



Government Operations Subcommittee

**Tuesday, March 25, 2014
11:30 AM
Webster Hall (212 Knott)**

**Will Weatherford
Speaker**

**Frank Artiles
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, March 25, 2014 11:30 am
End Date and Time: Tuesday, March 25, 2014 02:30 pm
Location: Webster Hall (212 Knott)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs by Gibbons
HB 125 Pub. Rec./Claim Settlement on Behalf of Minor or Ward by Schwartz
HB 457 Pub. Rec./Dental Workforce Surveys by Harrell
CS/HB 491 Infectious Disease Elimination Pilot Program by Health Quality Subcommittee, Pafford
CS/HB 503 Municipal Governing Body Meetings by Local & Federal Affairs Committee, Pigman
CS/HB 595 Council on the Social Status of Black Men and Boys by Civil Justice Subcommittee, Williams, A.
CS/HB 675 Pub. Rec./Office of Financial Regulation by Insurance & Banking Subcommittee, Broxson
CS/HB 775 Pub. Rec./Florida State Boxing Commission by Business & Professional Regulation Subcommittee, Hutson
CS/HB 993 Pub. Rec./Animal Researchers at Public Research Facilities by Higher Education & Workforce Subcommittee, Cummings
HB 1083 Pub. Rec./CDD Surveillance Recordings by Artiles
HB 1189 Publicly Funded Retirement Programs by Eagle
HB 1231 Government Data Practices by Beshears
HB 1327 Government Accountability by Metz
HB 1385 Inspectors General by Raulerson
HB 7001 Administrative Procedures by Rulemaking Oversight & Repeal Subcommittee, Santiago
HB 7087 Pub. Rec./Notices of Data Breach and Investigations/DLA by Civil Justice Subcommittee, Metz

Consideration of the following proposed committee substitute(s):

PCS for HB 973 -- Transportation Services Procurement
PCS for HB 7011 -- Pub. Rec./Emergency Planning or Notification by Agency

NOTICE FINALIZED on 03/21/2014 16:24 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109 Pub. Rec./Participants in Treatment-Based Drug Court Programs
SPONSOR(S): Gibbons
TIED BILLS: IDEN./SIM. BILLS: SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
2) Government Operations Subcommittee		Williamson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Rule 2.420 of the Florida Rules of Judicial Administration states the public must have access to records of the judicial branch. However, Rule 2.420 establishes 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information) that the public may not access. Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing. Drug court records contained in court files are not currently listed as Type I information. In order to make these records confidential, a motion must be filed and the trial court must hold a hearing.

In 2011, it was suggested that Rule 2.420 be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that "the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list."

The bill creates a public record exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program. The public record exemption applies to such information contained in the following records, reports, and evaluations:

- Records relating to initial screenings for participation in a treatment-based drug court program;
- Records relating to substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator reports that the bill will result in a reduction in judicial and court system workload, but that the precise impact cannot be accurately determined.

Article I, Section 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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of 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 Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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

Public Access to Judicial Records

Rule 2.420 of the Florida Rules of Judicial Administration (Rule) states the public must have access to records of the judicial branch.^{3,4} However, the Rule currently identifies 20 categories of court record information which the clerk of the court must automatically designate and maintain as confidential (Type I information).⁵ Information not listed as Type I information may still be treated as confidential, but only upon motion and only after a judicial hearing.⁶

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

² See s. 119.15, F.S.

³ Fla. R. Jud. Admin. 2.420(b)(1) defines "records of the judicial branch" as all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

- "Court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and
- "Administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

⁴ Fla. R. Jud. Admin 2.420(b)(2) defines "judicial branch" as the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all entities established by or operating under the authority of the supreme court or the chief justice.

⁵ *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011); Fla. R. Jud Admin 2.420(d)(3).

⁶ *Id.*

In 2011, it was suggested that the Rule be amended to include pretrial and post-trial psychological and psychiatric evaluations and reports (which would include drug court records) as Type I information. However, the Florida Supreme Court held that because such information was not expressly exempt from public access by the laws in effect on July 1, 1993, or court rules in effect on September 1992, such information was not appropriate for inclusion as Type I information.⁷ The opinion further stated “the Legislature would have to expressly make mental health evaluations filed with the court exempt from public access before those evaluations can properly be added to that list.”⁸

Records from Treatment-Based Drug Courts

Section 397.334, F.S., establishes pretrial and postadjudicatory treatment-based drug court programs. These programs are designed to divert drug addicted offenders from the criminal justice system and provide supervised community treatment services in lieu of incarceration.⁹ Participants in drug court programs receive substance abuse treatment, screenings, and continual monitoring and evaluations.¹⁰ Records of the screenings and evaluations can be reviewed by court officials as part of the process of determining whether the individual is complying with the drug court program.¹¹

Since drug court records contained in court files are not currently listed as Type I information, a motion must be filed and the trial court must hold a hearing in order to make these records confidential.¹²

Effect of the Bill

The bill amends s. 397.334, F.S., to make information relating to a participant or a person considered for participation in a treatment-based drug court program confidential and exempt¹³ from public records requirements. The exemption applies to such information contained in the following records, reports, and evaluations:

- Records relating to initial screenings for participation in a treatment-based drug court program;
- Records relating to substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill does not authorize the release of such information in any circumstance.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Provides a public necessity statement.

⁷ *In re: Amendments to the Florida Rule of Judicial Administration 2.420*, 68 So.3d 228 (Fla. 2011).

⁸ *Id.*

⁹ Section 397.305, F.S.

¹⁰ Section 397.334(4), F.S.

¹¹ Section 397.334(5), F.S.

¹² Office of the State Courts Administrator, Analysis of HB 109 (on file with the Criminal Justice Subcommittee). This analysis is further cited as “OSCA Analysis;” See Fla. R. Jud. Admin. 2.420.

¹³ 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 85-62 Fla. Op. Att’y Gen. (1985).

Section 3. The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill eliminates the need to file motions and conduct hearings to make drug court records confidential. The Office of the State Courts Administrator (OSCA) determined the bill will result in a reduction in judicial and court system workload.¹⁴ However, the precise impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the reduction in workload.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

¹⁴ Office of the State Courts Administrator, Analysis of HB 109 (2014) (on file with the Criminal Justice Subcommittee).

¹⁵ *Id.*

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information identifying a participant or a person considered for participation in a treatment-based drug court program contained in certain records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

OSCA reports that this bill will result in the need for changes to Rule 2.420(d)(1)(B), of the Florida Rules of Judicial Administration to add drug court records contained in court files as automatic Type I information.¹⁶

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

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 as such.¹⁷ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁶ *Id.*

¹⁷ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

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A bill to be entitled
 An act relating to public records; amending s.
 397.334, F.S.; exempting from public records
 requirements information from the initial screenings
 for participation in a treatment-based drug court
 program, substance abuse screenings, behavioral health
 evaluations, and subsequent treatment status reports
 regarding a participant or a person considered for
 participation in a treatment-based drug court program;
 providing for future repeal and legislative review 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. Subsection (10) is added to section 397.334,
 Florida Statutes, to read:

397.334 Treatment-based drug court programs.—

(10) (a) Information relating to a participant or a person
 considered for participation in a treatment-based drug court
 program which is contained in the following records, reports,
 and evaluations is confidential and exempt from s. 119.07(1) and
 s. 24(a), Art. I, of the State Constitution:

1. Records relating to initial screenings for
 participation in the program.
2. Records relating to substance abuse screenings.
3. Behavioral health evaluations.
4. Subsequent treatment status reports.

29 (b) This subsection is subject to the Open Government
 30 Sunset Review Act in accordance with s. 119.15 and shall stand
 31 repealed on October 2, 2019, unless reviewed and saved from
 32 repeal through reenactment by the Legislature.

33 Section 2. The Legislature finds that it is a public
 34 necessity that information relating to a participant or person
 35 considered for participation in a treatment-based drug court
 36 program under s. 397.334, Florida Statutes, which is contained
 37 in certain records, reports, and evaluations, be made
 38 confidential and exempt from s. 119.07(1), Florida Statutes, and
 39 s. 24(a), Art. I of the State Constitution. Protecting
 40 information contained in records relating to initial screenings
 41 for participation in a treatment-based drug court program,
 42 records relating to substance abuse screenings, behavioral
 43 health evaluations, and subsequent treatment status reports is
 44 necessary to protect the privacy rights of participants or
 45 individuals considered for participation in treatment-based drug
 46 court programs. Accordingly, the Legislature finds that the
 47 chilling effect to an individual who is seeking treatment for
 48 his or her substance abuse which would result from the release
 49 of this information substantially outweighs any public benefit
 50 derived from disclosure to the public. Making this information
 51 confidential and exempt will protect information that is of a
 52 sensitive, personal nature; thus, the release of this
 53 information would cause unwarranted damage to the reputation of
 54 an individual. Furthermore, making this information confidential
 55 and exempt will encourage individuals to participate in drug
 56 court programs, and thereby promote the effective and efficient

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2014

57 | administration of treatment-based drug court programs.

58 | 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	_____	

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Gibbons offered the following:
 4

Amendment (with title amendment)

Remove lines 21-42 and insert:

7 program which is contained in the following records is
 8 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 9 of the State Constitution:

10 1. Records created or compiled during screenings for
 11 participation in the program.

12 2. Records created or compiled during substance abuse
 13 screenings.

14 3. Behavioral health evaluations.

15 4. Subsequent treatment status reports.

16 (b) Such confidential and exempt information may be
 17 disclosed:



Amendment No.

18 1. Pursuant to the written request of the participant or
19 person considered for participation, or his or her legal
20 representative.

21 2. To another governmental entity in the furtherance of
22 its responsibilities associated with the screening of or
23 providing treatment to a person in a treatment-based drug court
24 program.

25 (c) Records of a service provider that pertain to the
26 identity, diagnosis, and prognosis of or provision of service to
27 any individual shall be disclosed pursuant to s. 397.501(7).

28 (d) This exemption applies to such information described
29 in paragraph (a) relating to a participant or a person
30 considered for participation in a treatment-based drug court
31 program before, on, or after the effective date of this
32 exemption.

33 (e) This subsection is subject to the Open Government
34 Sunset Review Act in accordance with s. 119.15 and shall stand
35 repealed on October 2, 2019, unless reviewed and saved from
36 repeal through reenactment by the Legislature.

37 Section 2. The Legislature finds that it is a public
38 necessity that information relating to a participant or person
39 considered for participation in a treatment-based drug court
40 program under s. 397.334, Florida Statutes, which is contained
41 in certain records be made confidential and exempt from s.
42 119.07(1), Florida Statutes, and s. 24(a), Article I of the
43 State Constitution. Protecting information contained in records



Amendment No.

44 created or compiled during screenings for participation in a
45 treatment-based drug court program, records created or compiled
46 during substance abuse screenings, behavioral

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

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Remove lines 4-9 and insert:

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requirements information from the screenings for participation
54 in a treatment-based drug court program, substance abuse
55 screenings, behavioral health evaluations, and subsequent
56 treatment status reports regarding a participant or a person
57 considered for participation in a treatment-based drug court
58 program; providing for exceptions to the exemption; providing
59 for retroactive application of the public record exemption;

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Pub. Rec./Claim Settlement on Behalf of Minor or Ward
SPONSOR(S): Schwartz
TIED BILLS: HB 123 IDEN./SIM. BILLS: CS/SB 108

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Civil Justice Subcommittee, Government Operations Subcommittee, and Judiciary Committee.

SUMMARY ANALYSIS

Litigation settlement agreements in guardianship cases routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of \$15,000 without court approval. The court approval process requires a petition setting forth the terms of the settlement. An order is eventually entered that also may contain the terms of settlement, or may refer to the petition. The petition and the order are part of a court file, and therefore are a matter of public record and open for inspection under current law.

The bill amends the guardianship law to provide that the petition requesting permission for settlement of a claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from public records requirements. The court may order partial or full disclosure of the confidential and exempt record upon a showing of good cause.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 123 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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 the current public record exemption for certain information related to guardianship; 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. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of 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. An exemption 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.

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S.² However, the Florida Supreme Court found that "both civil and criminal proceedings in Florida are public events" and that the court will "adhere to the well-established common law right of access to court proceedings and records."³ There is a Florida constitutional guarantee of access to judicial records.⁴ The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.⁵

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.⁶ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁷ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁸ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁹

¹ Art I., s. 24(c), Fla. Const.

² See e.g., *Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995).

³ *Barron v. Florida Freedom Newspapers*, 531 So.2d 113, 116 (Fla. 1988).

⁴ Art I., s. 24(a), Fla. Const.

⁵ Art I., ss. 24(c) and (d), Fla. Const.

