e) of the State Constitution.
[15] Section 121.4501(7), F.S.
[16] Section 121.4501(6)(a), F.S.
[17] Section 121.4501(6)(b), F.S.
[18] *See* s. 121.591, F.S.
[19] *See* s. 121.4501, F.S.
[20] Section 121.025, F.S.
[21] Section 121.091(1), F.S.
[22] *See* s. 121.091, F.S.
[23] Section 121.091(13), F.S.
[24] Section 121.091(13)(b), F.S.
[25] Section 121.091(13)(a)2., F.S.
[26] Section 121.35(2)(a), F.S., provides that SUSORP is available to certain instructional and research faculty, administrative and professional personnel, and the Chancellor and university presidents. Section 121.051(1)(a)2., F.S., requires faculty members at a college with faculty practice plans to participate in the optional retirement program.

Through this program, participants elect coverage as an alternative to membership in the traditional FRS and direct their own investments (retirement and death benefits).[29] Members of the SUSORP who have executed a contract may make voluntary contributions by salary reduction or deduction in an amount not to exceed the percentage amount contributed by the employer.[30] Current law provides that members may receive a payout of benefits funded by the member's voluntary contributions at any time within the limits of the contract between the member and the provider company.[31]

*State Community College System Optional Retirement Program*
The optional retirement program for the State Community College System (SCCSORP) is a retirement plan that is provided as an alternative to FRS membership for eligible State Community College employees.[32] Employees of public community colleges and charter technical career centers sponsored by public community colleges[33] who are members of the Regular Class of the FRS may, in lieu of participating in the FRS, elect to withdraw from the system and participate in the SCCSORP.[34] As of June 30, 2011, there were 1,569 SCCSORP participants.[35]

*Senior Management Service Optional Annuity Program*
The Senior Management Service Optional Annuity Program (SMSOAP) is a retirement plan that is provided as an alternative to FRS membership for members of the Senior Management Service Class.[36] Under this optional annuity plan, eligible members may purchase retirement, death, and disability benefits.[37] As of June 30, 2011, there were 38 members of the SMSOAP.[38]

Renewed Membership
Current law provides that a retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership in a state-administered retirement system.[39]

Senate Bill 2100 (2011)
During the 2011 Session, the Legislature passed Senate Bill 2100. Senate Bill 2100 made several changes to the FRS, including the SUSORP, SCCSORP, and the SMSOAP. The bill made the following changes:

- Required a 3 percent employee contribution for members of a state-administered retirement plan.[40]
- Increased the years of service required for vesting from six to eight years of creditable service for employees initially enrolled in the pension plan on or after July 1, 2011.[41]
- Revised the definition of "average final compensation" for members who initially enroll in the pension plan on or after July 1, 2011, to mean the average of the eight highest fiscal years of

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[27] *See* s. 121.35, F.S.
[28] Information provided by telephone on December 15, 2011, by Mr. Todd Gunderson, Senior Benefits Analyst, DMS.
[29] Section 121.35(1), F.S.
[30] Section 121.35(4)(e), F.S.
[31] Section 121.35(5)(g), F.S.
[32] Section 1012.875, F.S.
[33] *See* s. 1000.21(3)(a)-(bb), F.S., for a list of public community colleges and charter technical careers that are sponsored by public community colleges.
[34] Section 121.051(2)(c)
[35] Information provided by telephone on January 20, 2012, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.
[36] Section 121.055(6)(a), F.S.
[37] *Id.*
[38] Information provided by telephone on January 20, 2012, by Mr. Garry Green, Operations & Management Consultant Manager, Division of Retirement, Research and Education Section, Department of Management Services.
[39] Section 121.122(2), F.S.
[40] Codified in ss. 121.71, 121.055(6)(d)1.c., 121.35(4)(a)3., and 1012.875(4)(a)2., F.S.
[41] Codified in s. 121.021(45)(b), F.S.

compensation for creditable service prior to retirement, for purposes of calculating retirement benefits.[42]
- Reduced the interest accrual rate from 6.5 percent to 1.3 percent for members who enter DROP on or after July 1, 2011.[43]
- Increased the retirement age and years of service for members of the FRS who initially enroll on or after July 1, 2011.[44]

**Effect of Proposed Changes**

The bill corrects drafting errors and makes other conforming and clarifying changes that are necessary as a result of the passage of Senate Bill 2100.

The bill provides that the provisions of part I of Chapter 121, F.S., are applicable to parts II and III of the chapter, provided they are not duplicative or inconsistent. Part II of Chapter 121, F.S., pertains to the Public Employee Optional Retirement Program, which is the investment plan. Part III pertains to the Florida Retirement System Contribution Rates.

The bill revises the definition of "vesting" to clarify that the vesting schedule solely applies to pension plan members. It also revises the definition of "normal retirement date" to clarify that normal retirement age for pension plan members is attained on the normal retirement date of the member. It further clarifies that the normal retirement age for investment plan members is the later of the date a member attains their normal retirement age, or is vested under the investment plan as provided by law.

For purposes of the SMSOAP, the SUSORP, and the SCCSORP, the bill clarifies that the current prohibition on hardship loans does not apply to:
- A requested distribution for retirement;
- A mandatory de minis distribution authorized by the administrator; or
- A required minimum distribution provided pursuant to the Internal Revenue Code.

The bill conforms the deferral age for DROP participants initially enrolled in the FRS on or after July 1, 2011, to changes made by SB 2100 (2011) regarding a member's normal retirement date. It provides that a member initially enrolled in the FRS on or after July 1, 2011, who reaches his or her normal retirement date based on service before reaching the age 65, or 60 for Special Risk members, may defer his or her election to participate in DROP to the 12 months immediately following the date the member attains age 60, or 55 for Special Risk members.

The bill makes it clear that a retiree of the FRS investment plan, the SMSOAP, the SUSORP, and the SCCSORP who is reemployed on or after July 1, 2010, is prohibited from being reenrolled as a renewed member of a state-administered retirement system.

The bill clarifies that members of the SUSORP may receive payment of benefits from either annuity contracts or investment contracts. Additionally, the bill provides that the term "benefit" for purposes of the SUSORP means a distribution taken by the member, or surviving beneficiary, funded in part or in whole by employer and employee contributions. A rollover distribution to another qualified plan qualifies as a distribution.

The bill provides that members of the SUSORP may not receive benefits funded by voluntary personal contributions until after termination from employment for 3 calendar months. This provision aligns the payout of benefits funded by voluntary personal contributions with those for the payout of benefits funded by mandatory employee contributions.

[42] Codified in s. 121.021(24), F.S.
[43] Codified in s. 121.091(13)(c)1.b., F.S.
[44] Codified in ss. 121.021(29)(a) and (b)2.a. and b., F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 121.012, F.S., to provide applicability.

Section 2 amends s. 121.021, F.S., to revise definitions.

Section 3 amends s. 121.0515, F.S., to correct a cross-reference.

Section 4 amends s. 121.055, F.S., to clarify provisions related to the prohibition of hardship loans; to clarify that a retiree who is reemployed after a certain date may not be reenrolled as a renewed member.

Section 5 amends s. 121.071, F.S., to clarify provisions related to the prohibition of hardship loans.

Section 6 amends s. 121.091, F.S., to make conforming changes to DROP.

Section 7 amends s. 121.122, F.S., to clarify that a retiree who is reemployed after a certain date may not be reenrolled as a renewed member.

Section 8 amends s. 121.35, F.S., to clarify provisions related to the prohibition of hardship loans; to clarify when voluntary contributions may be paid out; to define the term "benefit" for purposes of SUSORP.

Section 9 amends s. 121.4501, F.S., to specify that the definition of "eligible employee" does not include certain members reemployed in a regularly established position; to clarify that a retiree who is reemployed after a certain date is not eligible to be enrolled as a renewed member.

Section 10 amends s. 121.591, F.S., to clarify provisions related to the prohibition of hardship loans.

Section 11 amends s. 1012.875, F.S., to clarify provisions related to the prohibition of hardship loans.

Section 12 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.

## 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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties or municipalities.

2. Other:

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

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

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

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution, because it does not provide benefit improvements under the FRS pension plan.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Government Operations Subcommittee reported PCB GVOPS 12-10 favorably with one amendment. The amendment corrected a drafting error in the bill.

A bill to be entitled

An act relating to state retirement; creating s. 121.012, F.S.; providing applicability; amending s. 121.021, F.S.; clarifying the definitions of the terms "normal retirement date" and "vesting"; amending s. 121.0515, F.S.; correcting a cross-reference; amending s. 121.055, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; clarifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.071, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; amending s. 121.091, F.S.; making conforming changes to the Deferred Retirement Option Program regarding deferral age; amending s. 121.122, F.S.; clarifying that a retiree who is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.35, F.S.; providing that a benefit for the purposes of the optional retirement program for the State University System includes a certain distribution; clarifying provisions related to the prohibition of hardship loans or payments; clarifying when voluntary contributions may be paid out; amending s. 121.4501, F.S.; specifying that the definition of the term "eligible employee" does not include certain members reemployed in regularly established positions; clarifying that a retiree who

is reemployed in a regularly established position after a certain date may not be enrolled as a renewed member; amending s. 121.591, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; amending s. 1012.875, F.S.; clarifying provisions related to the prohibition of hardship loans or payments; providing an effective date.

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

Section 1. Section 121.012, Florida Statutes, is created to read:

121.012 Inclusive provisions.—The provisions of part I of this chapter shall be applicable to parts II and III to the extent such provisions are not inconsistent with, or duplicative of, the provisions of parts II and III.

Section 2. Subsection (29) and paragraph (b) of subsection (45) of section 121.021, Florida Statutes, are amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(29) "Normal retirement date" means the date a member attains normal retirement age and is vested, which is determined as follows:

(a)~~1.~~ If a Regular Class member, a Senior Management Service Class member, or an Elected Officers' Class member initially enrolled:

1. Before July 1, 2011:

a. The first day of the month the member attains age 62; or

b. The first day of the month following the date the member completes 30 years of creditable service, regardless of age.

2. ~~If a Regular Class member, a Senior Management Service Class member, or an 'Elected Officers' Class member initially enrolled~~ On or after July 1, 2011:

a. The first day of the month the member attains age 65; or

b. The first day of the month following the date the member completes 33 years of creditable service, regardless of age.