⁶ *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

⁷ *Id.*

⁸ *Id.*

⁹ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of \$15,000 without court approval.¹⁰ The court approval process requires a petition setting forth the terms of the settlement.¹¹ An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.¹² The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Effect of the Bill

The bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

The bill includes a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of House Bill 123, if adopted in the same legislative session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

¹⁰ See s. 744.301(2), F.S.

¹¹ Section 744.387, F.S.

¹² *Id.*

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court system and clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption related to guardianships. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 744.3701, F.S.; creating an exemption from public
 4 records requirements for records relating to the
 5 settlement of a claim on behalf of a minor or ward;
 6 authorizing a guardian ad litem, a ward, a minor, and
 7 a minor's attorney to inspect guardianship reports and
 8 court records relating to the settlement of a claim on
 9 behalf of a minor or ward, upon a showing of good
 10 cause; authorizing the court to direct disclosure and
 11 recording of an amendment to a report or court records
 12 relating to the settlement of a claim on behalf of a
 13 ward or minor, in connection with real property or for
 14 other purposes; providing a statement of public
 15 necessity; providing a contingent effective date.

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

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 19 Section 1. Section 744.3701, Florida Statutes, is amended
 20 to read:

21 744.3701 Confidentiality ~~Inspection of report.~~-
 22 (1) Unless otherwise ordered by the court, upon a showing
 23 of good cause, an ~~any~~ initial, annual, or final guardianship
 24 report or amendment thereto, or a court record relating to the
 25 settlement of a claim, is subject to inspection only by the
 26 court, the clerk or the clerk's representative, the guardian and

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

27 | the guardian's attorney, the guardian ad litem with regard to
 28 | the settlement of the claim, and the ward if he or she is at
 29 | least 14 years of age and has not, unless he or she is a minor
 30 | or has been determined to be totally incapacitated, and the
 31 | ward's attorney, the minor if he or she is at least 14 years of
 32 | age, or the attorney representing the minor with regard to the
 33 | minor's claim, or as otherwise provided by this chapter.

34 | (2) The court may direct disclosure and recording of parts
 35 | of an initial, annual, or final report or amendment thereto, or
 36 | a court record relating to the settlement of a claim, including
 37 | a petition for approval of a settlement on behalf of a ward or
 38 | minor, a report of a guardian ad litem relating to a pending
 39 | settlement, or an order approving a settlement on behalf of a
 40 | ward or minor, in connection with a any real property
 41 | transaction or for such other purpose as the court allows, in
 42 | its discretion.

43 | (3) A court record relating to the settlement of a ward's
 44 | or minor's claim, including a petition for approval of a
 45 | settlement on behalf of a ward or minor, a report of a guardian
 46 | ad litem relating to a pending settlement, or an order approving
 47 | a settlement on behalf of a ward or minor, is confidential and
 48 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 49 | of the State Constitution and may not be disclosed except as
 50 | specifically authorized.

51 | Section 2. The Legislature finds that it is a public
 52 | necessity to keep confidential and exempt from public disclosure

53 information contained in a settlement record which could be used
54 to identify a minor or ward. The information contained in these
55 records is of a sensitive, personal nature, and its disclosure
56 could jeopardize the physical safety and financial security of
57 the minor or ward. In order to protect minors, wards, and others
58 who could be at risk upon disclosure of a settlement, it is
59 necessary to ensure that only those interested persons who are
60 involved in settlement proceedings or the administration of the
61 guardianship have access to reports and records. The Legislature
62 finds that the court retaining discretion to direct disclosure
63 of these records is a fair alternative to public access.

64 Section 3. This act shall take effect on the same date
65 that HB 123 or similar legislation takes effect if such
66 legislation is adopted in the same legislative session or an
67 extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Pub. Rec./Dental Workforce Surveys
SPONSOR(S): Harrell
TIED BILLS: IDEN./SIM. BILLS: SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N	Guzzo	O'Callaghan
2) Government Operations Subcommittee		Williamson	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates a public record exemption for personal identifying information that is contained in a record provided by a dentist or dental hygienist in response to a dental workforce survey and held by the Department of Health.

The bill provides exceptions to the public record exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

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

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

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 Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Workforce Surveys

In 2009, the Department of Health (DOH) developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses.³ Of the 11,272 dentists who renewed an active license by June 23, 2010, 89 percent responded to the voluntary survey.⁴

Responses to the survey are self-reported. The survey was designed to obtain information unavailable elsewhere on key workforce characteristics in order to better inform and shape public healthcare policy. Specifically, the survey consists of 25 core questions on demographics, education and training, practice characteristics and status, specialties, retention, and access to oral healthcare in Florida.⁵

Unlike dentists and dental hygienists, physicians are statutorily required to respond to physician workforce surveys as a condition of license renewal.⁶ All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

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

² Section 119.15, F.S.

³ Section 466.013(2), F.S., authorizes DOH to adopt rules for the biennial renewal of licenses.

⁴ Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists*, March 2011, at 11, http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf (last visited February 14, 2014).

⁵ *Id.*

⁶ Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians, and s. 459.0081, F.S., for osteopathic physicians.

Effect of Proposed Changes

The bill provides that personal identifying information that is contained in a record provided by a dentist or dental hygienist licensed under ch. 466, F.S., in response to a dental workforce survey and held by DOH is confidential and exempt⁷ from public records requirements.

The bill provides exceptions to the exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, if the entity seeks the record or data pursuant to a research protocol approved by DOH.

The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with DOH. The purchase and data-use agreement is required to:

- Prohibit the release of information by the research entity which would identify individuals;
- Limit the use of records or data to the approved research protocol; and
- Prohibit any other use of the records or data.

The bill provides that copies of records or data remain the property of DOH.

DOH is authorized to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of the confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸ The public necessity statement declares the public record exemption necessary to foster candid and honest responses to the workforce survey and to ensure DOH has accurate information on dentists and dental hygienists.

B. SECTION DIRECTORY:

Section 1: Creates s. 466.051, F.S., relating to confidentiality of certain information contained in dental workforce surveys.

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.

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

2. Expenditures:

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

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:

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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the personal identifying information of dentists and dental hygienists who respond to dental workforce surveys. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Voluntary Survey

The DOH developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses. However, it is unclear if there is any statutory authority for the creation of such survey.

Other Comments: Retroactive Application

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.⁹ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would only apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁹ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).
STORAGE NAME: h0457b.GVOPS.DOCX
DATE: 3/23/2014

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 466.051, F.S.; providing an exemption from public
 4 records requirements for information contained in
 5 dental workforce surveys submitted by dentists or
 6 dental hygienists to the Department of Health;
 7 providing exceptions to the exemption; providing for
 8 future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; providing
 10 a statement of public necessity; providing an
 11 effective date.

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

14
 15 Section 1. Section 466.051, Florida Statutes, is created
 16 to read:

17 466.051 Confidentiality of certain information contained
 18 in dental workforce surveys.-

19 (1) Personal identifying information that is contained in
 20 a record provided by a dentist or dental hygienist licensed
 21 under this chapter in response to a dental workforce survey and
 22 held by the Department of Health is confidential and exempt from
 23 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 Personal identifying information in such a record:

25 (a) Shall be disclosed with the express written consent of
 26 the individual to whom the information pertains or the

27 | individual's legally authorized representative.

28 | (b) Shall be disclosed by court order upon a showing of
 29 | good cause.

30 | (c) May be disclosed to a research entity, if the entity
 31 | seeks the records or data pursuant to a research protocol
 32 | approved by the Department of Health, maintains the records or
 33 | data in accordance with the approved protocol, and enters into a
 34 | purchase and data-use agreement with the department, the fee
 35 | provisions of which are consistent with s. 119.07(4). The
 36 | department may deny a request for records or data if the
 37 | protocol provides for intrusive follow-back contacts, does not
 38 | plan for the destruction of the confidential records after the
 39 | research is concluded, is administratively burdensome, or does
 40 | not have scientific merit. The agreement must prohibit the
 41 | release of information by the research entity which would
 42 | identify individuals, limit the use of records or data to the
 43 | approved research protocol, and prohibit any other use of the
 44 | records or data. Copies of records or data issued pursuant to
 45 | this paragraph remain the property of the department.

46 | (2) This section is subject to the Open Government Sunset
 47 | Review Act in accordance with s. 119.15 and shall stand repealed
 48 | on October 2, 2019, unless reviewed and saved from repeal
 49 | through reenactment by the Legislature.


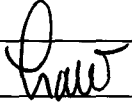
50 | Section 2. The Legislature finds that it is a public
 51 | necessity that personal identifying information that is
 52 | contained in a record provided by a dentist or dental hygienist

53 | licensed under chapter 466, Florida Statutes, who responds to a
 54 | dental workforce survey be made confidential and exempt from
 55 | disclosure. Candid and honest responses by licensed dentists or
 56 | dental hygienists to the workforce survey will ensure that
 57 | timely and accurate information is available to the Department
 58 | of Health. The Legislature finds that the failure to maintain
 59 | the confidentiality of such personal identifying information
 60 | would prevent the resolution of important state interests to
 61 | ensure the availability of dentists or dental hygienists in this
 62 | state.

63 | Section 3. This act shall take effect upon becoming a law.
 64 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 491 Infectious Disease Elimination Pilot Program
SPONSOR(S): Health Quality Subcommittee; Pafford
TIED BILLS: IDEN./SIM. BILLS: CS/SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Dunn	O'Callaghan
2) Government Operations Subcommittee		 Stramski	Williamson 
3) Judiciary Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 381.0038, F.S., to create the Miami-Dade Infectious Disease Elimination Act (IDEA). The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program (pilot program) in Miami-Dade County. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users, their sexual partners, and offspring. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity.

The pilot program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Strive for a one sterile needle and syringe unit to one used unit exchange ratio; and
- Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-use prevention and treatment.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2019, or 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program. The bill grants DOH the authority to adopt rules to implement the pilot program. The bill includes a severability clause.

The bill may have a positive fiscal impact on state government or local governments. See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used needles and syringes to reduce the transmission of human immunodeficiency virus (HIV) and other blood-borne infections associated with reuse of contaminated needles and syringes by injection-drug users (IDUs).

Federal Ban on Funding

In 2009, Congress passed the FY 2010 Consolidated Appropriations Act, which contained language that removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.¹

However, on December 23, 2011, President Obama signed the FY 2012 omnibus spending bill that, among other things, reinstated the ban on the use of federal funds for NSEPs; this step reversed the 111th Congress's decision to allow federal funds to be used for NSEPs.²

Safe Sharps Disposal

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. "Sharps" is a medical term for devices with sharp points or edges that can puncture or cut skin.

Examples of sharps include:³

- Needles – hollow needles used to inject drugs (medication) under the skin.
- Syringes – devices used to inject medication into or withdraw fluid from the body.
- Lancets, also called "fingerstick" devices – instruments with a short, two-edged blade used to get drops of blood for testing. Lancets are commonly used in the treatment of diabetes.
- Auto Injectors, including epinephrine and insulin pens – syringes pre-filled with fluid medication designed to be self-injected into the body.
- Infusion sets – tubing systems with a needle used to deliver drugs to the body.
- Connection needles/sets – needles that connect to a tube used to transfer fluids in and out of the body. This is generally used for patients on home hemodialysis.

On November 8, 2011, the Federal Drug Administration (FDA) launched a new website⁴ for patients and caregivers on the safe disposal of sharps that are used at home, at work, and while traveling.⁵

¹ Matt Fisher, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, SMARTGLOBALHEALTH.ORG (Feb. 6, 2012), <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/> (last viewed March 5, 2014); NPR, *Ban Lifted on Federal Funding for Needle Exchange*, (Dec. 18, 2009), <http://www.npr.org/templates/story/story.php?storyId=121511681> (last viewed March 5, 2014).

² *Id.*

³ Food and Drug Administration, *Needles and Other Sharps (Safe Disposal Outside of Health Care Settings)*, (Jan. 27, 2014), <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ucm20025647.htm> (last viewed March 5, 2014).

⁴ *Id.*

⁵ *Id.*

According to the FDA, used needles and other sharps are dangerous to people and pets if not disposed of safely because they can injure people and spread infections that cause serious health conditions. The most common infections from such injuries are Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV).⁶

Moreover, injections of illicit drugs have been estimated to represent approximately one-third of the estimated 2 to 3 billion injections occurring outside of health-care settings in the U.S. each year, second only to insulin injections by persons with diabetes.⁷

For these reasons, communities are trying to manage the disposal of sharps within the illicit drug population. In San Francisco in 2000, approximately 2 million syringes were recovered at NSEPs, and an estimated 1.5 million syringes were collected through a pharmacy-based program that provided free-of-charge sharps containers and accepted filled containers for disposal. As a result, an estimated 3.5 million syringes were recovered from community syringe users and safely disposed of as infectious waste.⁸ Other NSEPs offer methods for safe disposal of syringes after hours. For example, in Santa Cruz, California, the Santa Cruz Needle Exchange Program, in collaboration with the Santa Cruz Parks and Recreation Department, installed 12 steel sharps containers in public restrooms throughout the county.⁹

National Data & Survey Results

According to the Centers for Disease Control and Prevention (CDC), NSEPs can help prevent blood-borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used needles and syringes.¹⁰ Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.¹¹

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey found for the first time in 8 years, the number of NSEPs, the number of localities with NSEPs, and public funding for NSEPs decreased nationwide; however, the number of syringes exchanged and total budgets across all programs continued to increase.¹²

In 2011, the Beth Israel Medical Center conducted another survey, which is the most comprehensive survey of NSEPs in the U.S. to date.¹³ The results revealed that the most frequent drug being used by participants was heroin, followed by cocaine, and that usually the problems NSEPs encountered had to do with the lack of resources and staff shortages.¹⁴

⁶ *Id.*

⁷ Centers for Disease Control, *Update: Syringe Exchange Programs --- United States, 2002*, MMWR WEEKLY, July 15, 2005, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last viewed March 5, 2014) (citing American Association of Diabetes Educators, American Diabetes Association, American Medical Association, American Pharmaceutical Association, Association of State and Territorial Health Officials, National Alliance of State and Territorial AIDS Directors, *Safe Community Disposal of Needles and Other Sharps*, Houston, TX: Coalition for Safe Community Needle Disposal (2002)).

⁸ *Id.* (citing Brad Drda et al., *San Francisco Safe Needle Disposal Program, 1991—2001*, 42 J. AM PHARM ASSOC. S115—6 (2002), available at <http://japha.org/article.aspx?articleid=1035735> (last viewed March 5, 2014)).

⁹ Don Miller, *Dealing with Drug Needles*, SANTA CRUZ SENTINEL, Feb. 8, 2013, available at <http://www.santacruzlive.com/blogs/dmillereditor/2013/02/08/dealing-with-drug-needles/> (last viewed March 5, 2014).

¹⁰ Centers for Disease Control, *Update: Syringe Exchange Programs --- United States, 2002*, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ North American Syringe Exchange Network, *2011 Beth Israel Survey, Results Summary*, (PowerPoint slide) available at <http://www.nasen.org/news/2012/nov/29/2011-beth-israel-survey-results-summary/> (last viewed March 5, 2014).

¹⁴ *Id.*

A 2012 study compared improper public syringe disposal between Miami, a city without NSEPs, and San Francisco, a city with NSEPs.¹⁵ Using visual inspection walk-throughs of high drug use public areas, the study found that Miami was eight times more likely to have syringes improperly disposed of in public areas.¹⁶

Florida's Current Epidemic of Heroin Use

An estimated 1 million people in the U.S. are living with HIV/AIDS, and it has been estimated that one-third of those cases are linked directly or indirectly to injection drug use, including the injection of heroin.¹⁷ Recently the National Institute on Drug Abuse reported an epidemic of heroin use in South Florida and particularly in Miami-Dade County.¹⁸ The number of heroin-related deaths in Miami-Dade County jumped to 33 in 2012 from 15 in 2011, a 120 percent increase. Statewide, Florida has also seen an upswing in heroin deaths, which rose to 117 in 2012 from 62 in 2011, an increase of 89 percent.¹⁹

Florida Comprehensive Drug Abuse Prevention and Control Act

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates the above provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.²⁰

Moreover, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:²¹

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates the above provision is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.²²

¹⁵ Hansel E. Tookes, *et al.*, *A Comparison of Syringe Disposal Practices Among Injection Drug Users in a City with Versus a City Without Needle and Syringe Programs*, 123 DRUG & ALCOHOL DEPENDENCE 255 (2012), available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited March 5, 2014).

¹⁶ *Id.* at 255 (finding “44 syringes/1000 census blocks in San Francisco, and 371 syringes/1000 census blocks in Miami.”).

¹⁷ National Institute on Drug Abuse, *Drug abuse is a significant risk factor for HIV/AIDS in the U.S.*, (Oct. 2005) available at <http://www.drugabuse.gov/publications/topics-in-brief/linked-epidemics-drug-abuse-hiv-aids> (last visited March 5, 2014).

¹⁸ James N. Hall, *Drug Abuse Patterns and Trends in Miami-Dade and Broward Counties, Florida—Update: January 2014*, <http://www.drugabuse.gov/> (forthcoming March 2014) (on file with House Health Quality Subcommittee).

¹⁹ Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2012 Report*, (2013), available at <http://www.news-press.com/assets/pdf/A4212345924.PDF> (last visited March 5, 2014).

²⁰ A misdemeanor of the first degree is punishable by a definite term of imprisonment not exceeding 1 year or a fine not to exceed \$1,000.

²¹ Section 893.147(2), F.S.

²² A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years or a fine not to exceed \$5,000.

Federal Drug Paraphernalia Statute

Persons authorized by state law to possess or distribute drug paraphernalia are exempt from the federal drug paraphernalia statute.²³

Effect of Proposed Changes

The bill amends s. 381.0038, F.S., to require DOH to establish a 5 year needle and syringe exchange pilot program in Miami-Dade County. The pilot program must be administered by DOH or a designee, who may operate the pilot program at a fixed location or by using a mobile health unit. The designee may be a licensed hospital, a licensed health care clinic, a substance abuse treatment program, an HIV/AIDS service organization, or another nonprofit entity. The pilot program is to offer free, clean, and unused needles and hypodermic syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

The exchange program must:

- Provide maximum security of the exchange site and equipment;
- Account for the number, disposal, and storage of needles and syringes;
- Adopt any measure to control the use and dispersal of sterile needles and syringes;
- Strive for a 1 sterile to 1 used exchange ratio; and
- Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug-use prevention and treatment.

The bill provides that the possession, distribution, or exchange of needles or syringes as part of the pilot program does not violate the Florida Comprehensive Drug Abuse Prevention and Control Act under ch. 893, F.S., or any other law. However, pilot program staff and participants are not immune from prosecution for the possession or redistribution of needles or syringes in any form if acting outside of the pilot program.

The bill requires the collection of data for annual and final reporting purposes, but prohibits the collection of any personal identifying information from a participant. The pilot program expires on July 1, 2019, or if operated by a designee, 5 years after DOH designates an entity to operate the program. Six months prior to expiration, the Office of Program Policy Analysis and Government Accountability is required to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

The bill prohibits the use of state funds to operate the pilot program and specifies the use of grants and donations from private sources to fund the program.

The bill provides DOH the authority to promulgate rules to implement the pilot program.

The bill includes a severability clause²⁴ and provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Names the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

²³ 21 U.S.C. § 863(f)(1).

²⁴ A “severability clause” is a provision of a contract or statute that keeps the remaining provisions in force if any portion of that contract or statute is judicially declared void or unconstitutional. Courts may hold a law constitutional in one part and unconstitutional in another. Under such circumstances, a court may sever the valid portion of the law from the remainder and continue to enforce the valid portion. See *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So.2d 1276 (Fla. 1999); and *Wright v. State*, 351 So.2d 708 (Fla. 1977).

Section 2. Amends s. 381.0038, F.S., requiring DOH to establish a needle and syringe exchange program.

Section 3. Creates an unnumbered section to provide a severability clause.

Section 4. Provides an effective date of July 1, 2014.

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 pilot program required by the bill may significantly reduce state and local government expenditures for the treatment of blood borne diseases associated with intravenous drug use for individuals in Miami-Dade County.²⁵ The reduction in expenditures for such treatments will depend on the extent to which the needle and syringe exchange pilot program will reduce transmission of blood-borne diseases among intravenous drug users, their sexual partners, offspring, and others who might be at risk of transmission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

²⁵ The State of Florida and county governments incur costs for HIV/AIDS treatment through a variety of programs, including Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program. The lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars). Centers for Disease Control, *HIV Cost-effectiveness*, (Apr. 16, 2013) available at <http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/> (last visited March 5, 2014). Miami-Dade County has 3,274 reported cases of individuals living with HIV/AIDS that have an IDU-associated risk. Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Sept. 17, 2013), available at http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/HIV-AIDS-slide%20sets/IDU_2012.pdf (last visited March 5, 2014) (noting that HIV IDU infection risk includes IDU cases, men who have sex with men (MSM)/IDU, heterosexual sex with IDU, children of IDU mom). If 10 percent of those individuals with an IDU-associated risk had avoided infection, this would represent a savings in treatment costs of approximately \$124 million.

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 provides DOH the authority to promulgate rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Substitutes the term "drug-abuse" for "drug-use" for clarification.
- Provides an alternative expiration date for the pilot program, in case the expiration of the pilot program cannot be based on the date an entity is designated to operate the pilot program.
- Makes technical changes by correcting certain punctuation marks.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1 A bill to be entitled
2 An act relating to an infectious disease elimination
3 pilot program; creating the "Miami-Dade Infectious
4 Disease Elimination Act (IDEA)"; amending s. 381.0038,
5 F.S.; requiring the Department of Health to establish
6 a sterile needle and syringe exchange pilot program in
7 Miami-Dade County; providing for administration of the
8 pilot program by the department or a designee;
9 establishing pilot program criteria; providing that
10 the distribution of needles and syringes under the
11 pilot program is not a violation of the Florida
12 Comprehensive Drug Abuse Prevention and Control Act or
13 any other law; providing conditions under which a
14 pilot program staff member or participant may be
15 prosecuted; prohibiting the collection of participant
16 identifying information; providing for the pilot
17 program to be funded through private grants and
18 donations; providing for expiration of the pilot
19 program; requiring the Office of Program Policy
20 Analysis and Government Accountability to submit a
21 report and recommendations regarding the pilot program
22 to the Legislature; providing rulemaking authority;
23 providing for severability; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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

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Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange pilot program.—The Department of Health shall establish a program to educate the public about the threat of acquired immune deficiency syndrome and a sterile needle and syringe exchange pilot program.

(1) The acquired immune deficiency syndrome education program shall:

(a) Be designed to reach all segments of Florida's population;

(b) Contain special components designed to reach non-English-speaking and other minority groups within the state;

(c) Impart knowledge to the public about methods of transmission of acquired immune deficiency syndrome and methods of prevention;

(d) Educate the public about transmission risks in social, employment, and educational situations;

(e) Educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environments;

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high

53 risk for acquiring acquired immune deficiency syndrome;
 54 (g) Provide information and consultation to state agencies
 55 to educate all state employees; ~~and~~
 56 (h) Provide information and consultation to state and
 57 local agencies to educate law enforcement and correctional
 58 personnel and inmates;~~;~~
 59 (i) Provide information and consultation to local
 60 governments to educate local government employees;~~;~~
 61 (j) Make information available to private employers and
 62 encourage them to distribute this information to their
 63 employees;~~;~~
 64 (k) Contain special components which emphasize appropriate
 65 behavior and attitude change; ~~and~~
 66 (1) Contain components that include information about
 67 domestic violence and the risk factors associated with domestic
 68 violence and AIDS.
 69 (2) The education program designed by the Department of
 70 Health shall use ~~utilize~~ all forms of the media and shall place
 71 emphasis on the design of educational materials that can be used
 72 by businesses, schools, and health care providers in the regular
 73 course of their business.
 74 (3) The department may contract with other persons in the
 75 design, development, and distribution of the components of the
 76 education program.
 77 (4) The department shall establish a sterile needle and
 78 syringe exchange pilot program in Miami-Dade County. The pilot

79 program shall be administered by the department or the
 80 department's designee. The department may designate one of the
 81 following entities to operate the pilot program at a fixed
 82 location or through a mobile health unit: a hospital licensed
 83 under chapter 395, a health care clinic licensed under part X of
 84 chapter 400, a substance abuse treatment program, an HIV or AIDS
 85 service organization, or another nonprofit entity designated by
 86 the department. The pilot program shall offer the free exchange
 87 of clean, unused needles and hypodermic syringes for used
 88 needles and hypodermic syringes as a means to prevent the
 89 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
 90 diseases among intravenous drug users and their sexual partners
 91 and offspring.

92 (a) The pilot program shall:

93 1. Provide for maximum security of exchange sites and
 94 equipment, including an accounting of the number of needles and
 95 syringes in use, the number of needles and syringes in storage,
 96 safe disposal of returned needles, and any other measure that
 97 may be required to control the use and dispersal of sterile
 98 needles and syringes.