(b)~~1.~~ If a Special Risk Class member initially enrolled:

1. Before July 1, 2011:

a. The first day of the month the member attains age 55 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 25 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 25 years of creditable service and attains age 52, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

2. ~~If a Special Risk Class member initially enrolled~~ On or after July 1, 2011:

a. The first day of the month the member attains age 60 and completes the years of creditable service in the Special Risk Class equal to or greater than the years of service required for vesting;

b. The first day of the month following the date the member completes 30 years of creditable service in the Special Risk Class, regardless of age; or

c. The first day of the month following the date the member completes 30 years of creditable service and attains age 57, which service may include a maximum of 4 years of military service credit if such credit is not claimed under any other system and the remaining years are in the Special Risk Class.

For pension plan members, "normal retirement age" is attained on the "normal retirement date." For investment plan members, normal retirement age is the date a member attains his or her normal retirement date as provided in this section, or the date a member is vested under the investment plan as provided in s. 121.4501(6), whichever is later.

(45) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to

disability benefits are set forth under s. 121.091(4).

(b) Any member initially enrolled in the Florida Retirement System on or after July 1, 2011, shall be vested in the pension plan upon completion of 8 years of creditable service.

Section 3. Paragraph (k) of subsection (3) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special Risk Class.—

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

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

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

a. That this physical loss or loss of use is total and permanent, except in the event that the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75 percent loss of motor function with respect to each arm or leg affected.

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

c. That, notwithstanding this physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position, as provided in subparagraph 3.

d. That use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job functions of the member's position.

e. That the physical loss or loss of use is a direct result of a physical injury and not a result of any mental, psychological, or emotional injury.

2. For the purposes of this paragraph, "qualifying injury" means an injury sustained in the line of duty, as certified by the member's employing agency, by a special risk member that does not result in total and permanent disability as defined in s. 121.091(4)(b). An injury is a qualifying injury if the injury is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: left arm, right arm, left leg, or right leg. Notwithstanding any other provision of this section, an injury that would otherwise qualify as a qualifying injury is not

considered a qualifying injury if and when the member ceases employment with the employer for whom he or she was providing special risk services on the date the injury occurred.

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

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

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

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

(1)

(f) Effective July 1, 1997:

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

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

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

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

(6)

(e) Benefits.—

1. Benefits under the Senior Management Service Optional Annuity Program are payable only to members of the program, or their beneficiaries as designated by the member in the contract with the provider company, and must be paid by the designated company in accordance with the terms of the annuity contract applicable to the member. A member must be terminated from all employment relationships with Florida Retirement System employers for 3 calendar months to begin receiving the employer-funded and employee-funded benefit. The member must meet the definition of termination in s. 121.021(39) beginning the month after receiving a benefit, including a distribution. Benefits funded by employer and employee contributions are payable under the terms of the contract to the member, his or her beneficiary, or his or her estate, in addition to:

a. A lump-sum payment to the beneficiary upon the death of the member;

b. A cash-out of a de minimis account upon the request of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation. Such cash-out must be a complete liquidation of the account balance with that company and is subject to the Internal Revenue Code;

c. A mandatory distribution of a de minimis account of a former member who has been terminated for a minimum of 6 calendar months from the employment that entitled him or her to optional annuity program participation as authorized by the department; or

d. A lump-sum direct rollover distribution whereby all

accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member.

2. Under the Senior Management Service Optional Annuity Program, benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers for 3 calendar months~~.

3. The benefits payable to any person under the Senior Management Service Optional Annuity Program, and any contribution accumulated under such program, are not subject to assignment, execution, or attachment or to any legal process whatsoever.

4. Except as provided in subparagraph 5., a member who terminates employment and receives a distribution, including a rollover or trustee-to-trustee transfer, funded by employer and required employee contributions is a retiree of ~~deemed to be retired from~~ a state-administered retirement system. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July

1, 2010, is not eligible to be enrolled in renewed membership ~~if the member is subsequently employed with an employer that participates in the Florida Retirement System~~.

5. A member who receives optional annuity program benefits funded by employer and employee contributions as a mandatory distribution of a de minimis account authorized by the department is not considered a retiree.

As used in this paragraph, a "de minimis account" means an account with a provider company containing employer and employee contributions and accumulated earnings of not more than $5,000 made under this chapter.

Section 5. Subsection (7) of section 121.071, Florida Statutes, is amended to read:

121.071 Contributions.—Contributions to the system shall be made as follows:

(7) ~~Before termination of employment,~~ Benefits, including employee contributions, are not payable under the pension plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code ~~before termination from all employment relationships with participating employers~~.

Section 6. Paragraph (a) of subsection (13) of section

121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the member, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in

DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(a) Eligibility of member to participate in DROP.—All active Florida Retirement System members in a regularly established position, and all active members of the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122, which are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in DROP if:

1. The member is not a renewed member under s. 121.122 or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Except as provided in subparagraph 6., <u>for members initially enrolled before July 1, 2011,</u> election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 57, or age 52 for Special Risk Class members. <u>Except as provided in subparagraph 6., for members initially enrolled on or after July 1, 2011, election to participate is made within 12 months</u>

immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 65, or age 60 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains age 60, or age 55 for Special Risk Class members. A member who delays DROP participation during the 12-month period immediately following his or her maximum DROP deferral date, except as provided in subparagraph 6., loses a month of DROP participation for each month delayed. A member who fails to make an election within the 12-month limitation period forfeits all rights to participate in DROP. The member shall advise his or her employer and the division in writing of the date DROP begins. The beginning date may be subsequent to the 12-month election period but must be within the original 60-month participation period provided in subparagraph (b)1. When establishing eligibility to participate in DROP, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in DROP after attaining normal retirement date in either class.

3. The employer of a member electing to participate in DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in DROP begins and the date the member's employment and DROP participation terminates.

4. Simultaneous employment of a member by additional

Florida Retirement System employers subsequent to the commencement of a member's participation in DROP is permissible if such employers acknowledge in writing a DROP termination date no later than the member's existing termination date or the maximum participation period provided in subparagraph (b)1.

5. A member may change employers while participating in DROP, subject to the following:

a. A change of employment takes place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation ceases unless the employer verifies a continuation of the employment relationship for such member pursuant to s. 121.021(39)(b).

b. The member and new employer notify the division of the identity of the new employer on forms required by the division.

c. The new employer acknowledges, in writing, the member's DROP termination date, which may be extended but not beyond the maximum participation period provided in subparagraph (b)1., acknowledges liability for any additional retirement contributions and interest required if the member fails to timely terminate employment, and is subject to the adjustment required in sub-subparagraph (c)5.d.

6. Effective July 1, 2001, for instructional personnel as defined in s. 1012.01(2), election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement date. The member shall advise his or her employer and the division in writing of the date on which DROP begins. When establishing eligibility of the member to

participate in DROP for the 60-month participation period provided in subparagraph (b)1., the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member who has dual normal retirement dates is eligible to elect to participate in either class.

Section 7. Subsection (2) of section 121.122, Florida Statutes, is amended to read:

121.122 Renewed membership in system.—

(2) A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member ~~is not eligible for renewed membership~~.

Section 8. Paragraphs (a), (b), and (g) of subsection (5) of section 121.35, Florida Statutes, are amended to read:

121.35 Optional retirement program for the State University System.—

(5) BENEFITS.—

(a) Benefits are payable under the optional retirement program only to vested members participating in the program, or their beneficiaries as designated by the member in the contract with a provider company, and such benefits shall be paid only by the designated company in accordance with s. 403(b) of the Internal Revenue Code and the terms of the annuity contract or investment contracts applicable to the member. A benefit under the optional retirement program is a distribution requested by the member or surviving beneficiary funded in part or in whole by employer or required employee contributions, plus earnings,

and includes rolling a distribution over to another qualified plan. Benefits accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and the earnings thereon. The member must be terminated for 3 calendar months from all employment relationships with all Florida Retirement System employers to begin receiving the benefit. Benefits funded by employer and required employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be paid only to a participating member, to his or her beneficiaries, or to his or her estate, as designated by the member.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable department rule or policy.

3. In the event of a member's death, moneys accumulated by, or on behalf of, the member, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the member's designated beneficiary or beneficiaries, or to the member's estate, as if the member retired on the date of death, as provided in paragraph (d). No other death benefits are available to survivors of members under the optional retirement program except for such benefits, or coverage for such benefits, as are separately afforded by the employer, at the employer's discretion.

(b) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a

principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason <u>except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code</u> ~~before termination from all employment relationships with participating employers for 3 calendar months~~.

(g) Benefits funded by the participating member's voluntary personal contributions may be paid out <u>after termination from employment with all participating employers for 3 calendar months</u> ~~at any time~~ and in any form within the limits provided in the contract between the member and the provider company. The member shall notify the provider company regarding the date and provisions under which he or she wants to receive the employee-funded portion of the plan.

Section 9. Paragraph (e) of subsection (2) and paragraph (f) of subsection (4) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; or

2. Participates in, or is eligible to participate in, the

Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

(4) PARTICIPATION; ENROLLMENT.—

(f) A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in ~~for~~ renewed membership.

Section 10. Section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. ~~Before termination of employment,~~ Benefits, including employee

contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason <u>except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code</u> ~~prior to termination from all employment relationships with participating employers~~. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an

eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(1) NORMAL BENEFITS.—Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate

payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the

invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.

(b) If a member elects to receive his or her benefits upon termination of employment as defined in s. 121.021, the member must submit a written application or an application by electronic means to the third-party administrator indicating his or her preferred distribution date and selecting an authorized method of distribution as provided in paragraph (c). The member may defer receipt of benefits until he or she chooses to make such application, subject to federal requirements.

(c) Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit is payable to the member pro rata across all Florida Retirement System benefit sources as:

1. A lump-sum or partial distribution to the member;

2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the member's account directly to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the member; or

3. Periodic distributions, as authorized by the state board.

(d) The distribution payment method selected by the member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution. Any additional service that remains unclaimed at retirement may not be claimed or purchased, and the type of retirement may not be changed, except that if a member recovers from a disability, the member may subsequently request benefits under subsection (2).

(e) A member may not receive a distribution of employee contributions if a pending qualified domestic relations order is filed against the member's investment plan account.

(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(a) Transfer of funds.—To qualify to receive monthly disability benefits under this subsection:

1. All moneys accumulated in the member's account, including vested and nonvested accumulations as described in s. 121.4501(6), must be transferred from such individual accounts to the division for deposit in the disability account of the Florida Retirement System Trust Fund. Such moneys must be accounted for separately. Earnings must be credited on an annual basis for amounts held in the disability accounts of the Florida

Retirement System Trust Fund based on actual earnings of the trust fund.

2. If the member has retained retirement credit earned under the pension plan as provided in s. 121.4501(3), a sum representing the actuarial present value of such credit within the Florida Retirement System Trust Fund shall be reassigned by the division from the pension plan to the disability program as implemented under this subsection and shall be deposited in the disability account of the trust fund. Such moneys must be accounted for separately.

(b) Disability retirement; entitlement.—

1. A member of the investment plan who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the 8 years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service shall be considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred shall be considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

(c) Disability retirement effective date.—The effective retirement date for a member who applies and is approved for disability retirement shall be established as provided under s. 121.091(4)(a)2. and 3.

(d) Total and permanent disability.—A member shall be considered totally and permanently disabled if, in the opinion of the division, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee.

(e) Proof of disability.— Before approving payment of any disability retirement benefit, the division shall require proof that the member is totally and permanently disabled as provided under s. 121.091(4)(c).

(f) Disability retirement benefit.—Upon the disability retirement of a member under this subsection, the member shall receive a monthly benefit that begins accruing on the first day

of the month of disability retirement, as approved by the division, and is payable on the last day of that month and each month thereafter during his or her lifetime and continued disability. All disability benefits must be paid out of the disability account of the Florida Retirement System Trust Fund established under this subsection.

(g) Computation of disability retirement benefit.—The amount of each monthly payment must be calculated as provided under s. 121.091(4)(f). Creditable service under both the pension plan and the investment plan shall be applicable as provided under paragraph (b).

(h) Reapplication.—A member whose initial application for disability retirement is denied may reapply for disability benefits as provided in s. 121.091(4)(g).

(i) Membership.—Upon approval of a member's application for disability benefits, the member shall be transferred to the pension plan, effective upon his or her disability retirement effective date.

(j) Option to cancel.—A member whose application for disability benefits is approved may cancel the application if the cancellation request is received by the division before a disability retirement warrant has been deposited, cashed, or received by direct deposit. Upon cancellation:

1. The member's transfer to the pension plan under paragraph (i) shall be nullified;

2. The member shall be retroactively reinstated in the investment plan without hiatus;

3. All funds transferred to the Florida Retirement System

Trust Fund under paragraph (a) must be returned to the member accounts from which the funds were drawn; and

4. The member may elect to receive the benefit payable under subsection (1) in lieu of disability benefits.

(k) Recovery from disability.—

1. The division may require periodic reexaminations at the expense of the disability program account of the Florida Retirement System Trust Fund. Except as provided in subparagraph 2., all other matters relating to recovery from disability shall be as provided under s. 121.091(4)(h).

2. Upon recovery from disability, the recipient of disability retirement benefits under this subsection shall be a compulsory member of the investment plan. The net difference between the recipient's original account balance transferred to the Florida Retirement System Trust Fund, including earnings and total disability benefits paid to such recipient, if any, shall be determined as provided in sub-subparagraph a.

a. An amount equal to the total benefits paid shall be subtracted from that portion of the transferred account balance consisting of vested accumulations as described under s. 121.4501(6), if any, and an amount equal to the remainder of benefit amounts paid, if any, shall be subtracted from any remaining nonvested accumulations.

b. Amounts subtracted under sub-subparagraph a. must be retained within the disability account of the Florida Retirement System Trust Fund. Any remaining account balance shall be transferred to the third-party administrator for disposition as provided under sub-subparagraph c. or sub-subparagraph d., as

appropriate.

c. If the recipient returns to covered employment, transferred amounts must be deposited in individual accounts under the investment plan, as directed by the member. Vested and nonvested amounts shall be accounted for separately as provided in s. 121.4501(6).

d. If the recipient fails to return to covered employment upon recovery from disability:

(I) Any remaining vested amount must be deposited in individual accounts under the investment plan, as directed by the member, and is payable as provided in subsection (1).

(II) Any remaining nonvested amount must be held in a suspense account and is forfeitable after 5 years as provided in s. 121.4501(6).

3. If present value was reassigned from the pension plan to the disability program as provided under subparagraph (a)2., the full present value amount must be returned to the defined benefit account within the Florida Retirement System Trust Fund and the member's associated retirement credit under the pension plan must be reinstated in full. Any benefit based upon such credit must be calculated as provided in s. 121.091(4)(h)1.

(l) Nonadmissible causes of disability.—A member is not entitled to a disability retirement benefit if the disability results from any injury or disease as described in s. 121.091(4)(i).

(m) Disability retirement of justice or judge by order of Supreme Court.—

1. If a member is a justice of the Supreme Court, judge of

a district court of appeal, circuit judge, or judge of a county court who has served for the years equal to, or greater than, the vesting requirement in s. 121.021(45) as an elected constitutional judicial officer, including service as a judicial officer in any court abolished pursuant to Art. V of the State Constitution, and who is retired for disability pursuant to s. 12, Art. V of the State Constitution, the member's Option 1 monthly disability benefit amount as provided in s. 121.091(6)(a)1. shall be two-thirds of his or her monthly compensation as of the member's disability retirement date. The member may alternatively elect to receive an actuarially adjusted disability retirement benefit under any other option as provided in s. 121.091(6)(a) or to receive the normal benefit payable under subsection (1).

2. If any justice or judge who is a member of the investment plan is retired for disability pursuant to s. 12, Art. V of the State Constitution and elects to receive a monthly disability benefit under the provisions of this paragraph:

a. Any present value amount that was transferred to his or her investment plan account and all employer and employee contributions made to such account on his or her behalf, plus interest and earnings thereon, must be transferred to and deposited in the disability account of the Florida Retirement System Trust Fund; and

b. The monthly disability benefits payable under this paragraph shall be paid from the disability account of the Florida Retirement System Trust Fund.

(n) Death of retiree or beneficiary.—Upon the death of a

disabled retiree or beneficiary of the retiree who is receiving monthly disability benefits under this subsection, the monthly benefits shall be paid through the last day of the month of death and shall terminate, or be adjusted, if applicable, as of that date in accordance with the optional form of benefit selected at the time of retirement. The department may adopt rules necessary to administer this paragraph.

(3) DEATH BENEFITS.—Under the Florida Retirement System Investment Plan:

(a) Survivor benefits are payable in accordance with the following terms and conditions:

1. To the extent vested, benefits are payable only to a member's beneficiary or beneficiaries as designated by the member as provided in s. 121.4501(20).

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable state board rule or policy.

3. To receive benefits, the member must be deceased.

(b) In the event of a member's death, all vested accumulations as described in s. 121.4501(6), less withholding taxes remitted to the Internal Revenue Service, shall be distributed, as provided in paragraph (c) or as described in s. 121.4501(20), as if the member retired on the date of death. No other death benefits are available for survivors of members, except for benefits, or coverage for benefits, as are otherwise provided by law or separately provided by the employer, at the employer's discretion.

(c) Upon receipt by the third-party administrator of a

properly executed application for distribution of benefits, the total accumulated benefit is payable by the third-party administrator to the member's surviving beneficiary or beneficiaries, as:

1. A lump-sum distribution payable to the beneficiary or beneficiaries, or to the deceased member's estate;

2. An eligible rollover distribution, if permitted, on behalf of the surviving spouse of a deceased member, whereby all accrued benefits, plus interest and investment earnings, are paid from the deceased member's account directly to the custodian of an eligible retirement plan, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse; or

3. A partial lump-sum payment whereby a portion of the accrued benefit is paid to the deceased member's surviving spouse or other designated beneficiaries, less withholding taxes remitted to the Internal Revenue Service, and the remaining amount is transferred directly to the custodian of an eligible retirement plan, if permitted, as described in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the surviving spouse. The proportions must be specified by the member or the surviving beneficiary.

This paragraph does not abrogate other applicable provisions of state or federal law providing for payment of death benefits.

(4) LIMITATION ON LEGAL PROCESS.—The benefits payable to any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not

subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

Section 11. Subsection (7) of section 1012.875, Florida Statutes, is amended to read:

1012.875 State Community College System Optional Retirement Program.—Each Florida College System institution may implement an optional retirement program, if such program is established therefor pursuant to s. 1001.64(20), under which annuity or other contracts providing retirement and death benefits may be purchased by, and on behalf of, eligible employees who participate in the program, in accordance with s. 403(b) of the Internal Revenue Code. Except as otherwise provided herein, this retirement program, which shall be known as the State Community College System Optional Retirement Program, may be implemented and administered only by an individual Florida College System institution or by a consortium of Florida College System institutions.

(7) Benefits, including employee contributions, are not payable for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code ~~before termination from~~

~~all employment relationships with participating employers for 3 calendar months~~.

Section 12. This act shall take effect July 1, 2012.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Patronis offered the following:

**Amendment (with title amendment)**

Remove line 233 and insert:
funded and employee-funded benefit. The department may authorize a distribution of up to 10 percent of the member's account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this provision. The member must meet the

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

Remove line 7 and insert:
s. 121.055, F.S.; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; authorizing the

Amendment No.

Department of Management Services to adopt rules; clarifying provisions related to the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7079 (2012)

Amendment No. 2

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Patronis offered the following:

**Amendment (with title amendment)**

Remove line 455 and insert:

begin receiving the benefit. The department may authorize a distribution of up to 10 percent of the member's account after being terminated from employment with all participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021. The department may adopt rules to implement this provision. Benefits funded by employer and

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

Remove line 22 and insert:

certain distribution; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; authorizing the

Amendment No. 2

Department of Management Services to adopt rules; clarifying provisions related to

Amendment No. 3

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Patronis offered the following:

**Amendment (with directory and title amendments)**

Between lines 915 and 916, insert:

(5)

(b) Benefits are payable under the optional retirement program to program participants or their beneficiaries and paid only by the designated company in accordance with the terms of the contracts applicable to the program participant. Benefits shall accrue in individual accounts that are participant-directed, portable, and funded by employer and employee contributions and the earnings thereon. Benefit payments may not be made until the member has been terminated for 3 calendar months, except the college may authorize a distribution of up to 10 percent of the member's account after the member is terminated from employment with all Florida Retirement System participating employers for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

Amendment No. 3

The board of trustees for the college may adopt rules to implement this paragraph. Benefits funded by employer and employee contributions are payable in accordance with the following terms and conditions:

1. Benefits shall be payable only to a participant, to his or her beneficiaries, or to his or her estate, as designated by the participant.