99 2. Strive for a one-to-one exchange, whereby the
 100 participant shall receive one sterile needle and syringe unit in
 101 exchange for each used one.

102 3. Make available educational materials; HIV counseling
 103 and testing; referral services to provide education regarding

104 | HIV, AIDS, and viral hepatitis transmission; and drug-abuse
 105 | prevention and treatment.

106 | (b) The possession, distribution, or exchange of needles
 107 | or syringes as part of the pilot program established by the
 108 | department or the department's designee is not a violation of
 109 | any part of chapter 893 or any other law.

110 | (c) A pilot program staff member, volunteer, or
 111 | participant is not immune from criminal prosecution for:

112 | 1. The possession of needles or syringes that are not a
 113 | part of the pilot program; or

114 | 2. Redistribution of needles or syringes in any form, if
 115 | acting outside the pilot program.

116 | (d) The pilot program shall collect data for annual and
 117 | final reporting purposes, which shall include information on the
 118 | number of participants served, the number of needles and
 119 | syringes exchanged and distributed, the demographic profiles of
 120 | the participants served, the number of participants entering
 121 | drug counseling and treatment, the number of participants
 122 | receiving HIV, AIDS, or viral hepatitis testing, and other data
 123 | deemed necessary for the pilot program. However, personal
 124 | identifying information may not be collected from a participant
 125 | for any purpose.

126 | (e) State funds may not be used to operate the pilot
 127 | program. The pilot program shall be funded through grants and
 128 | donations from private resources and funds.

129 (f) The pilot program shall expire July 1, 2019, or, if
 130 operated by a designee, 5 years after the entity is designated.
 131 Six months before the pilot program expires, the Office of
 132 Program Policy Analysis and Government Accountability shall
 133 submit a report to the President of the Senate and the Speaker
 134 of the House of Representatives that includes the data
 135 collection requirements established in this subsection; the
 136 rates of HIV, AIDS, viral hepatitis, or other blood-borne
 137 diseases before the pilot program began and every subsequent
 138 year thereafter; and a recommendation on whether to continue the
 139 pilot program.



140 (g) The department may adopt and develop rules to
 141 administer this subsection.

142 Section 3. If any provision of this act or its application
 143 to any person or circumstance is held invalid, the invalidity
 144 does not affect other provisions or applications of the act that
 145 can be given effect without the invalid provision or
 146 application, and to this end the provisions of this act are
 147 severable.

148 Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Municipal Governing Body Meetings
SPONSOR(S): Local & Federal Affairs Committee; Pigman and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 730

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Flegiel	Rojas
2) Government Operations Subcommittee		 Stramski	Williamson 
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution and Statutes require that the exercise of extra-territorial powers by a municipality be authorized by general or special law. These provisions have been interpreted to prohibit a municipality's governing body from holding meetings outside its boundaries absent enactment of a law authorizing such meetings.

This bill authorizes a municipal governing body to hold joint meetings with the governing body of the municipality's home county or the governing body of other municipalities to discuss and act on matters of mutual concern at a place and time prescribed by ordinance or resolution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Open Meetings:

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 any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public. Any act taken by a public body shall not be considered binding unless it is taken at a meeting open to the public.¹

Florida courts have held that "open to the public" means the public must be given a reasonable opportunity to attend the public meeting.² This requires that government meetings be held within a reasonable distance of the jurisdiction subject to the authority of the public body.

County Government Meeting Authority:

The Florida Constitution provides non-charter counties the power of self-government as is provided by general or special law.³ Charter counties have all powers of local self-government not inconsistent with general law or special law.⁴ Counties may hold special and regular meetings at "any appropriate public place in the county," after giving proper public notice.⁵ A legislative and governing body of a county may set the time and place of its official meetings.⁶ These provisions give charter and non-charter counties the authority to hold joint meetings with cities at any place within the county.

Municipal Government Meeting Authority:

The Florida Constitution provides municipalities with the governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and authorizes the exercise of any municipal power for municipal purposes except as otherwise provided by law.⁷ This provision allows municipalities to hold joint meeting with county governments. However, unlike the laws regulating county meetings, the laws regulating municipal meetings are not explicit as to where municipalities may meet.

The Florida Constitution requires that the exercise of extra-territorial powers by a municipality shall be as provided by general or special law.⁸ Municipal bodies are authorized to adopt legislation concerning any subject matter upon which the Legislature may act, except for: "[t]he subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution."⁹

The Florida Attorney General has recognized the Legislature's role in authorizing extraterritorial powers for municipalities. In a 2003 opinion concerning the authority of a municipality to meet roughly four miles outside its boundaries, the Attorney General wrote that city councils may not hold meetings

¹ Section 286.011(1), F.S.

² *Rhea v. School Bd. Of Alachua County*, 636 So.2d 1383 (Fla. 1st DCA 1994).

³ Art. VIII, Sec. 1(f), Florida Constitution.

⁴ Art. VIII, Sec. 1(g), Florida Constitution.

⁵ Section 125.001, F.S.

⁶ Section 125.01(1)(a), F.S.

⁷ Art. VIII, Sec. 2(b), Florida Constitution.

⁸ Art. VIII, Section 2(c), Florida Constitution.

⁹ Section 166.021(3)(a), F.S.

outside municipal limits without authorization from general or special law, and that all acts and proceedings at meetings without statutory authorization are void.¹⁰

In 2008, the Legislature enacted ch. 2008-286, L.O.F., authorizing the City of Belleair Beach's governing board to hold meetings outside the municipality's boundaries at such time and place as prescribed by ordinance, resolution or interlocal agreement. Language in the bill provided that the city council was encouraged to hold its meetings in close proximity to the people it serves.

In 2011, the Legislature enacted ch. 2011-147, L.O.F., creating s. 166.0213, F.S., which authorized municipalities with populations of 500 or less to hold meetings up to five miles outside their municipal boundaries.

Joint meetings between the governing bodies of cities and counties are common practice across the state. These meetings generally take place in the concerned city. However, legislative staff has found several instances of joint meetings held beyond municipal boundaries, including in the counties of Highlands, Charlotte and Indian River.¹¹ Joint meetings between municipalities are also common practice¹² and by their nature cannot take place in both concerned municipalities at the same time.

In 2010, a civil complaint was filed against the Town of Lake Placid Commission for holding joint meetings with the Highlands County Commission in the county seat of Sebring, located approximately 20 miles away from Lake Placid.¹³ The complaint alleged that the Town did not have the authority to meet beyond its municipal boundaries.¹⁴ The Circuit Court ruled in favor of the Town of Lake Placid on Summary Judgment. The case is presently on appeal to the Second District Court of Appeals.¹⁵

Effect of Proposed Changes

The bill explicitly authorizes municipality governing bodies to hold joint meetings with county governing bodies within which the municipality is located or with the governing body of another municipality. The bill requires municipalities to set the time and location of joint meetings by ordinance or resolution.

B. SECTION DIRECTORY:

Section 1: Creates s. 166.0213(2), F.S., authorizing a municipality to hold joint meetings with county governing bodies within which the municipality is located or with the governing body of another municipality at such a time and place as shall be prescribed by ordinance or resolution.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁰ Attorney General's Opinion 2003-03 (2003).

¹¹ List of Meeting Notices for Joint meetings held beyond municipal boundaries on file with LFAC staff.

¹² *Id.*

¹³ *Wiggins v. Town of Lake Placid*. FL. 10th Circuit Court (2010). Case #10-1012GCS. Verified Complaint Seeking Declaratory and Injunctive Relief.

¹⁴ *Id.*

¹⁵ See Docket for Case 10-1012GCS, on file with Highlands County Clerk of Court. <http://www.hcclerk.org/Home.aspx>.

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

2. Other:

The Florida Constitution's Sunshine Law requires public meetings to be noticed and open to the public.¹⁶ Florida courts have held that "open to the public" means the public must be given a reasonable opportunity to attend open public meetings.¹⁷ The First District Court of Appeals held that a public meeting 100 miles away from the relevant jurisdiction was a violation of the state's Sunshine Laws because the affected citizens were not given a "reasonable opportunity to attend."¹⁸

In determining whether citizens have a "reasonable opportunity to attend" courts balance the interests of the body holding the public meeting versus the interests of the public in attending (the *Rhea* test).¹⁹ Factors in the balancing test include the distance of the meeting from the constituents it is affecting, efforts of the public body to minimize the impact of the distance, and the need for the public body to hold the meeting at a location that is further away than normal from its constituency.²⁰ After passage of this bill, cities and counties would still have to comply with s. 286.011, F.S., and the *Rhea* test. Nothing in this bill alters the *Rhea* test or authorizes cities and counties to disregard Florida's Sunshine Law.

B. RULE-MAKING AUTHORITY:

None.

¹⁶ Section 24(b), Art. I of the State Constitution, and s. 286.011, F.S. (2013).

¹⁷ *Rhea v. School Bd. Of Alachua County*, 636 So.2d 1383 (Fla. 1st DCA 1994).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 1385-1386.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2014, the Local and Federal Affairs Committee adopted one amendment, striking the word "may" and adding the word "shall" at line 26, and reported the bill favorably as a committee substitute to a proposed committee bill.

This analysis has been updated to reflect the amendment.

CS/HB 503

2014

27 | ordinance or resolution.


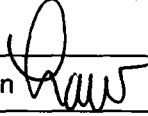
28 | Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 595 The Council on the Social Status of Black Men and Boys

SPONSOR(S): Civil Justice Subcommittee; Williams and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Government Operations Subcommittee		 Stramski	Williamson 
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

The Council on the Social Status of Black Men and Boys was established within the Department of Legal Affairs in 2006. The council consists of 19 appointed volunteer members who serve four year terms. The council studies conditions affecting black men and boys, proposes measures to alleviate underlying conditions affecting black men and boys, and develops local councils. The Office of the Attorney General provides staff and administrative support to the council. In addition to its mandatory duties, the council may:

- Access public data;
- Request public officials and agencies for assistance and research;
- Seek state and federal grants;
- Accept gifts for defraying costs of administration; and
- Work with or request information from Florida's traditionally black colleges and universities.

The bill:

- Provides for removal of a member of the council for absences;
- Directs the council to perform some of those functions which were previously discretionary;
- Adds to the discretionary duties of the council;
- Reduces the number of members required to form a quorum from 11 to nine;
- Provides that the council may reimburse per diem and travel expenses for individuals and entities that make presentations to the council regarding the council's mission or strategic vision; and
- Repeals the statute establishing a direct-support organization for the council.

The bill does not appear to have a fiscal impact on local governments. The bill may have an undetermined but likely minimal recurring negative fiscal impact on expenditures applicable to state government. See FISCAL COMMENTS.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Council on the Social Status of Black Men and Boys was established within the Department of Legal Affairs in 2006.¹ The council consists of 19 appointed volunteer² members who serve a four year term.³ A quorum consists of 11 members of the council.⁴ The council is directed by statute to:

- Study conditions affecting black men and boys;
- Propose measures to alleviate negative underlying conditions affecting black men and boys;
- Study other topics as suggested by the Legislature or chair of the council;
- Receive suggestions pertinent to applicable issues;
- Monitor the direct-support organization established by statute,⁵ and
- Develop a strategic program and funding initiative to establish local councils.⁶

The council may also:

- Access public data;⁷
- Request that public officials and agencies provide assistance and research;⁸
- Seek state and federal grants,
- Accept gifts to defray costs of administration;⁹ and
- Work with or request information from Florida's traditionally black colleges and universities.¹⁰

The Office of the Attorney General provides staff and administrative support to the council.¹¹ Council members are entitled to reimbursement for travel and per diem expenses.¹² The council is subject to public records and meetings laws,¹³ and its members must file a disclosure of financial interests.¹⁴

Effect of Bill

The bill provides that a member of the council is deemed to have vacated his or her position if the member has three consecutive unexcused absences, defined as failure to notify the chair in advance, or the member is absent from at least half of the council meetings over a twelve month period. The bill reduces the number of members required to obtain a quorum from 11 to nine. This is less than a majority of the council membership.

The bill directs the council to perform some of those functions that were previously discretionary, directing the council to:

- Access public records held by any state department or agency;
- Make direct requests to the Joint Legislative Auditing Committee¹⁵ for assistance with research and monitoring of the outcomes provided by the Office of Program Policy Analysis and Government Accountability,¹⁶

¹ Section 16.615, F.S.

² Section 16.615(10), F.S.

³ Section 16.615(2), F.S.

⁴ Section 16.615(8), F.S.

⁵ Section 16.616, F.S.

⁶ Section 16.615(4), F.S.

⁷ Section 16.615(5)(a), F.S.

⁸ Section 16.615(5)(b)(c)(d), F.S.

⁹ Section 16.615(5)(e), F.S.

¹⁰ Section 16.615(5)(f), F.S.

¹¹ Section 16.615(6), F.S.

¹² Section 16.615(10), F.S.

¹³ Section 16.615(11), F.S.

¹⁴ Section 16.615(12), F.S., citing s. 112.3145, F.S.

- Request through member legislators research assistance from the Office of Economic and Demographic Research;¹⁷
- Request information from the state or any political subdivision, municipal corporation, public officer, or governmental department thereof;
- Apply for and accept funds, grants, gifts, and services from the state, federal government, or other sources for administrative costs and for council duties; and
- Work directly with or request information from Florida's historically black colleges and universities.

The bill adds to the discretionary duties of the council by providing that it may:

- Identify initiatives and programs that support the council's mission and strategic vision;
- Study other topics suggested by the Legislature or as directed by the chair of the council; and
- Subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs for the council to:
 - Conduct additional research and studies that support the council's vision and strategic mission;
 - Provide information and assistance in the establishment of local Councils on the Social Status of Black Men and Boys; and
 - Host an annual statewide conference.

The bill also:

- Provides that the council may present its strategic findings at an annual statewide conference; and
- Provides that the council may reimburse per diem and travel expenses for individuals and entities that make presentations to the council regarding the council's mission or strategic vision at the same rate provided for public employees under s. 112.061, F.S. Strategic issues include:
 - Removing the barriers to healthy lifestyles, health care, and community-based support and prevention services;
 - Ensuring a commitment to education and lifelong learning;
 - Addressing the disproportionately high rate of unemployment and unstable economic conditions;
 - Addressing crime prevention and criminal justice issues that adversely and disproportionately affect black men and boys; and
 - Promoting community awareness, leadership, and sustainable community and agency partnerships.

The bill repeals s. 16.616, F.S., which directed the Department of Legal Affairs to establish a direct-support organization to support the council's goals. According to the Office of the Attorney General, the organization was not established.¹⁸ The repealed statute provides that in the event the organization is established and then ceases to exist, any moneys revert to the Department of Legal Affairs.¹⁹

The bill makes grammatical and stylistic changes that do not affect the meaning of the statute.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 16.615, F.S., relating to Council on the Social Status of Black Men and Boys.

Section 2 repeals s. 16.616, F.S., relating to the direct-support organization.

¹⁵ Rule 4.1(1)(c), Joint Rules of the Florida Legislature.

¹⁶ See s. 11.51, F.S.

¹⁷ Rule 3.1(1)(a), Joint Rules of the Florida Legislature.

¹⁸ As reported on February 11, 2014, by Rob Johnson, Director of Legislative Affairs for the Office of the Attorney General, Department of Legal Affairs.

¹⁹ Section 16.616(2)(d), F.S.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The portion of the bill expanding per diem reimbursements could have a negative recurring fiscal impact on state expenditures. This amount may be minimal. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Per diem change: The Office of the Attorney General did not provide an estimate of the additional cost of increasing the number of persons eligible for reimbursement of travel expenses. The office believes this additional expense can be absorbed within existing resources appropriated to the office for the benefit of the council. It is unclear how additional expenses can be absorbed within an existing budget unless other expenses of the office are somehow reduced.²⁰

Cooperation by other state agencies: The bill requires the council to ask other agencies for cooperation in providing research materials. At least one agency has commented that such cooperation may have an unknown negative fiscal impact.²¹ However, even without the changes made by this bill, the council has the authority to ask state agencies for assistance, and those agencies will not incur any financial cost unless they agree to provide the assistance. Accordingly, these portions of the bill do not appear likely to have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁰ See *supra*, fn. 18

²¹ According to the Agency Bill Analysis Request provided by the Office of Program Policy Analysis and Government Accountability, "The fiscal impact of HB 595 on OPPAGA cannot be determined at this time because the proposed language provides that the Council on the Social Status of Black Men and Boys shall make requests directly to the Joint Legislative Auditing Committee for assistance from OPPAGA with research and monitoring of outcomes on the broad range of issues within the mission of the council." Statement by the Office of Program Policy Analysis and Government Accountability uploaded on February 7, 2014 to <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx> [last reviewed February 11, 2014] and on file with the House of Representatives Civil Justice Subcommittee.

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

2. Other:

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:

Other Comments: Requests for Assistance from Legislative Entities

The bill requires the council to:

- Make direct requests to the Joint Legislative Auditing Committee for assistance with research and monitoring of the outcomes provided by the Office of Program Policy Analysis and Government Accountability; and
- Request, through council members who are also legislators, research assistance from the Office of Economic and Demographic Research.

The Joint Legislative Auditing Committee, the Office of Program Policy Analysis and Government Accountability, and the Office of Economic and Demographic Research, are governed by Joint Rule Three of the Joint Rules of the Florida Legislature. Joint Rule 3.1(2) provides, in part, that the offices established under the rule provide support services to the Legislature that are *determined by the President of the Senate and the Speaker of the House of Representatives* to be necessary.

The bill requires the council to make requests of these offices, without making the request through the presiding officers, in essence circumventing the authority of the presiding officers.

Other Comments: Quorum Requirement

The bill reduces the number of members required to obtain a quorum from 11 to nine. This is less than a majority of the council membership.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment repealed the statute creating the direct support organization of the council established in s. 16.616, F.S., thus eliminating the organization.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
2 An act relating to the Council on the Social Status of
3 Black Men and Boys; amending s. 16.615, F.S.;
4 providing criteria for removal of a member of the
5 council; revising the duties of the council;
6 authorizing the council to identify specified
7 initiatives and programs, study other topics suggested
8 by the Legislature or as directed by the chair of the
9 council, and, subject to legislative appropriations,
10 use funds appropriated to the Department of Legal
11 Affairs to perform certain tasks; revising what
12 constitutes a quorum of the council; authorizing the
13 council to present its findings and strategic issues
14 at an annual statewide conference; providing for
15 reimbursement for per diem and travel expenses for
16 individuals and entities that make presentations to
17 the council regarding the mission or strategic vision
18 of the council; repealing s. 16.616, F.S., relating to
19 a requirement that the department establish a direct-
20 support organization; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 16.615, Florida Statutes, is amended to
25 read:

26 16.615 Council on the Social Status of Black Men and

27 Boys.—

28 (1) The Council on the Social Status of Black Men and Boys
 29 is established within the Department of Legal Affairs and shall
 30 consist of 19 members appointed as follows:

31 (a) Two members of the Senate who are not members of the
 32 same political party, appointed by the President of the Senate
 33 with the advice of the Minority Leader of the Senate.

34 (b) Two members of the House of Representatives who are
 35 not members of the same political party, appointed by the
 36 Speaker of the House of Representatives with the advice of the
 37 Minority Leader of the House of Representatives.

38 (c) The Secretary of Children and Families ~~Family Services~~
 39 or his or her designee.

40 (d) The director of the Mental Health Program Office
 41 within the Department of Children and Families ~~Family Services~~
 42 or his or her designee.

43 (e) The State Surgeon General or his or her designee.

44 (f) The Commissioner of Education or his or her designee.

45 (g) The Secretary of Corrections or his or her designee.

46 (h) The Attorney General or his or her designee.

47 (i) The Secretary of Management Services or his or her
 48 designee.

49 (j) The executive director of the Department of Economic
 50 Opportunity or his or her designee.

51 (k) A businessperson who is an African American, as
 52 defined in s. 760.80(2)(a), appointed by the Governor.

53 (1) Two persons appointed by the President of the Senate
 54 who are not members of the Legislature or employed by state
 55 government. One of the appointees must be a clinical
 56 psychologist.

57 (m) Two persons appointed by the Speaker of the House of
 58 Representatives who are not members of the Legislature or
 59 employed by state government. One of the appointees must be an
 60 Africana studies professional.

61 (n) The deputy secretary for Medicaid in the Agency for
 62 Health Care Administration or his or her designee.

63 (o) The Secretary of Juvenile Justice or his or her
 64 designee.

65 (2) Each member of the council shall be appointed to a 4-
 66 year term; however, for the purpose of providing staggered
 67 terms, of the initial appointments, 9 members shall be appointed
 68 to 2-year terms and 10 members shall be appointed to 4-year
 69 terms. A member of the council may be removed at any time by the
 70 member's appointing authority, who shall fill the vacancy on the
 71 council. A member of the council is deemed to have vacated his
 72 or her position on the council and the member's appointing
 73 authority shall fill the vacated position if:

74 (a) The member has three consecutive unexcused absences.
 75 As used in this paragraph, the term "unexcused absence" means
 76 the member's failure to notify the chair that the member will
 77 not be present at a meeting of the council; or

78 (b) The member is absent for at least 50 percent of the

79 council meetings within a 12-month period.

80 (3) (a) At the first meeting of the council each year, the
81 members shall elect a chair and a vice chair.

82 (b) A vacancy in the office of chair or vice chair shall
83 be filled by vote of the remaining members.

84 (4) ~~(a)~~ The council shall:

85 (a) Make a systematic study of the conditions affecting
86 black men and boys, including, but not limited to, homicide
87 rates, arrest and incarceration rates, poverty, violence, drug
88 abuse, death rates, disparate annual income levels, school
89 performance in all grade levels, including postsecondary levels,
90 and health issues.

91 ~~(b) The council shall~~ Propose measures to alleviate and
92 correct the underlying causes of the conditions described in
93 paragraph (a). These measures may consist of changes to the law
94 or systematic changes that can be implemented without
95 legislative action.

96 ~~(c) The council may study other topics suggested by the~~
97 ~~Legislature or as directed by the chair of the council.~~

98 (c) ~~(d)~~ The council shall Receive suggestions or comments
99 pertinent to the applicable issues from members of the
100 Legislature, governmental agencies, public and private
101 organizations, and private citizens.

102 ~~(e) The council shall monitor outcomes of the direct-~~
103 ~~support organization created pursuant to s. 16.616.~~

104 (d) ~~(f)~~ The council shall Develop a strategic program and

105 funding initiative to establish local Councils on the Social
 106 Status of Black Men and Boys.

107 (e) Access data held by any state department or agency,
 108 which is otherwise a public record.

109 (f) Make requests directly to the Joint Legislative
 110 Auditing Committee for assistance with the research and
 111 monitoring of the outcomes provided by the Office of Program
 112 Policy Analysis and Government Accountability.

113 (g) Request, through council members who are also
 114 legislators, research assistance from the Office of Economic and
 115 Demographic Research within the Legislature.

116 (h) Request information and assistance from the state or
 117 any political subdivision, municipal corporation, public
 118 officer, or governmental department thereof.

119 (i) Apply for and accept funds, grants, gifts, and
 120 services from the state, the Federal Government, or any of its
 121 agencies, or any other public or private source for the purpose
 122 of defraying clerical and administrative costs as may be
 123 necessary for carrying out its duties under this section.

124 (j) Work directly with, or request information and
 125 assistance on issues pertaining to education from, this state's
 126 historically black colleges and universities.

127 (5) The council may:

128 (a) Identify initiatives and programs that support the
 129 council's mission and strategic vision.

130 (b) Study other topics suggested by the Legislature or as

131 directed by the chair of the council.

132 (c) Subject to legislative appropriations, use funds
 133 appropriated to the Department of Legal Affairs for the council
 134 to:

135 1. Conduct additional research and studies that support
 136 the council's mission and strategic vision.

137 2. Provide information and assistance in the establishment
 138 of local Councils on the Social Status of Black Men and Boys.

139 3. Host an annual statewide conference as provided in
 140 paragraph (9) (a).

141 ~~(a) Access data held by any state departments or agencies,~~
 142 ~~which data is otherwise a public record.~~

143 ~~(b) Make requests directly to the Joint Legislative~~
 144 ~~Auditing Committee for assistance with research and monitoring~~
 145 ~~of outcomes by the Office of Program Policy Analysis and~~
 146 ~~Government Accountability.~~

147 ~~(c) Request, through council members who are also~~
 148 ~~legislators, research assistance from the Office of Economic and~~
 149 ~~Demographic Research within the Florida Legislature.~~

150 ~~(d) Request information and assistance from the state or~~
 151 ~~any political subdivision, municipal corporation, public~~
 152 ~~officer, or governmental department thereof.~~

153 ~~(e) Apply for and accept funds, grants, gifts, and~~
 154 ~~services from the state, the Federal Government or any of its~~
 155 ~~agencies, or any other public or private source for the purpose~~
 156 ~~of defraying clerical and administrative costs as may be~~

157 | ~~necessary for carrying out its duties under this section.~~

158 | ~~(f) Work directly with, or request information and~~
 159 | ~~assistance on issues pertaining to education from, Florida's~~
 160 | ~~historically black colleges and universities.~~

161 | (6) The Office of the Attorney General shall provide staff
 162 | and administrative support to the council.