2. Benefits shall be paid by the provider company or companies in accordance with the law, the provisions of the contract, and any applicable employer rule or policy.

3. In the event of a participant's death, moneys accumulated by, or on behalf of, the participant, less withholding taxes remitted to the Internal Revenue Service, if any, shall be distributed to the participant's designated beneficiary or beneficiaries, or to the participant's estate, as if the participant retired on the date of death as provided in paragraph (d). No other death benefits are available for survivors of participants under the optional retirement program except for such benefits, or coverage for such benefits, as are separately afforded by the employer at the employer's discretion.

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**D I R E C T O R Y  A M E N D M E N T**

Remove lines 901-902 and insert:

Section 11. Paragraph (b) of subsection (5) and subsection (7) of section 1012.875, Florida Statutes, are amended to read:

Amendment No. 3

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

Remove line 33 and insert:

loans or payments; amending s. 1012.875, F.S.; authorizing distributions to a member who is terminated from employment for 1 calendar month if the member has reached the normal retirement date; authorizing the college board of trustees to adopt rules;

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7103 PCB GVOPS 12-05 OGSR/Florida Opportunity Fund and Institute for the Commercialization of Public Research
**SPONSOR(S):** Government Operations Subcommittee, Mayfield
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 798

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 15 Y, 0 N | Williamson | Williamson |
| 1) State Affairs Committee | | Williamson | 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 and public meeting exemption for the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute). The following information is confidential and exempt from public record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;
- Any information received from a person from another state or nation, or from the federal government, which is otherwise confidential or exempt under the laws governing that entity; and
- Proprietary confidential business information regarding alternative investments for 10 years after the termination of the alternative investments.

In addition, any portion of a meeting wherein confidential and exempt information is discussed is exempt from public meeting requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2012, if this bill does not become law. It transfers and relocates the public record and public meeting exemptions for the institute to a new section of law. As such, the bill makes conforming changes to the exemptions.

Specific to the FOF, the bill removes the public record exemption for information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws governing that entity. It was determined that this exemption was applicable to the institute only.

In addition, the bill decreases the time period for protecting proprietary confidential business information from 10 years to seven years.

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.

Florida Opportunity Fund

In 2007, the Legislature created the Florida Opportunity Fund (FOF) to attract venture capital investment into targeted Florida industries by providing a state match.[4,5] The FOF is organized as a private, not-for-profit corporation, with a five-member board of directors selected by an Enterprise Florida, Inc., (EFI) appointments committee.[6]

The Legislature appropriated $29.5 million for investment funds in fiscal year 2007-2008.[7] Originally, the FOF was established as a "fund-of-funds" program, meaning it could only invest in investment funds, not directly in individual businesses. Additionally, the investment funds had to match each $1 in state investment with $2 of their own. The initial emphasis was on "seed" and "early-stage" investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing.[8]

Targeted industries for the FOF investments include life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense. To be eligible

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. 1 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* s. 288.9624, F.S.
[5] The State Board of Administration (SBA) has invested in "alternative investments" that included Florida-based businesses, and in 2009, pursuant to chapter 2008-31, L.O.F., created the $250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. These SBA programs are separate from the FOF.
[6] Section 288.9624(1)(b), F.S.
[7] This appropriation was included in Section 4 of the substantive legislation, chapter 2007-189, L.O.F., which created the FOF.
[8] *See* Bill Analysis for CS/SB 2420 (2007).

for state participation, an investment fund must have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.[9]

The FOF invested in its first fund in fiscal year 2008-2009: $594,000 in Element Partners II, according to FOF's financial statements. Currently, the FOF has invested $27 million of the original $29.5 million appropriation.[10]

In 2009, the Legislature amended s. 288.9624, F.S., to allow the FOF to make loans and other direct investments to individual businesses and infrastructure projects, to form or operate other entities, and to accept funds from other public and private sources for use as investments.[11] These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida, and operate in technology sectors that are strategic to Florida. The FOF may not use its original appropriation of $29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the now-defunct Florida Energy and Climate Commission.[12] This new FOF program is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF initially has access to $32.4 million in federal funds through the 2009 American Recovery and Reinvestment Act to make loans or investments in qualifying businesses. Under the terms of the federal agreement, these investments are restricted to facility and equipment improvement using EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes.[13]

FOF has invested $12 million of the $32.4 million in federal funds into three Florida companies, matching $80 million in private investment.[14]

In mid-2011, EFI entered into an agreement with the Florida Department of Economic Opportunity (DEO) for use of $43.5 million in federal funds from the United States State Small Business Credit Initiative.[15] These funds will be used by the FOF to make direct investments in eligible businesses.[16] EFI estimates that it can leverage the $43.5 million into $652.5 million in private investment. The United States Treasury has approved DEO's application to access Florida's full share of $97.6 million in federal funds, and in September, the Legislative Budget Commission approved the release of a portion of the federal funds.[17]

Institute for the Commercialization of Public Research

Created in the same legislation as the FOF, the Institute for the Commercialization of Public Research (institute) was envisioned as a matchmaker for venture capitalists and young companies trying to turn research ideas, technology, or patents, developed at public institutions, into marketable products and services.[18] The institute's purpose is to assist in the commercialization of products developed by the research and development activities of publicly supported universities and colleges, research institutes, and other publicly supported organizations within the state.[19]

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[9] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.
[10] *Id.* at 5.
[11] Sections 25-26, chapter 2009-51, L.O.F.
[12] The commission's statutes were repealed and its responsibilities transferred to the Florida Department of Agriculture and Consumer Services (DACS) by the Legislature in the 2011 session. *See* s. 500, chapter 2011-142, L.O.F.
[13] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.
[14] *Id.* at 6.
[15] This initiative is part of the federal Small Business Jobs Act of 2010. *See* United States Dept. of Treasury, State Small Business Credit Initiative.
[16] Florida's total share of the federal funding is $97.6 million. The monies not allocated to EFI for the investment program are earmarked for small business loans, export financing, and credit enhancement programs.
[17] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.
[18] *See* s. 288.9625, F.S.
[19] Section 288.9625(2), F.S.

The institute must support existing commercialization efforts at Florida universities, and may not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

The institute is a not-for-profit corporation subject to Florida law, but is not an "agency," as defined in s. 20.03(11), F.S.[20] It is governed by a five-member board of directors comprised of:

- The chair of EFI or designee;
- The president of the state university where the institute is located or designee, or if jointly sponsored by a number of universities, the presidents of those universities must agree on the designated person to serve on the board; and
- Three appointees by the Governor, to serve staggered 3-year terms to which they may be reappointed.[21]

The institute is based in Boca Raton, and is preparing to open a second administrative office in Gainesville.

In 2007, the Legislature appropriated $900,000 in general revenue to the institute for its operations.[22] In 2009, an additional $600,000 was appropriated as a transfer from the Florida Small Business Technology Growth Trust Fund administered by EFI.[23] In 2010, the institute was authorized to use up to five percent of the $3 million appropriated for the Research Commercialization Matching Grant Program to administer the grants.[24] In fiscal year 2011-2012, the institute received a $10 million general revenue appropriation, which did not specify the uses or amount set aside for the institute's administration.[25] The institute and DEO have entered into a contract that specifies how the funds may be spent, including a low-interest loan program for eligible companies.

To be eligible for the institute's assistance, the company or organization attempting to commercialize its product or service must be accepted by the institute into its program. The institute reviews the business plans and technology information of each company recommended by an institute peer-review board, before making its decision whether to accept a recommended company.

For each company that is accepted, the institute provides mentoring, develops marketing information, and uses its resources to attract capital investment into the company. The institute's other duties are to:

- Maintain a centralized location to showcase companies and their technologies and products;
- Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible companies in the institute;
- Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies; and
- Administer the Florida Research Commercialization Matching Grant Program.[26]

The institute is prohibited from developing or accruing any ownership, royalty, or other such rights over, or interest in, companies or products in the institute and must maintain the confidentiality of proprietary

[20] *See* ss. 288.9625(1) and (2), F.S.
[21] Section 288.9625(4), F.S.
[22] Section 4, chapter 2007-189, L.O.F.
[23] Section 72, chapter 2009-81, L.O.F.
[24] Section 56, chapter 2010-147, L.O.F.
[25] Section 39, chapter 2011-76, L.O.F.
[26] Section 288.9625(8), F.S.

information. It also may not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.[27]

In 2010, the Legislature created the Research Commercialization Matching Grant Program, to leverage existing federal grant programs for small businesses, and directed the institute to manage it.[28] The grant program is intended to assist small or startup companies that take advantage of federal and private financial support to accelerate their growth and market penetration. Program applicants must meet several criteria, such as having attracted funding from non-government sources and achieved certain milestones required by the federal government.[29]

Public Record and Public Meeting Exemptions under Review

In 2007, the Legislature created a joint public record and public meeting exemption for the FOF and the institute.[30]

The following information is confidential and exempt[31] from public record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;
- Any information received from a person or another state or nation, or from the federal government, which is otherwise confidential or exempt under the laws of that governmental entity; and
- Proprietary confidential business information regarding alternative investments[32] for 10 years after the termination of the alternative investments.

"Proprietary confidential business information" is defined to mean information that has been designated by the proprietor when provided to the FOF or the institute as owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private and the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets;
- Information provided to the FOF or institute regarding a prospective investment in a private equity fund, venture capital fund, angel fund, or portfolio company which is proprietary to the provider of the information;
- Financial statements and auditor reports of an alternative investment vehicle or portfolio company, unless such records have been released by the alternative investment vehicle or portfolio company and are publicly available;
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company;

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[27] Sections 288.9625(9) and (10), F.S.

[28] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.

[29] *Id.*

[30] Chapter 2007-190, L.O.F.; codified as s. 288.9626, F.S.

[31] 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).

[32] Section 288.9626(1)(a), F.S., defines "alternative investment to mean any investment by the FOF in a private equity fund, venture capital fund, or angel fund or a direct investment in a portfolio company or investment through a distribution of securities to its partners or shareholders by an alternative investment vehicle.