163 | (7) The council shall meet quarterly and at other times at
 164 | the call of the chair or as determined by a majority of council
 165 | members and approved by the Attorney General.

166 | (8) Nine ~~Eleven~~ of the members of the council constitute a
 167 | quorum, and an affirmative vote of a majority of the members
 168 | present is required for final action.

169 | (9)(a) The council shall issue an ~~its first~~ annual report
 170 | ~~by December 15, 2007, and by~~ December 15 of each ~~following~~ year,
 171 | stating the findings, conclusions, and recommendations of the
 172 | council. The council shall submit the report to the Governor,
 173 | the President of the Senate, the Speaker of the House of
 174 | Representatives, and the chairs ~~chairpersons~~ of the standing
 175 | committees of jurisdiction in each house ~~chamber~~. The council
 176 | may also present its findings and its strategic issues regarding
 177 | the status of black men and boys at an annual statewide
 178 | conference hosted by the council. The strategic issues include
 179 | the following:

180 | 1. Removing the barriers to healthy lifestyles, health
 181 | care, and community-based support and prevention services.

182 | 2. Ensuring a commitment to education and lifelong

183 learning.

184 3. Addressing the disproportionately high rate of
 185 unemployment and unstable economic conditions.

186 4. Addressing crime prevention and criminal justice issues
 187 that adversely and disproportionately affect black men and boys.

188 5. Promoting community awareness, leadership, and
 189 sustainable community and agency partnerships.

190 (b) The initial report must include the findings of an
 191 investigation into factors causing black-on-black crime from the
 192 perspective of public health related to mental health, other
 193 health issues, cultural disconnection, and cultural identity
 194 trauma.

195 (10) Members of the council shall serve without
 196 compensation. Members are entitled to reimbursement for per diem
 197 and travel expenses as provided in s. 112.061. State officers
 198 and employees shall be reimbursed from the budget of the agency
 199 through which they serve. Other members may be reimbursed by the
 200 Department of Legal Affairs. The council may also reimburse per
 201 diem and travel expenses at the same rate provided for public
 202 employees under s. 112.061 for individuals and entities that
 203 make presentations to the council regarding the council's
 204 mission or strategic vision. These individuals and entities
 205 shall be paid from funds appropriated to the council for that
 206 purpose.

207 (11) The council and any subcommittees it forms are
 208 subject to ~~the provisions of~~ chapter 119, related to public

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2014

209 records, and ~~the provisions of~~ chapter 286, related to public
 210 meetings.

211 (12) Each member of the council who is not otherwise
 212 required to file a financial disclosure statement pursuant to s.
 213 8, Art. II of the State Constitution or s. 112.3144~~7~~, must file a
 214 disclosure of financial interests pursuant to s. 112.3145.

215 Section 2. Section 16.616, Florida Statutes, is repealed.

216 Section 3. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Williams, A. offered the following:

Amendment

Remove lines 109-115



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Williams, A. offered the following:

Amendment (with title amendment)

Remove line 166 and insert:

(8) Eleven of the members of the council constitute a

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

Remove lines 11-12 and insert:

Affairs to perform certain tasks; authorizing the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 675 Pub. Rec./Office of Financial Regulation
SPONSOR(S): Insurance & Banking Subcommittee; Broxson
TIED BILLS: CS/HB 673 **IDEN./SIM. BILLS:** CS/SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. Currently, s. 655.057, F.S., exempts certain records held by the OFR relating to the supervision and regulation of financial institutions chartered in Florida.

The bill creates a limited public records exemption for informal enforcement actions as well as an exemption for trade secrets that are held by the OFR in accordance with its statutory duties with respect to the Codes. In addition, the bill defines:

- Examination report,
- Informal enforcement action,
- Working papers, and
- Personal financial information.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, it also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that HB 673 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Fla. Const. art. I, s. 24.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- 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 under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁸ Florida Attorney General Opinion 85-62.

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁰ *Supra* fn. 1.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ *Supra* fn. 1.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Supervision of State-Chartered Financial Institutions

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

House Bill 673 (2014), which is linked to this bill, amends a number of provisions throughout the Codes.

Current Public Records Exemptions Under the Codes

Currently, s. 655.057, F.S., of the Codes contains the following public records exemptions:

- All records and information relating to an "active" investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, the following information remains confidential and exempt to the extent that disclosure would:
 - Jeopardize the integrity of another active investigation;
 - Impair the safety and soundness of the financial institution;
 - Reveal personal financial information;
 - Reveal the identity of a confidential source;
 - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
 - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers* or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
 - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within 1 year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Florida-chartered credit unions and mutual associations are required to maintain and submit to the OFR a list of their members' names and residences. This list of members is confidential and exempt.
- Florida-chartered banks, trust companies, and stock associations are required to maintain and produce to the OFR lists of their shareholders' names, addresses, and number of shares held by each shareholder. Any portion of this list which reveals the shareholders' identities is confidential and exempt.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are "confidential" and may only be made available to specified persons, including the OFR.¹⁸ However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the Sunshine Law, unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.¹⁹ This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

¹⁸ In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the Codes.

¹⁹ Florida Attorney General Opinion 07-27.

Effect of the Bill

Informal Enforcement Actions

The bill creates a limited exemption for “informal enforcement actions” by the OFR, which the bill defines as “a board resolution, document of resolution, or an agreement in writing between the office and a financial institution” that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action²⁰ is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution, reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institution. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.²¹

Trade Secrets

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S.,²² and that are held by the OFR in accordance with its statutory duties with respect to the Codes. The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

Definitions

In addition to creating a definition of “informal enforcement action” for the new exemption, the following terms are defined in the bill to clarify existing exemptions in s. 655.057, F.S.:

- Examination report,
- Working papers,²³ and
- Personal financial information.

Statement of Public Necessity

Section 2 of the bill is the statement of public necessity as required by the State Constitution. It contains:

- Legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and
- Identified public purposes for exempting informal enforcement actions and trade secrets.

²⁰ Generally, the OFR initiates a formal enforcement action with a cease and desist order issued under s. 655.033, F.S., or a suspension or removal order under s. 655.037, F.S. Pursuant to s. 655.0321, F.S., the OFR is required to consider the public purposes stated in s. 119.14(4)(b), F.S., in determining whether the hearings, proceedings, and documents relating to these formal enforcement actions shall be closed/confidential and exempt from s. 286.011 and s. 119.071(1), F.S., respectively.

²¹ According to the OFR, federal courts have broadly construed 5 U.S.C. §552(b)(8) of the federal Freedom of Information Act, which exempts matters contained in or related to examination, operating, or condition reports prepared by federal financial supervisory and regulatory agencies. E-mail from the OFR (received October 18, 2014), on file with the Insurance & Banking Subcommittee.

²² HB 673 creates s. 655.0591, F.S., to provide a statutory procedure when a person required to submit documents to the OFR pursuant to the Codes claims that such documents contain a trade secret.

²³ The bill’s definition of “working papers” is substantially similar to the definition of “work papers” in s. 624.319(3)(b)1., F.S., of the Insurance Code.

The bill also amends current exemptions in s. 655.057, F.S., to make references to s. 24(a), Art. I of the State Constitution, instead of only s. 119.07(1), F.S. The bill provides that this section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides a contingent effective date.

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:

The bill's protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, 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 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:

Vote Requirement and Public Necessity Statement for Public Records Bills

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

Subject Requirement

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created public-records or public-meetings exemption.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Pre-1993 Exemptions

The State Constitution provides that only the Legislature may create an exemption from public record requirements.²⁴ Such exemption must be created by general law, passed by a two-thirds vote of each house of the Legislature. It must provide a statement of public necessity and be as narrowly drafted as possible to accomplish the stated public purpose.²⁵ Because the constitutional provision took effect on July 1, 1993, any public record exemption already in law on that date was grandfathered in pursuant to the State Constitution.²⁶ A pre-1993 exemption is only made subject to the constitutional requirements if it is expanded in scope, thereby, effectively creating a new exemption for an additional category of public record.

This bill amends current public record exemptions that were created before 1993 to add cross-references to Art. I, s. 24(a) of the State Constitution. However, this change appears inappropriate because those exemptions were created prior to the 1993 amendment and, as such, were grandfathered in under Art. I, s. 24(d) of the State Constitution.

Other Comments: Open Government Sunset Review Act

The bill provides that the entire section is made subject to repeal on October 2, 2019, pursuant to the Open Government Sunset Review Act. However, only two subsections create new public record exemptions. As such, it is recommended that only those subsections be made subject to repeal on October 2, 2019.

Drafting Issue: Public Necessity Statement

The public necessity statement is an unnumbered section of law that is codified in the Laws of Florida. As such, references to sections of law must include reference to the Florida Statutes. On line 262 of the bill, it references s. 688.002 but fails to include reference to the Florida Statutes.

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

²⁵ *Id.*

²⁶ Section 24(d), Art. I of the State Constitution.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the original bill's exemption for working papers, since the Codes already exempt working papers,
- Removed the exemption for examination reports and working papers for subsidiaries, affiliates, and service corporations,
- Created a trade secrets exemption,
- Created a limited exemption for informal enforcement actions,
- Made references to s. 24(a), Art. I of the State Constitution instead of only s. 119.07(1) for all current and new exemptions in s. 655.057, F.S.,
- Subjected the entire section to Open Government Sunset Review,
- Retained the bill's definitions of examination report, informal enforcement action, and personal financial information, and
- Provided a more specific definition of "working papers."

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee

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A bill to be entitled
 An act relating to public records; amending s.
 655.057, F.S.; providing an exemption from public
 records requirements for certain informal enforcement
 actions by the Office of Financial Regulation, to
 which penalties apply for willful disclosure of such
 confidential information; providing an exemption from
 public records requirements for certain trade secrets
 held by the office, to which penalties apply for
 willful disclosure of such confidential information;
 providing for the release of certain records in
 certain circumstances; providing definitions;
 providing for future legislative review and repeal of
 the exemption; providing a statement of public
 necessity; providing a contingent effective date.

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

Section 1. Section 655.057, Florida Statutes, is amended
 to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and
 except for such portions thereof which are otherwise public
 record, all records and information relating to an investigation
 by the office are confidential and exempt from the provisions of
 s. 119.07(1) and s. 24(a), Art. I of the State Constitution

27 | until such investigation is completed or ceases to be active.
 28 | For purposes of this subsection, an investigation is considered
 29 | "active" while such investigation is being conducted by the
 30 | office with a reasonable, good faith belief that it may lead to
 31 | the filing of administrative, civil, or criminal proceedings. An
 32 | investigation does not cease to be active if the office is
 33 | proceeding with reasonable dispatch, and there is a good faith
 34 | belief that action may be initiated by the office or other
 35 | administrative or law enforcement agency. After an investigation
 36 | is completed or ceases to be active, portions of such records
 37 | relating to the investigation shall be confidential and exempt
 38 | from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 39 | State Constitution to the extent that disclosure would:

- 40 | (a) Jeopardize the integrity of another active
- 41 | investigation;
- 42 | (b) Impair the safety and soundness of the financial
- 43 | institution;
- 44 | (c) Reveal personal financial information;
- 45 | (d) Reveal the identity of a confidential source;
- 46 | (e) Defame or cause unwarranted damage to the good name or
- 47 | reputation of an individual or jeopardize the safety of an
- 48 | individual; or
- 49 | (f) Reveal investigative techniques or procedures.
- 50 | (2) Except as otherwise provided in this section and
- 51 | except for such portions thereof which are public record,
- 52 | reports of examinations, operations, or condition, including

53 | working papers, or portions thereof, prepared by, or for the use
 54 | of, the office or any state or federal agency responsible for
 55 | the regulation or supervision of financial institutions in this
 56 | state are confidential and exempt from the provisions of s.
 57 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

58 | However, such reports or papers or portions thereof may be
 59 | released to:

- 60 | (a) The financial institution under examination;
- 61 | (b) Any holding company of which the financial institution
 62 | is a subsidiary;
- 63 | (c) Proposed purchasers if necessary to protect the
 64 | continued financial viability of the financial institution, upon
 65 | prior approval by the board of directors of such institution;
- 66 | (d) Persons proposing in good faith to acquire a
 67 | controlling interest in or to merge with the financial
 68 | institution, upon prior approval by the board of directors of
 69 | such financial institution;
- 70 | (e) Any officer, director, committee member, employee,
 71 | attorney, auditor, or independent auditor officially connected
 72 | with the financial institution, holding company, proposed
 73 | purchaser, or person seeking to acquire a controlling interest
 74 | in or merge with the financial institution; or
- 75 | (f) A fidelity insurance company, upon approval of the
 76 | financial institution's board of directors. However, a fidelity
 77 | insurance company may receive only that portion of an
 78 | examination report relating to a claim or investigation being

79 | conducted by such fidelity insurance company.