- Information regarding the portfolio positions in which an alternative investment vehicle or the FOF invests;
- Capital call and distribution notices to investors of an alternative investment vehicle or the FOF;
- Alternative investment agreements and related records; and
- Information concerning investors, other than the FOF itself, in an alternative investment vehicle or portfolio company.[33]

Proprietary confidential business information does not include:

- The name, address, and vintage year of an alternative investment vehicle or the FOF, and the identity of principals involved in the management of the alternative investment vehicle or the FOF;
- The dollar amount of the commitment made by the FOF to each alternative investment vehicle since inception;
- The dollar amount and date of cash contributions made by the FOF to each alternative investment vehicle since inception;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF from each alternative investment vehicle;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF, plus the remaining value of alternative-vehicle assets that are attributable to the FOF investment in each alternative investment vehicle;
- The net internal rate of return of each alternative investment vehicle since inception;
- The investment multiple of each alternative investment vehicle since inception; and
- The dollar amount of the total management fees and costs paid on an annual fiscal-year- end basis by the FOF to each alternative investment vehicle on a fiscal-year-end basis.[34]

Current law also provides a public meeting exemption for the FOF and the institute. The boards of directors of those entities may close that portion of their otherwise public meeting when discussing confidential and exempt information.[35] The closed portion of the meeting must be recorded and transcribed;[36] however, the transcript and minutes are confidential and exempt from public record requirements.[37]

Upon written request, the FOF and the institute may release confidential and exempt records to a governmental entity in the performance of its official duties and responsibilities.[38] In addition, a request to inspect or copy a public record containing proprietary confidential business information must be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the FOF or the institute, to verify the following through a written declaration:[39]

- That the requested record contains proprietary confidential business information and the specific location of such information within the record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret;
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and
- That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.[40]

Any person may petition a court of competent jurisdiction for an order for the public release of any portion of a confidential and exempt record.[41]

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[33] Section 288.9626(1)(g)1., F.S.
[34] Section 299.9626(1)(g)2., F.S.
[35] Section 288.9626(3)(a), F.S.
[36] Section 288.9626(3)(b), F.S.
[37] Section 288.9626(3)(c), F.S.
[38] Section 288.9626(4)(a), F.S.
[39] The written declaration must be verified as provided by s. 92.525, F.S.
[40] Section 288.9626(4)(b), F.S.

Any person who willfully and knowingly violates the exemptions commits a first-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.[42]

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

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute). It removes from s. 288.9626, F.S., the public record and public meeting exemptions for the institute and recreates the institute's exemptions in a new s. 288.9627, F.S. As such, the bill makes conforming changes to the definition section for both exemptions. In essence, the definition section for the FOF's exemptions is amended to reflect its application to the FOF only, and the definition section for the institute's exemptions is amended to reflect its application to the institute only. The same conforming changes also are made to the exemptions.

Specific to the FOF, the bill removes the public record exemption for information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws governing that entity. It was determined that this exemption was applicable to the institute only.

Finally, the bill decreases the time period for protecting proprietary confidential business information from 10 years to seven years.

B. SECTION DIRECTORY:

Section 1 amends s. 288.9626, F.S., to reenact the public record and public meeting exemptions for the Florida Opportunity Fund.

Section 2 creates s. 288.9627, F.S., to recreate the public record and public meeting exemptions for the Institute for the Commercialization of Public Research in a new section of law.

Section 3 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.

[41] *See* s. 288.9626(4)(c), F.S.
[42] Section 288.9626(5), F.S.

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. 288.9626, F.S., which provides exemptions from public record and open meeting requirements for the Florida Opportunity Fund and the Institute for the Commercialization of Public Research; reorganizing the exemptions by removing references to the Institute for the Commercialization of Public Research and relocating the exemptions relating to the institute in a new statute; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; revising definitions; clarifying that the exemptions pertaining to the Florida Opportunity Fund apply to prospective investments, alternative investments, and certain proprietary confidential information provided by a proprietor; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; creating s. 288.9627, F.S.; providing exemptions from public record and open meeting requirements for the Institute for the Commercialization of Public Research which are relocated from s. 288.9626, F.S.; providing definitions; providing an exemption from public record requirements for materials relating to methods of manufacturing, trade secrets, patents, and research by universities or other publically supported

organizations, materials supplied by a proprietor, information that would identify investors or potential investors, and information that is confidential and exempt under other laws; reducing the time period during which proprietary confidential business information is confidential and exempt from disclosure; providing an exemption from public meeting requirements for portions of meetings of the institute's board of directors at which confidential and exempt information is discussed; requiring the recording and transcription of closed meetings; providing an exemption from public record requirements for transcripts and minutes of exempt portions of meetings of the institute's board of directors; specifying procedure by which a proprietor of information may prevent the disclosure of proprietary confidential business information when a request for such information is made to the institute; authorizing a person to petition a court in Palm Beach County or Alachua County for the release of confidential and exempt information; requiring a court to make specific findings before the information may be released; providing criminal penalties for willful and knowing violation of public record or public meeting exemptions pertaining to the institute; providing an effective date.

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

Section 1. Section 288.9626, Florida Statutes, is amended to read:

288.9626 Exemptions from public records and public meetings requirements for the~~;~~ Florida Opportunity Fund ~~and the Institute for the Commercialization of Public Research~~.—

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

(a) "Alternative investment" means an investment or prospective investment through a loan, acquisition of an equity interest, or other investment method by the Florida Opportunity Fund in a private equity fund, venture capital fund, or angel fund; an investment by the Florida Opportunity Fund or an alternative investment ~~or a direct investment~~ in a portfolio company; or an investment through a distribution of securities to its partners or shareholders by an alternative investment vehicle.

(b) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal fund structure through which funds of, or funds managed by, the Florida Opportunity Fund are invested ~~may elect to invest~~ in a portfolio company.

(c) "Florida Opportunity Fund" ~~or "fund"~~ means the Florida Opportunity Fund as defined in s. 288.9623.

~~(d) "Institute for the Commercialization of Public Research" or "institute" means the institute established by s. 288.9625.~~

(d)~~(e)~~ "Portfolio company" means a corporation or other issuer, any of whose securities or debt obligations are owned,

or are being considered for ownership, by an alternative investment vehicle or the Florida Opportunity Fund and any subsidiary of such corporation or other issuer.

(e) ~~(f)~~ "Portfolio positions" means individual investments in portfolio companies that are made by an alternative investment vehicle or the Florida Opportunity Fund, including information or specific investment terms associated with any portfolio company investment.

(f) ~~(g)~~1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the Florida Opportunity Fund ~~or the Institute for the Commercialization of Public Research~~ as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Information provided to the Florida Opportunity Fund ~~or the Institute for the Commercialization of Public Research~~ regarding an existing or ~~a~~ prospective alternative investment in a private equity fund, venture capital fund, angel fund, or portfolio company that is proprietary to the provider of the information.

c. Financial statements and auditor reports of an

alternative investment vehicle or portfolio company, unless publicly released by the alternative investment vehicle or portfolio company.

d. Meeting materials of an alternative investment vehicle or portfolio company relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company.

e. Information regarding the portfolio positions in which the alternative investment vehicles or Florida Opportunity Fund invest.

f. Capital call and distribution notices to investors or the Florida Opportunity Fund of an alternative investment vehicle.

g. Alternative investment agreements and related records.

h. Information concerning investors, other than the Florida Opportunity Fund, in an alternative investment vehicle or portfolio company.

2. "Proprietary confidential business information" does not include:

a. The name, address, and vintage year of an alternative investment vehicle or Florida Opportunity Fund and the identity of the principals involved in the management of the alternative investment vehicle or Florida Opportunity Fund.

b. The dollar amount of the commitment made by the Florida Opportunity Fund to each alternative investment vehicle since inception, if any.

c. The dollar amount and date of cash contributions made by the Florida Opportunity Fund to each alternative investment

vehicle since inception, if any.

d. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund from each alternative investment vehicle.

e. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund plus the remaining value of alternative-vehicle assets that are attributable to the Florida Opportunity Fund's investment in each alternative investment vehicle.

f. The net internal rate of return of each alternative investment vehicle since inception.

g. The investment multiple of each alternative investment vehicle since inception.

h. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the Florida Opportunity Fund to each alternative investment vehicle.

i. The dollar amount of cash profit received by the Florida Opportunity Fund from each alternative investment vehicle on a fiscal-year-end basis.

(g) ~~(h)~~ "Proprietor" means an alternative investment vehicle or~~, a~~ portfolio company in which an ~~the~~ alternative investment vehicle or Florida Opportunity Fund invests or which is being considered for investment ~~is invested~~, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, that controls or owns information.

(2) PUBLIC RECORDS EXEMPTION.—

(a) The following records held by the Florida Opportunity

Fund ~~or the Institute for the Commercialization of Public Research~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that are provided by a proprietor ~~conducted by universities and other publicly supported organizations in this state~~.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Florida Opportunity Fund ~~or institute~~.

~~3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.~~

3.~~4.~~ Proprietary confidential business information regarding alternative investments for 7 ~~10~~ years after the termination of the alternative investment.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt and shall be made available for inspection and copying.

(3) PUBLIC MEETINGS EXEMPTION.—

(a) That portion of a meeting of the board of directors of the Florida Opportunity Fund ~~or the board of directors of the Institute for the Commercialization of Public Research~~ at which

information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board ~~boards~~ of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the Florida Opportunity Fund ~~or the Institute for the Commercialization of Public Research~~, to verify the following to the Florida Opportunity Fund through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

(c)1. Any person may petition a court of competent jurisdiction for an order for the public release of those portions of any record made confidential and exempt by subsection (2).

2. Any action under this subsection must be brought in Orange County, and the petition or other initial pleading shall be served on the Florida Opportunity Fund ~~or the institute, whichever is applicable,~~ and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record;

and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or ~~the fund, or any trust fund the assets of which are invested by~~ the Florida Opportunity Fund.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(6) OPEN GOVERNMENT SUNSET REVIEW.—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. Section 288.9627, Florida Statutes, is created to read:

288.9627 Exemptions from public record and public meeting requirements for the Institute for the Commercialization of Public Research.—

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

(a) "Institute for the Commercialization of Public Research" or "institute" means the institute established by s. 288.9625.