80 | (g) Examination, operation, or condition reports of a
 81 | financial institution shall be released by the office within 1
 82 | year after the appointment of a liquidator, receiver, or
 83 | conservator to such financial institution. However, any portion
 84 | of such reports which discloses the identities of depositors,
 85 | bondholders, members, borrowers, or stockholders, other than
 86 | directors, officers, or controlling stockholders of the
 87 | institution, shall remain confidential and exempt from the
 88 | provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 89 | Constitution.

90 |
 91 | Any confidential information or records obtained from the office
 92 | pursuant to this paragraph shall be maintained as confidential
 93 | and exempt from the provisions of s. 119.07(1) and s. 24(a),
 94 | Art. I of the State Constitution.

95 | (3) Except as otherwise provided in this section and
 96 | except for such portions thereof which are otherwise public
 97 | record, after an investigation relating to an informal
 98 | enforcement action is completed or ceases to be active, informal
 99 | enforcement actions are confidential and exempt from s.
 100 | 119.07(1) and s. 24(a), Art. I of the State Constitution to the
 101 | extent that disclosure would:

102 | (a) Jeopardize the integrity of another active
 103 | investigation.

104 | (b) Impair the safety and soundness of the financial

105 | institution.

106 | (c) Reveal personal financial information.

107 | (d) Reveal the identity of a confidential source.

108 | (e) Defame or cause unwarranted damage to the good name or

109 | reputation of an individual or jeopardize the safety of an

110 | individual.

111 | (f) Reveal investigative techniques or procedures.

112 | (4) Except as otherwise provided in this section and

113 | except for such portions thereof which are otherwise public

114 | record, trade secrets, as defined in s. 688.002, that comply

115 | with s. 655.0591, and that are held by the office in accordance

116 | with its statutory duties with respect to the financial

117 | institutions codes, are confidential and exempt from s.

118 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

119 | ~~(5)~~⁽³⁾ The provisions of this section do not prevent or

120 | restrict:

121 | (a) Publishing reports required to be submitted to the

122 | office pursuant to s. 655.045(2)(a) or required by applicable

123 | federal statutes or regulations to be published.

124 | (b) Furnishing records or information to any other state,

125 | federal, or foreign agency responsible for the regulation or

126 | supervision of financial institutions, including Federal Home

127 | Loan Banks.

128 | (c) Disclosing or publishing summaries of the condition of

129 | financial institutions and general economic and similar

130 | statistics and data, provided that the identity of a particular

131 financial institution is not disclosed.

132 (d) Reporting any suspected criminal activity, with
 133 supporting documents and information, to appropriate law
 134 enforcement and prosecutorial agencies.

135 (e) Furnishing information upon request to the Chief
 136 Financial Officer or the Division of Treasury of the Department
 137 of Financial Services regarding the financial condition of any
 138 financial institution that is, or has applied to be, designated
 139 as a qualified public depository pursuant to chapter 280.

140

141 Any confidential information or records obtained from the office
 142 pursuant to this subsection shall be maintained as confidential
 143 and exempt from the provisions of s. 119.07(1) and s. 24(a),
 144 Art. I of the State Constitution.

145 (6) (a) (4) (a) Orders of courts or of administrative law
 146 judges for the production of confidential records or information
 147 shall provide for inspection in camera by the court or the
 148 administrative law judge and, after the court or administrative
 149 law judge has made a determination that the documents requested
 150 are relevant or would likely lead to the discovery of admissible
 151 evidence, said documents shall be subject to further orders by
 152 the court or the administrative law judge to protect the
 153 confidentiality thereof. Any order directing the release of
 154 information shall be immediately reviewable, and a petition by
 155 the office for review of such order shall automatically stay
 156 further proceedings in the trial court or the administrative

157 hearing until the disposition of such petition by the reviewing
 158 court. If any other party files such a petition for review, it
 159 will operate as a stay of such proceedings only upon order of
 160 the reviewing court.

161 (b) Confidential records and information furnished
 162 pursuant to a legislative subpoena shall be kept confidential by
 163 the legislative body or committee which received the records or
 164 information, except in a case involving investigation of charges
 165 against a public official subject to impeachment or removal, and
 166 then disclosure of such information shall be only to the extent
 167 determined by the legislative body or committee to be necessary.

168 (7)~~(5)~~ Every credit union and mutual association shall
 169 maintain, in the principal office where its business is
 170 transacted, full and correct records of the names and residences
 171 of all the members of the credit union or mutual association.
 172 Such records shall be subject to the inspection of all the
 173 members of the credit union or mutual association, and the
 174 officers authorized to assess taxes under state authority,
 175 during business hours of each business day. A current list of
 176 members shall be made available to the office's examiners for
 177 their inspection and, upon the request of the office, shall be
 178 submitted to the office. Except as otherwise provided in this
 179 subsection, the list of the members of the credit union or
 180 mutual association is confidential and exempt from the
 181 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 182 Constitution.

183 ~~(8)(6)~~ Every bank, trust company, and stock association
 184 shall maintain, in the principal office where its business is
 185 transacted, full and complete records of the names and
 186 residences of all the shareholders of the bank, trust company,
 187 or stock association and the number of shares held by each. Such
 188 records shall be subject to the inspection of all the
 189 shareholders of the bank, trust company, or stock association,
 190 and the officers authorized to assess taxes under state
 191 authority, during business hours of each banking day. A current
 192 list of shareholders shall be made available to the office's
 193 examiners for their inspection and, upon the request of the
 194 office, shall be submitted to the office. Except as otherwise
 195 provided in this subsection, any portion of this list which
 196 reveals the identities of the shareholders is confidential and
 197 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 198 of the State Constitution.

199 ~~(9)(7)~~ Materials supplied to the office or to employees of
 200 any financial institution by other governmental agencies,
 201 federal or state, shall remain the property of the submitting
 202 agency or the corporation, and any document request must be made
 203 to the appropriate agency. Any confidential documents supplied
 204 to the office or to employees of any financial institution by
 205 other governmental agencies, federal or state, shall be
 206 confidential and exempt from the provisions of s. 119.07(1) and
 207 s. 24(a), Art. I of the State Constitution. Such information
 208 shall be made public only with the consent of such agency or the

209 corporation.

210 ~~(10)(8)~~ Examination reports, investigatory records,
 211 applications, and related information compiled by the office, or
 212 photographic copies thereof, shall be retained by the office for
 213 a period of at least 10 years.

214 ~~(11)(9)~~ A copy of any document on file with the office
 215 which is certified by the office as being a true copy may be
 216 introduced in evidence as if it were the original. The
 217 commission shall establish a schedule of fees for preparing true
 218 copies of documents.

219 (12) For purposes of this section, the term:

220 (a) "Examination report" means records submitted to or
 221 prepared by the office as part of the office's duties performed
 222 pursuant to s. 655.012 or s. 655.045(1).

223 (b) "Informal enforcement action" means a board
 224 resolution, a document of resolution, or an agreement in writing
 225 between the office and a financial institution that:

226 1. The office imposes on an institution when the office
 227 considers the administrative enforcement guidelines in s.
 228 655.031 and determines that a formal enforcement action is not
 229 an appropriate administrative remedy.

230 2. Sets forth a program of corrective action to address
 231 one or more safety and soundness deficiencies and violations of
 232 law or rule at the institution.

233 3. Is not subject to enforcement by imposition of an
 234 administrative fine pursuant to s. 655.041.

235 | (c) "Personal financial information" means:
 236 | 1. Information relating to the existence, nature, source,
 237 | or amount of a person's personal income, expenses, or debt.
 238 | 2. Information relating to a person's financial
 239 | transactions of any kind.
 240 | 3. Information relating to the existence, identification,
 241 | nature, or value of a person's assets, liabilities, or net
 242 | worth.
 243 | (d) "Working papers" means the records of the procedures
 244 | followed, the tests performed, the information obtained, and the
 245 | conclusions reached in an examination or investigation performed
 246 | under s. 655.032 or s. 655.045. Working papers include planning
 247 | documentation, work programs, analyses, memoranda, letters of
 248 | confirmation and representation, abstracts of the books and
 249 | records of a financial institution as defined in s.
 250 | 655.005(1)(i), and schedules or commentaries prepared or
 251 | obtained in the course of such examination or investigation.
 252 | ~~(13)~~~~(10)~~ Any person who willfully discloses information
 253 | made confidential by this section is guilty of a felony of the
 254 | third degree, punishable as provided in s. 775.082, s. 775.083,
 255 | or s. 775.084.
 256 | (14) This section is subject to the Open Government Sunset
 257 | Review Act in accordance with s. 119.15 and shall stand repealed
 258 | on October 2, 2019, unless reviewed and saved from repeal
 259 | through reenactment by the Legislature.
 260 | Section 2. (1) The Legislature finds that it is a public

261 | necessity that informal enforcement actions and trade secrets,
 262 | as defined in s. 688.002, must be kept confidential and exempt
 263 | from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 264 | the State Constitution.

265 | (2) Public disclosure of an informal enforcement action
 266 | could further impair the safety and soundness of a financial
 267 | institution that is subject to the action. Furthermore, the
 268 | public disclosure of this information could erode public
 269 | confidence in financial institutions and the financial
 270 | institution system in this state and may lead to a reduced level
 271 | of protection of the interests of the depositors and creditors
 272 | of financial institutions. Maintaining informal enforcement
 273 | actions as confidential and exempt from s. 119.07(1), Florida
 274 | Statutes, and s. 24(a), Article I of the State Constitution
 275 | will:

276 | (a) Provide the same protections for financial
 277 | institutions chartered by this state as are available to
 278 | financial institutions chartered under federal law and by other
 279 | states.

280 | (b) Maintain public confidence in financial institutions
 281 | subject to the financial institutions codes.

282 | (c) Protect the safety and soundness of the financial
 283 | institution system in this state.

284 | (d) Protect the interests of the depositors and creditors
 285 | of financial institutions in this state.

286 | (e) Promote the opportunity for state-chartered financial

287 institutions to be and remain competitive with financial
 288 institutions chartered by other states or the United States.

289 (f) Provide for and promote the purposes of the financial
 290 institutions codes as set forth in s. 655.001, Florida Statutes.

291 (3) A trade secret derives independent economic value,
 292 actual or potential, from not being generally known to, and not
 293 readily ascertainable by, other persons who can obtain economic
 294 value from its disclosure or use. Without an exemption for a
 295 trade secret held by the Office of Financial Regulation, that
 296 trade secret becomes a public record when received and must be
 297 divulged upon request. Divulging a trade secret under the public
 298 records laws would destroy the value of that property, causing a
 299 financial loss to the person or entity submitting the trade
 300 secret. Release of that information would give business
 301 competitors an unfair advantage and weaken the position of the
 302 person or entity supplying the trade secret in the marketplace.

303 Section 3. This act shall take effect on the same date
 304 that HB 673 or similar legislation takes effect, if such
 305 legislation is adopted in the same legislative session or an
 306 extension thereof and becomes 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	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representative Broxson offered the following:

Amendment

Remove lines 26-262 and insert:

7 s. 119.07(1) until such investigation is completed or ceases to
8 be active. For purposes of this subsection, an investigation is
9 considered "active" while such investigation is being conducted
10 by the office with a reasonable, good faith belief that it may
11 lead to the filing of administrative, civil, or criminal
12 proceedings. An investigation does not cease to be active if the
13 office is proceeding with reasonable dispatch, and there is a
14 good faith belief that action may be initiated by the office or
15 other administrative or law enforcement agency. After an
16 investigation is completed or ceases to be active, portions of
17 such records relating to the investigation shall be confidential



Amendment No.

18 and exempt from the provisions of s. 119.07(1) to the extent
19 that disclosure would:

20 (a) Jeopardize the integrity of another active
21 investigation;

22 (b) Impair the safety and soundness of the financial
23 institution;

24 (c) Reveal personal financial information;

25 (d) Reveal the identity of a confidential source;

26 (e) Defame or cause unwarranted damage to the good name or
27 reputation of an individual or jeopardize the safety of an
28 individual; or

29 (f) Reveal investigative techniques or procedures.