(b)1. "Proprietary confidential business information" means information that has been designated by the proprietor when provided to the institute as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which

would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

a. Trade secrets as defined in s. 688.002.

b. Financial statements and internal or external auditor reports of a proprietor corporation, partnership, or person requesting confidentiality under this statute, unless publicly released by the proprietor.

c. Meeting materials related to financial, operating, investment, or marketing information of the proprietor corporation, partnership, or person.

d. Information concerning private investors in the proprietor corporation, partnership, or person.

2. "Proprietary confidential business information" does not include:

a. The identity and primary address of the proprietor's principals.

b. The dollar amount and date of the financial commitment or contribution made by the institute.

c. The dollar amount, on a fiscal-year-end basis, of cash repayments or other fungible distributions received by the institute from each proprietor.

d. The dollar amount, if any, of the total management fees and costs paid on an annual fiscal-year-end basis by the institute.

(c) "Proprietor" means a corporation, partnership, or person that has applied for or received assistance, financial or otherwise, from the institute and that controls or owns the proprietary confidential business information.

(2) PUBLIC RECORD EXEMPTION.—

(a) The following records held by the institute are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects conducted by universities and other publicly supported organizations in this state and that are provided to the institute by a proprietor.

2. Information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the institute for assistance.

3. Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

4. Proprietary confidential business information for 7 years after the termination of the institute's financial commitment to the company.

(b) At the time any record made confidential and exempt by this subsection, or portion thereof, is legally available or subject to public disclosure for any other reason, that record, or portion thereof, shall no longer be confidential and exempt

and shall be made available for inspection and copying.

(3) PUBLIC MEETING EXEMPTION.—

(a) That portion of a meeting of the institute's board of directors at which information is discussed which is confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Any exempt portion of a meeting shall be recorded and transcribed. The board of directors shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) REQUEST TO INSPECT OR COPY A RECORD.—

(a) Records made confidential and exempt by this section may be released, upon written request, to a governmental entity in the performance of its official duties and responsibilities.

(b) Notwithstanding the provisions of paragraph (2)(a), a request to inspect or copy a public record that contains proprietary confidential business information shall be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the institute, to verify the following to the institute through a written declaration in the manner provided by s. 92.525:

1. That the requested record contains proprietary confidential business information and the specific location of

such information within the record;

2. If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in s. 688.002;

3. That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.

(c)1. Any person may petition a court of competent jurisdiction for an order for the public release of those portions of any record made confidential and exempt by subsection (2).

2. Any action under this subsection must be brought in Palm Beach County or Alachua County, and the petition or other initial pleading shall be served on the institute and, if determinable upon diligent inquiry, on the proprietor of the information sought to be released.

3. In any order for the public release of a record under this subsection, the court shall make a finding that:

a. The record or portion thereof is not a trade secret as defined in s. 688.002;

b. A compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record;

and

c. The release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, or the institute.

(5) PENALTIES.—Any person who willfully and knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect October 1, 2012.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7105 PCB GVOPS 12-11 OGSR/Florida Workers' Compensation Joint Underwriting Association, Inc.
**SPONSOR(S):** Government Operations Subcommittee, Mayfield
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2082

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 15 Y, 0 N | Williamson | Williamson |
| 1) State Affairs Committee | | Williamson | 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 certain records held by the Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA). It also provides a public meeting exemption for that portion of a meeting of the JUA's board of governors, or any subcommittee of the JUA's board, at which confidential and exempt records are discussed. An exempt portion of any meeting may not be off the record.

The bill reenacts the public record and public meeting exemptions, 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.

Florida Workers' Compensation Joint Underwriting Association, Inc.

The Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), created by the Legislature in 1993, is a nonprofit, self-funding entity that is the insurer of last resort for employers who are unable to secure workers' compensation insurance coverage in the voluntary market.[4] The JUA board consists of three members appointed by the Financial Services Commission, two members representing the top 20 domestic insurers writing workers' compensation, two members representing the top 20 foreign insurers writing workers' compensation, one person appointed by the largest property and casualty insurance agents' association, and the Consumer Advocate for the Department of Financial Services.[5]

Public Record and Public Meeting Exemptions under Review

In 2007, the Legislature created a public record and public meeting exemption for the JUA.[6]

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[1] *See* s. 119.15, F.S.

[2] Section 24(c), Art. 1 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] Florida Workers' Compensation Joint Underwriting Association, Inc., http://www.fwcjua.com/ (last visited Feb. 3, 2012).

[5] Section 627.311(5)(b), F.S.

[6] Chapter 2007-202, L.O.F.; codified as s. 627.3121, F.S.

The following records held by the JUA are confidential and exempt[7] from public record requirements:

- Underwriting files, except that a policyholder or an applicant must have access to his or her own files.
- Claims files until termination of all litigation and the settlement of all claims arising out of the same accident, with exceptions.
- Records obtained or generated by an auditor pursuant to a routine audit until the audit is completed or, if the audit is part of an investigation, until the investigation is closed or ceases to be active.[8]
- Proprietary information licensed to the JUA under contract if the contract requires the JUA to maintain the confidentiality of such information.
- Medical records, including information relating to the medical condition or medical status of an individual.
- All records relative to an employee's participation in an employee assistance program, except as otherwise provided.
- Information relating to negotiations for financing, reinsurance, reinsurance commutation agreements, depopulation, or other contractual services until the conclusion of the negotiations.
- Reports provided to or submitted by the JUA regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until such investigation is closed or ceases to be active.
- Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies as authorized in current law.
- A public record prepared by an attorney retained by the JUA to protect or represent the interests of the JUA or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the JUA.[9]

Upon written request, the JUA may release confidential and exempt records to another agency in the performance of that agency's official duties and responsibilities.[10] In addition, the JUA may release confidential and exempt underwriting files and claims files to a carrier that is considering underwriting a risk insured by the JUA, a producer seeking to place such a risk with such a carrier, or another entity seeking to arrange voluntary market coverage for association risk.[11] Prior to releasing confidential and exempt underwriting files or claims files, the carrier, producer, or other entity must agree in writing, notarized under oath, to maintain the confidential and exempt status of such file until that carrier, producer, or other entity agrees to underwrite the risk or provide voluntary market coverage.[12]

Current law also provides a public meeting exemption for that portion of a meeting of the JUA's board of governors, or any subcommittee of the JUA's board, at which confidential and exempt records are discussed.[13] All exempt portions of meetings must be recorded and transcribed. The board must record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.[14] The court reporter's notes of any exempt portion of a meeting must be retained by the JUA for a minimum of five years.[15]

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[7] 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).

[8] An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. (Section 627.3121(1)(c), F.S.)

[9] Section 627.3121(1), F.S.

[10] Section 627.3121(3), F.S.

[11] Section 627.3121(2)(a), F.S.

[12] Section 627.3121(2)(b), F.S.

[13] Section 627.3121(4)(a), F.S.

[14] Section 627.3121(4)(b), F.S.

[15] Section 627.3121(4)(c), F.S.

A transcript and minutes of exempt portions of meetings are confidential and exempt from public record requirements.[16] Those portions of the transcript or the minutes pertaining to confidential and exempt claims files are no longer confidential and exempt upon termination of all litigation with regard to that claim.[17]

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

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the Florida Workers' Compensation Joint Underwriting Association, Inc. It also removes reference to "medical records" and replaces the term with "medical information" because use of the latter term is more consistent with definitions in other statutory provisions.

B. SECTION DIRECTORY:

Section 1 amends s. 627.3121, F.S., to reenact the public record and public meeting exemptions for the Florida Workers' Compensation Joint Underwriting Association, Inc.

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:

[16] Section 627.3121(4)(d)1., F.S.
[17] Section 627.3121(4)(d)2., F.S.

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. 627.3121, F.S., which provides an exemption from public records requirements for certain records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., and an exemption from public meetings requirements for certain meetings of the association's board of governors, or a subcommittee of the association's board; clarifying that the public record exemption applies to medical information relating to the medical condition or medical status of an individual; 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 627.3121, Florida Statutes, is amended to read:

627.3121 Public records and public meetings exemptions.—

(1) The following records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Underwriting files, except that a policyholder or an applicant shall be provided access to his or her own underwriting files.

(b) Claims files until termination of all litigation and

the settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential or exempt if otherwise provided by law.

(c) Records obtained or generated by an auditor pursuant to a routine audit until the audit is completed or, if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

(d) Proprietary information licensed to the association under contract if the contract requires the association to maintain the confidentiality of such information.

(e) Medical ~~records, which include~~ information relating to the medical condition or medical status of an individual.

(f) All records relative to an employee's participation in an employee assistance program upon the entrance of the employee into the program, except as otherwise provided in s. 440.102(8).

(g) Information relating to negotiations for financing, reinsurance, reinsurance commutation agreements, depopulation, or contractual services until the conclusion of the negotiations.

(h) Reports provided to or submitted by the association regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until such investigation is closed or ceases to be active.

(i) Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies obtained pursuant to ss. 440.381 and 468.529.

(j) A public record prepared by an attorney retained by the association to protect or represent the interests of the association, or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association. This protection is not waived by the release of such public record to another employee or officer of the same association or any person consulted by the association attorney.

(2)(a) The association may release confidential and exempt underwriting files and claims files to:

1. A carrier that is considering underwriting a risk insured by the association;

2. A producer seeking to place such a risk with such a carrier; or

3. Another entity seeking to arrange voluntary market coverage for association risks.

(b) Prior to the release authorized in paragraph (a), the carrier, producer, or other entity must agree in writing, notarized and under oath, to maintain the confidential and exempt status of such file until that carrier, producer, or other entity agrees to underwrite the risk or provide voluntary market coverage.

(3) Records made confidential and exempt by this section may be released, upon written request, to another agency in the performance of that agency's official duties and

responsibilities.

(4)(a) That portion of a meeting of the association's board of governors, or any subcommittee of the association's board, at which records made confidential and exempt by this section are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) All exempt portions of meetings shall be recorded and transcribed. The board shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) Subject to this section and s. 119.021(2), the court reporter's notes of any exempt portion of a meeting shall be retained by the association for a minimum of 5 years.

(d)1. A transcript and minutes of exempt portions of meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Those portions of the transcript or the minutes pertaining to a confidential and exempt claims file are no longer confidential and exempt upon termination of all litigation with regard to that claim.

~~(5) 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 7107 PCB GVOPS 12-12 OGSR/Consumer Complaints and Inquiries
**SPONSOR(S):** Government Operations Subcommittee, Mayfield
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1230

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 15 Y, 0 N | Williamson | Williamson |
| 1) State Affairs Committee | | Williamson | 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 personal financial and health information held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR), relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It reorganizes the definition of "personal financial and health information" to group like topics. It also allows a consumer, or the consumer's legally authorized representative, to have access to his or her personal financial and health information.

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.

Consumer Inquiries and Complaints

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS or department) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services primarily is responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.[4]

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.[5]

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. 1 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* s. 20.121(2)(h), F.S.

[5] House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 2 and 3.

Workers' Compensation

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements.[6] The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an employee and the employer or carrier.[7] Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.[8]

Public Record Exemption under Review

In 2007, the Legislature reenacted and expanded the public record exemption for certain information regarding a consumer complaint.[9] Personal financial and health information[10] held by DFS or OIR, relating to a consumer's[11] complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., is confidential and exempt[12] from public record requirements. Current law provides for retroactive application[13] of the exemption.[14]

Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.[15]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.[16]

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal financial and health information held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. It reorganizes the definition of "personal financial and health information" to group like topics. The bill also allows the

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[6] *See* chapter 440, F.S.

[7] *See* s. 440.191, F.S.

[8] House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 4.

[9] Chapter 2007-70, L.O.F.; codified as s. 624.23, F.S.

[10] Section 624.23(1)(b), F.S., defines "personal financial and health information to mean:

- A consumer's personal health condition, disease, or injury;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

[11] Section 624.23(1)(a), F.S., defines "consumer" to mean a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer; or an employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

[12] 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).

[13] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

[14] Section 624.23(2), F.S.

[15] Section 624.23(3), F.S.

[16] Section 624.23(4), F.S.

department or OIR to release personal financial and health information to the consumer or the consumer's legally authorized representative.

B. SECTION DIRECTORY:

Section 1 amends s. 624.23, F.S., to reenact the public record exemption for a consumer's personal financial and health information held by DFS or OIR.

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:

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. 624.23, F.S., which provides a public records exemption for certain records relating to consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or the Employee Assistance and Ombudsman Office within the Department of Financial Services; reorganizing the definition of "consumer"; providing an additional exception to the exemption; eliminating the scheduled repeal of the exemption under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 624.23, Florida Statutes, is amended to read:

624.23 Public records exemption.—

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

(a) "Consumer" means:

1. A prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer.

2. An employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3.~~2.~~ The existence, nature, source, or amount of a consumer's personal income or expenses;

4.~~3.~~ Records of or relating to a consumer's personal financial transactions of any kind;

5.~~4.~~ The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

~~5. A history of a consumer's personal medical diagnosis or treatment;~~

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) Personal financial and health information held by the department or office relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to personal financial and health information held by the department or office before, on, or after the effective date of this exemption.

(3) Such confidential and exempt information may be disclosed to:

(a) Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.~~; and~~

(b) The National Association of Insurance Commissioners.

(c) The consumer or the consumer's legally authorized representative.

~~(4) 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 7109 PCB GVOPS 12-14 OGSR/Lifeline Assistance Plan
**SPONSOR(S):** Government Operations Subcommittee, Mayfield
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2080

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 15 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 Lifeline Assistance Plan (Lifeline) is part of a federal program designed to provide telecommunications services to low-income customers at affordable rates. Eligible persons may enroll in Lifeline by submitting an application to the Public Service Commission (PSC) that requires personal identifying information. In addition, the Department of Children and Family Services, the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange personal identifying information of eligible customers with eligible telecommunications carriers and commercial mobile radio service providers.

Current law provides that personal identifying information of a participant in Lifeline held by the PSC is confidential and exempt from public records requirements. The information may be released as provided by law. An officer or employee of a telecommunications carrier who intentionally discloses the confidential and exempt information commits a misdemeanor of the second degree.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law. In addition, it expands the list of entities subject to penalties for disclosing such information to include officers or employees of the PSC.

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.

Lifeline Assistance Plan

The Lifeline Assistance Plan (Lifeline) is a component of the federal Low Income Program,[4] which is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates.[5] Lifeline participants in Florida are given a $13.50 credit per month on local phone bills.[6]

Current law provides oversight of Lifeline by the Public Service Commission (PSC).[7] A customer's eligibility for Lifeline is determined by the customer's enrollment in any one of the following programs:

- Temporary Assistance for Needy Families;
- Supplemental Security Income;
- Food Stamps;
- Medicaid;
- Federal Public Housing Assistance;
- Low-Income Home Energy Assistance Plan;
- National School Lunch Program's Free Lunch Program; and

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[1] *See* s. 119.15, F.S.

[2] Section 24(c), Art. 1 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 104-104, the Federal Telecommunications Act of 1996, created the Universal Service Program, in which the Low Income Program is a part.

[5] The Universal Service Administrative Company (USAC), at http://www.usac.org/li/about/default.aspx (last visited January 23, 2012).

[6] Florida Public Service Commission, Link-Up Florida and Lifeline Assistance Programs, at http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx (last visited January 23, 2012).

[7] *See* s. 364.10, F.S.

- Bureau of Indian Affairs Programs.[8]

Each local exchange telecommunications company[9] that has more than one million access lines is required to provide Lifeline service to any otherwise eligible customer or potential customer.[10] The PSC, Office of Public Council certifies eligibility for Lifeline on income-based criteria, which is 150 percent of the federal poverty guidelines.[11]

Eligible persons may enroll in Lifeline by submitting an application to the PSC that requires the name, address, telephone number, service provider, and the last four digits of the applicant's social security number.[12]

Current law also provides for automatic enrollment. The Department of Children and Family Services (DCF), the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange information such as a person's name, date of birth, service address, and telephone number with eligible telecommunications carriers and commercial mobile radio service providers so that the carriers can identify and enroll an eligible person in Lifeline.[13] If any state agency determines that a person is eligible for Lifeline services, the person's information must be immediately forwarded to the PSC for automatic enrollment with the appropriate eligible telecommunications carrier. In addition, the PSC and DCF are granted rulemaking authority to create procedures for automatic enrollment of eligible customers in Lifeline.[14]

The number of eligible customers participating in Lifeline in Florida grew 47 percent during the July 2010 and June 2011 annual review period. As of June 30, 2011, 943,854 eligible customers participated in Lifeline.[15]

Public Record Exemption under Review

Current law provides that personal identifying information of a participant in a telecommunications carrier's Lifeline plan held by the Public Service Commission is confidential and exempt[16] from public record requirements.[17]

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[8] Rule 25-4.0665, F.A.C.

[9] Section 364.02(13), F.S., defines "telecommunications company" to include every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

(a) An entity that provides a telecommunications facility exclusively to a certificated telecommunications company;
(b) An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
(c) A commercial mobile radio service provider;
(d) A facsimile transmission service;
(e) A private computer data network company not offering service to the public for hire;
(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522;
(g) An intrastate interexchange telecommunications company;
(h) An operator services provider; or
(i) An airport that provides communications services within the confines of its airport layout plan.

[10] Section 364.10(2)(a), F.S.

[11] Section 364.10(2)(a), F.S., provides the household income level for a family of four for the 150 percent threshold would be $33,525. Office of Public Counsel website: http://www.floridaopc.gov/lifeline.cfm (last visited January 23, 2012).

[12] Rule 25-4.0665, F.A.C., requires eligible telecommunications carriers to accept Form PSC/RAD 157 for hard copies submittals and Form PSC/RAD 158 for electronic submittals.

[13] Section 364.10(2)(g)1., F.S.

[14] Section 364.10(2)(g)2., F.S.

[15] Link-Up Florida Lifeline Assistance, Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, Annual Report to the Governor, President of the Senate, and Speaker of the House of Representatives, Executive Summary, page 1, at http://www.psc.state.fl.us/publications/pdf/telecomm/tele-lifelinereport2011.pdf, last visited, January 25, 2012.

[16] 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

Such information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline plan.[18] In addition, an officer or employee of a telecommunications carrier may disclose the information only as:

- Authorized by a customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to an agency or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline plan or auditing a Lifeline plan; or
- Otherwise authorized by law.[19]

Nothing precludes a telecommunications carrier from disclosing the confidential and exempt information to the extent such information is otherwise publicly available or from disclosing to a customer his or her own account record through telephonic means.[20]

An officer or employee of a telecommunications carrier who intentionally discloses confidential and exempt information in violation of the exemption commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.[21]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.[22]

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information of a participant in a telecommunications carrier's Lifeline Assistance Plan held by the Public Service Commission (PSC). The bill also adds officers or employees of the PSC to the list of entities who are subject to penalties for violating the exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 364.107, F.S., to reenact the public record exemption for information of a participant in the Lifeline Assistance Plan held by the Public Service Commission.

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.

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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).

[17] Section 364.107(1), F.S.

[18] Section 364.107(2), F.S.

[19] Section 364.107(3)(a), F.S.

[20] Section 364.107(3)(b), F.S.

[21] Section 364.107(3)(c), F.S.

[22] Section 364.107(4), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 364.107, F.S., which provides an exemption from public record requirements for personal identifying information of Lifeline Assistance Plan participants; providing a penalty for intentional disclosure of confidential and exempt information by an officer or employee of the Public Service Commission; 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 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(1) Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public Service Commission is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

(3)(a) An officer or employee of a telecommunications

carrier shall not intentionally disclose information made confidential and exempt under subsection (1), except as:

1. Authorized by the customer;

2. Necessary for billing purposes;

3. Required by subpoena, court order, or other process of court;

4. Necessary to disclose to an agency as defined in s. 119.011 or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline Assistance Plan or auditing a Lifeline Assistance Plan; or

5. Otherwise authorized by law.

(b) Nothing in this section precludes a telecommunications carrier from disclosing information made confidential and exempt under subsection (1) to the extent such information is otherwise publicly available or from disclosing to a customer his or her own account record through telephonic means.

(4) ~~(c)~~ Any officer or employee of a telecommunications carrier or of the Public Service Commission who intentionally discloses information in violation of this section ~~paragraph (a)~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4) 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 7115 PCB GVOPS 12-15 OGSR/Economic Development Agencies
**SPONSOR(S):** Government Operations Subcommittee, Patronis
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1206

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Government Operations Subcommittee | 15 Y, 0 N | Williamson | Williamson |
| 1) State Affairs Committee | | Williamson | 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 public record exemptions for certain information held by economic development agencies. The following information is confidential and exempt from public record requirements:

- Upon written request, information relating to a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida.
- Trade secrets.
- Proprietary confidential business information.
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Certain information pertaining to economic incentive programs.

The bill reenacts the public record exemptions, which will repeal on October 2, 2012, if this bill does not become law. It modifies the exemptions for plans, intentions, and interests, and for economic incentive programs, to provide for earlier release of confidential and exempt information when certain requirements are met.

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.

Public Record Exemptions under Review

Since 1977, there has been a public record exemption for records that contain information concerning the plans of a business to locate, relocate, or expand any of its business activities in Florida. The exemption has undergone several revisions over the years. The last significant modification was in 2007, which merged specific provisions of a related public record exemption regarding economic incentive programs with the public record exemption for the plans, intentions, and interests of a business to locate to Florida.[4]

Currently, upon written request, certain business records are confidential and exempt[5] from public record requirements when held by an economic development agency.[6] Specifically, business plans,

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. 1 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] Chapter 2007-203, L.O.F.; codified as s. 288.075, F.S.

[5] 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).

[6] Section 288.075(1)(a), F.S., defines "economic development agency to mean the Department of Economic Opportunity; any industrial development authority created in accordance with part III of chapter 159, F.S., or by special law; Space Florida created in part II of chapter 331, F.S.; the public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto; any research and

intentions, and interests to locate, relocate, or expand business activities in Florida are confidential and exempt for 12 months. The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing its consideration to locate, relocate, or expand its activities in Florida.[7] A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information related to plans, intentions, or interests until 90 days after the information is made public unless:

- The public officer or employee is acting in an official capacity;
- The agreement does not accrue to the personal benefit of such public officer or employee; and
- In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.[8]

This provision is to prevent a public officer or employee from using confidential information to his or her personal benefit.

Current law also provides a public record exemption for the following information held by an economic development agency:

- Trade secrets.[9,10]
- Proprietary confidential business information,[11] until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.[12]
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.[13]

Current law also provides that the following information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is confidential and exempt from public record requirements:

- The percentage of the business's sales occurring outside Florida and, for businesses applying under s. 288.1045, F.S., the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the business's application is submitted.
- The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.
- The average wage actually paid by the business for those jobs created by the project or an employee's personal identifying information which is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.
- The amount of taxes on sales, use, and other transactions paid pursuant to chapter 212, F.S.; corporate income taxes paid pursuant to chapter 220, F.S.; intangible personal property taxes

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development authority created in accordance with part V of chapter 159, F.S.; or any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

[7] Section 288.075(2), F.S.

[8] Section 288.075(2)(c), F.S.

[9] Section 288.075(3), F.S.

[10] Section 288.075(1)(c), F.S., provides that the term "trade secret" has the same meaning as defined in the Uniform Trade Secrets Act (*see* s. 688.002, F.S.)

[11] Section 288.075(1)(b), F.S., defines "proprietary confidential business information" to mean information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.

[12] Section 288.075(4), F.S.

[13] Section 288.075(5), F.S.

paid pursuant to chapter 199, F.S.; insurance premium taxes paid pursuant to chapter 624, F.S.; excise taxes paid on documents pursuant to chapter 201, F.S.; ad valorem taxes paid; or state communications services taxes paid pursuant to chapter 202, F.S.[14]

The exemption may not exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement.

An economic development agency may release names of qualified businesses; the total number of jobs each business expects to create; the total number of jobs created by each business; and the amount of tax refunds, tax credits, or incentives awarded to and claimed by each business.[15] In addition, an economic development agency may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.[16]

Any person who is an employee of an economic development agency and who violates any of the public record exemptions commits a second degree misdemeanor punishable as provided in ss. 775.082 and 775.083, F.S.[17]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.[18]

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemptions for economic development agencies.

The bill clarifies that the public record exemption for plans, intentions, and interests only applies if a written request is provided prior to an economic incentive agreement being signed. It also provides that the information is no longer confidential and exempt at the earlier of 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final order, 12 months after a request for confidentiality is received or 24 months if an additional 12-month extension is requested, or until the information is publically disclosed.

With regards to the public record exemption for economic incentive programs, the bill removes the public record exemption for anticipated wages for the project jobs that the business plans to create, and the average wage actually paid by the business for those jobs created by the project. An economic development agency may disclose in the annual incentive report the aggregate amount of each tax identified and paid by all businesses participating in each economic incentive program.

The bill provides that the following information relating to a specific business participating in an economic incentive program is no longer confidential and exempt 180 days after the final project order for an economic incentive agreement is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first:

- The name of the qualified business.
- The total number of jobs the business committed to create or retain.
- The total number of jobs created or retained by the business.
- The amount of tax refunds, tax credits, or incentives awarded to, claimed by, or, if applicable, refunded to the state by the business.
- The anticipated total annual wages of employees the business committed to hire or retain.

[14] Section 288.075(6)(a), F.S.
[15] Section 288.075(6)(b)1., F.S.
[16] Section 288.075(6)(c), F.S.
[17] Section 288.075(7), F.S.
[18] Section 288.075(8), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., to reenact the public record exemptions for economic development agencies.

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:

*See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

*See* FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on economic development agencies, because staff responsible for complying with public record requests could require training related to the changes in the public record exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

## 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. 288.075, F.S., which provides public record exemptions for information held by economic development agencies; saving from repeal the exemption concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state; providing that the exemption applies if a request for confidentiality is made before an economic incentive agreement is signed; specifying the time period during which information remains confidential and exempt when a final project order for a signed economic development agreement is issued; saving from repeal the exemption for trade secrets; saving from repeal the exemption for proprietary confidential business information; saving from repeal the exemption for identification, account, and registration numbers and sales, wage, and tax data relating to a recipient of an economic development incentive; saving from repeal the exemption for information held pursuant to the administration of an economic incentive program; clarifying and reorganizing the exemption; providing that the taxes paid by businesses participating in an economic incentive program may be disclosed in the aggregate; specifying duration of the period in which certain information held by an economic development agency

relating to a specific business participating in an economic development program remains confidential and exempt; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Section 288.075, Florida Statutes, is amended to read:

288.075 Confidentiality of records.—

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

(a) "Economic development agency" means:

1. The Department of Economic Opportunity;

2. Any industrial development authority created in accordance with part III of chapter 159 or by special law;

3. Space Florida created in part II of chapter 331;

4. The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;

5. Any research and development authority created in accordance with part V of chapter 159; or

6. Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or

county.

(b) "Proprietary confidential business information" means information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

1. Business plans.

2. Internal auditing controls and reports of internal auditors.

3. Reports of external auditors for privately held companies.

(c) "Trade secret" has the same meaning as in s. 688.002.

(2) PLANS, INTENTIONS, AND INTERESTS.—

(a)1. If ~~Upon written request from~~ a private corporation, partnership, or person requests in writing before an economic incentive agreement is signed that~~, information held by~~ an economic development agency maintain the confidentiality of information concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state, the information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the

date an economic development agency receives a request for confidentiality ~~or until the information is otherwise disclosed, whichever occurs first~~.

2.~~(b)~~ An economic development agency may extend the period of confidentiality specified in subparagraph 1. ~~paragraph (a)~~ for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under subparagraph 1. ~~this section.~~

However, if a final project order for a signed economic development agreement is issued, then the information shall remain confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first.

(b)~~(c)~~ A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information under this subsection until 90 days after the information is made public unless:

1. The public officer or employee is acting in an official

capacity;

2. The agreement does not accrue to the personal benefit of such public officer or employee; and

3. In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.

(3) TRADE SECRETS.—Trade secrets held by an economic development agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—Proprietary confidential business information held by an economic development agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

(5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number held by an economic development agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(6) ECONOMIC INCENTIVE PROGRAMS.—

(a) The following information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period not to exceed the duration of the

incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement:

1. The percentage of the business's sales occurring outside this state and, for businesses applying under s. 288.1045, the percentage of the business's gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business's application is submitted.

~~2. The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.~~

2.~~3.~~ ~~The average wage actually paid by the business for those jobs created by the project or~~ An individual employee's personal identifying information that ~~which~~ is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.

3.~~4.~~ The amount of:

a. Taxes on sales, use, and other transactions paid pursuant to chapter 212;

b. Corporate income taxes paid pursuant to chapter 220;

c. Intangible personal property taxes paid pursuant to chapter 199;

d. Insurance premium taxes paid pursuant to chapter 624;

e. Excise taxes paid on documents pursuant to chapter 201;

f. Ad valorem taxes paid, as defined in s. 220.03(1); or

g. State communications services taxes paid pursuant to

chapter 202.

However, an economic development agency may disclose in the annual incentives report required under s. 288.907 the aggregate amount of each tax identified in this subparagraph and paid by all businesses participating in each economic incentive program.

(b)1. The following information held by an economic development agency relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first ~~may release~~:

a. The name ~~Names~~ of the qualified business ~~businesses~~.

b. The total number of jobs the ~~each~~ business committed ~~expects~~ to create or retain.

c. The total number of jobs created or retained by the ~~each~~ business.

d. Notwithstanding s. 213.053(2), the amount of tax refunds, tax credits, or incentives awarded to, ~~and~~ claimed by, or, if applicable, refunded to the state by the ~~each~~ business.

e. The anticipated total annual wages of employees the business committed to hire or retain.

2. For a business applying for certification under s. 288.1045 which is based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed may not be released until the new Department of Defense contract is awarded.

~~(c) An economic development agency may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.~~

(7) PENALTIES.—Any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—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 upon becoming a law.

Amendment No.

| COMMITTEE/SUBCOMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Patronis offered the following:

**Amendment**

Remove lines 86-106 and insert:
confidentiality or until the information is otherwise disclosed, whichever occurs first.

2. ~~(b)~~ An economic development agency may extend the period of confidentiality specified in subparagraph 1. ~~paragraph (a)~~ for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under subparagraph 1. ~~this section.~~

Amendment No.

If a final project order for a signed economic development agreement is issued, then the information will remain confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality established in subparagraph 1. or subparagraph 2.