30 (2) Except as otherwise provided in this section and
31 except for such portions thereof which are public record,
32 reports of examinations, operations, or condition, including
33 working papers, or portions thereof, prepared by, or for the use
34 of, the office or any state or federal agency responsible for
35 the regulation or supervision of financial institutions in this
36 state are confidential and exempt from the provisions of s.
37 119.07(1). However, such reports or papers or portions thereof
38 may be released to:

39 (a) The financial institution under examination;

40 (b) Any holding company of which the financial institution
41 is a subsidiary;



Amendment No.

42 (c) Proposed purchasers if necessary to protect the
43 continued financial viability of the financial institution, upon
44 prior approval by the board of directors of such institution;

45 (d) Persons proposing in good faith to acquire a
46 controlling interest in or to merge with the financial
47 institution, upon prior approval by the board of directors of
48 such financial institution;

49 (e) Any officer, director, committee member, employee,
50 attorney, auditor, or independent auditor officially connected
51 with the financial institution, holding company, proposed
52 purchaser, or person seeking to acquire a controlling interest
53 in or merge with the financial institution; or

54 (f) A fidelity insurance company, upon approval of the
55 financial institution's board of directors. However, a fidelity
56 insurance company may receive only that portion of an
57 examination report relating to a claim or investigation being
58 conducted by such fidelity insurance company.

59 (g) Examination, operation, or condition reports of a
60 financial institution shall be released by the office within 1
61 year after the appointment of a liquidator, receiver, or
62 conservator to such financial institution. However, any portion
63 of such reports which discloses the identities of depositors,
64 bondholders, members, borrowers, or stockholders, other than
65 directors, officers, or controlling stockholders of the
66 institution, shall remain confidential and exempt from the
67 provisions of s. 119.07(1).



Amendment No.

68
69 Any confidential information or records obtained from the office
70 pursuant to this paragraph shall be maintained as confidential
71 and exempt from the provisions of s. 119.07(1).

72 (3) Except as otherwise provided in this section and
73 except for such portions thereof which are otherwise public
74 record, after an investigation relating to an informal
75 enforcement action is completed or ceases to be active, informal
76 enforcement actions are confidential and exempt from s.
77 119.07(1) and s. 24(a), Art. I of the State Constitution to the
78 extent that disclosure would:

79 (a) Jeopardize the integrity of another active
80 investigation.

81 (b) Impair the safety and soundness of the financial
82 institution.

83 (c) Reveal personal financial information.

84 (d) Reveal the identity of a confidential source.

85 (e) Defame or cause unwarranted damage to the good name or
86 reputation of an individual or jeopardize the safety of an
87 individual.

88 (f) Reveal investigative techniques or procedures.

89 (4) Except as otherwise provided in this section and
90 except for such portions thereof which are otherwise public
91 record, trade secrets, as defined in s. 688.002, that comply
92 with s. 655.0591, and that are held by the office in accordance
93 with its statutory duties with respect to the financial



Amendment No.

94 institutions codes, are confidential and exempt from s.
95 119.07(1) and s. 24(a), Art. I of the State Constitution.

96 ~~(5)~~(3) The provisions of this section do not prevent or
97 restrict:

98 (a) Publishing reports required to be submitted to the
99 office pursuant to s. 655.045(2)(a) or required by applicable
100 federal statutes or regulations to be published.

101 (b) Furnishing records or information to any other state,
102 federal, or foreign agency responsible for the regulation or
103 supervision of financial institutions, including Federal Home
104 Loan Banks.

105 (c) Disclosing or publishing summaries of the condition of
106 financial institutions and general economic and similar
107 statistics and data, provided that the identity of a particular
108 financial institution is not disclosed.

109 (d) Reporting any suspected criminal activity, with
110 supporting documents and information, to appropriate law
111 enforcement and prosecutorial agencies.

112 (e) Furnishing information upon request to the Chief
113 Financial Officer or the Division of Treasury of the Department
114 of Financial Services regarding the financial condition of any
115 financial institution that is, or has applied to be, designated
116 as a qualified public depository pursuant to chapter 280.

117



Amendment No.

118 Any confidential information or records obtained from the office
119 pursuant to this subsection shall be maintained as confidential
120 and exempt from the provisions of s. 119.07(1).

121 (6) (a) ~~(4) (a)~~ Orders of courts or of administrative law
122 judges for the production of confidential records or information
123 shall provide for inspection in camera by the court or the
124 administrative law judge and, after the court or administrative
125 law judge has made a determination that the documents requested
126 are relevant or would likely lead to the discovery of admissible
127 evidence, said documents shall be subject to further orders by
128 the court or the administrative law judge to protect the
129 confidentiality thereof. Any order directing the release of
130 information shall be immediately reviewable, and a petition by
131 the office for review of such order shall automatically stay
132 further proceedings in the trial court or the administrative
133 hearing until the disposition of such petition by the reviewing
134 court. If any other party files such a petition for review, it
135 will operate as a stay of such proceedings only upon order of
136 the reviewing court.

137 (b) Confidential records and information furnished
138 pursuant to a legislative subpoena shall be kept confidential by
139 the legislative body or committee which received the records or
140 information, except in a case involving investigation of charges
141 against a public official subject to impeachment or removal, and
142 then disclosure of such information shall be only to the extent
143 determined by the legislative body or committee to be necessary.



Amendment No.

144 (7)~~(5)~~ Every credit union and mutual association shall
145 maintain, in the principal office where its business is
146 transacted, full and correct records of the names and residences
147 of all the members of the credit union or mutual association.
148 Such records shall be subject to the inspection of all the
149 members of the credit union or mutual association, and the
150 officers authorized to assess taxes under state authority,
151 during business hours of each business day. A current list of
152 members shall be made available to the office's examiners for
153 their inspection and, upon the request of the office, shall be
154 submitted to the office. Except as otherwise provided in this
155 subsection, the list of the members of the credit union or
156 mutual association is confidential and exempt from the
157 provisions of s. 119.07(1).

158 (8)~~(6)~~ Every bank, trust company, and stock association
159 shall maintain, in the principal office where its business is
160 transacted, full and complete records of the names and
161 residences of all the shareholders of the bank, trust company,
162 or stock association and the number of shares held by each. Such
163 records shall be subject to the inspection of all the
164 shareholders of the bank, trust company, or stock association,
165 and the officers authorized to assess taxes under state
166 authority, during business hours of each banking day. A current
167 list of shareholders shall be made available to the office's
168 examiners for their inspection and, upon the request of the
169 office, shall be submitted to the office. Except as otherwise



Amendment No.

170 provided in this subsection, any portion of this list which
171 reveals the identities of the shareholders is confidential and
172 exempt from the provisions of s. 119.07(1).

173 ~~(9)(7)~~ Materials supplied to the office or to employees of
174 any financial institution by other governmental agencies,
175 federal or state, shall remain the property of the submitting
176 agency or the corporation, and any document request must be made
177 to the appropriate agency. Any confidential documents supplied
178 to the office or to employees of any financial institution by
179 other governmental agencies, federal or state, shall be
180 confidential and exempt from the provisions of s. 119.07(1).
181 Such information shall be made public only with the consent of
182 such agency or the corporation.

183 ~~(10)(8)~~ Examination reports, investigatory records,
184 applications, and related information compiled by the office, or
185 photographic copies thereof, shall be retained by the office for
186 a period of at least 10 years.

187 ~~(11)(9)~~ A copy of any document on file with the office
188 which is certified by the office as being a true copy may be
189 introduced in evidence as if it were the original. The
190 commission shall establish a schedule of fees for preparing true
191 copies of documents.

192 (12) For purposes of this section, the term:

193 (a) "Examination report" means records submitted to or
194 prepared by the office as part of the office's duties performed
195 pursuant to s. 655.012 or s. 655.045(1).



Amendment No.

196 (b) "Informal enforcement action" means a board
197 resolution, a document of resolution, or an agreement in writing
198 between the office and a financial institution that:

199 1. The office imposes on an institution when the office
200 considers the administrative enforcement guidelines in s.
201 655.031 and determines that a formal enforcement action is not
202 an appropriate administrative remedy.

203 2. Sets forth a program of corrective action to address
204 one or more safety and soundness deficiencies and violations of
205 law or rule at the institution.

206 3. Is not subject to enforcement by imposition of an
207 administrative fine pursuant to s. 655.041.

208 (c) "Personal financial information" means:

209 1. Information relating to the existence, nature, source,
210 or amount of a person's personal income, expenses, or debt.

211 2. Information relating to a person's financial
212 transactions of any kind.

213 3. Information relating to the existence, identification,
214 nature, or value of a person's assets, liabilities, or net
215 worth.

216 (d) "Working papers" means the records of the procedures
217 followed, the tests performed, the information obtained, and the
218 conclusions reached in an examination or investigation performed
219 under s. 655.032 or s. 655.045. Working papers include planning
220 documentation, work programs, analyses, memoranda, letters of
221 confirmation and representation, abstracts of the books and



Amendment No.

222 records of a financial institution as defined in s.
223 655.005(1)(i), and schedules or commentaries prepared or
224 obtained in the course of such examination or investigation.

225 (13)~~(10)~~ Any person who willfully discloses information
226 made confidential by this section is guilty of a felony of the
227 third degree, punishable as provided in s. 775.082, s. 775.083,
228 or s. 775.084.

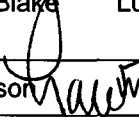
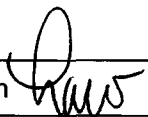
229 (14) Subsections (3) and (4) are subject to the Open
230 Government Sunset Review Act in accordance with s. 119.15 and
231 shall stand repealed on October 2, 2019, unless reviewed and
232 saved from repeal through reenactment by the Legislature.

233 Section 2. (1) The Legislature finds that it is a public
234 necessity that informal enforcement actions and trade secrets,
235 as defined in s. 688.002, Florida Statutes, must be kept
236 confidential and exempt

237

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 775 Pub. Rec./Florida State Boxing Commission
SPONSOR(S): Business & Professional Regulation Subcommittee; Hutson
TIED BILLS: CS/HB 773 **IDEN./SIM. BILLS:** SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Government Operations Subcommittee		Williamson 	Williamson 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill, which is linked to passage of CS/HB 773, creates a public records exemption for proprietary confidential business information submitted by promoters in a post-match report to the Florida State Boxing Commission (Commission) or obtained by audit of the Commission. "Proprietary confidential business information" means information that is intended to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations, and that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. The term includes:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the promoter providing the information.

The bill authorizes release of the proprietary confidential business information to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

Article I, Section 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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24, of the Florida Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- 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 the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

The Florida State Boxing Commission Generally

The function of the Florida State Boxing Commission (Commission) is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and

⁸ 85-62 Fla. Op. Att'y Gen. (1985).

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁰ *See supra* note 2.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ *See supra* note 2.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

safety requirements are met and that matches are competitive and physically safe for participants.¹⁸ The Commission regulates professional boxing, kickboxing, and mixed martial arts matches by designating employees to attend the matches, appointing match officials, and ensuring the matches are held in a safe and fair manner.

The Commission is appointed by the Governor, and consists of five members.¹⁹ It collects revenue via license issuance, live event permit fees, and taxation on gross receipts associated with live events in the state.²⁰

Licensure of Promoters

Section 548.002(20), F.S., defines promoter as any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional. Section 548.012, F.S., provides for the licensure of promoters.

Applicants for promoter licensure are required to submit a completed application along with a non-refundable application fee of \$250.00²¹ and must deposit with the Commission a surety bond, cash, or certified check in the amount of \$15,000 prior to being issued a promoter license.²²

Promoters are responsible for producing the events at which matches are held, and are responsible for ensuring the following requirements are met:

- Insurance is obtained for the event in the following amounts:
 - Minimum of \$20,000 per participant for medical, surgical and hospital care for injuries sustained while engaged in a match.
 - Minimum of \$20,000 per participant for life insurance covering death caused by injuries received while engaged in a bout.
 - Any deductible associated with these policies is entirely the responsibility of the promoter of record.²³
- Live Event Permit is issued for the event from the Commission.²⁴
- Location of the weigh-in and pre-match physical is scheduled, and the participants are notified of the location. Additionally, the promoter is responsible for ensuring the weigh-in location is appropriate for the weigh-in and pre-match physicals to be completed as well as ensure the required documentation is present from all the participants.²⁵
- The correct number of all access credentials is provided for the Commission employees that will attend the event.
- The venue has the appropriate ring and apron, required equipment, and medical personnel and equipment present for the match.²⁶
- Payment is made to the referees, judges, and ringside physicians assigned by the Commission for the event.²⁷
- Reporting requirements as set forth in s. 548.06, F.S., are complied with regarding gross receipts and the applicable taxes related to gross receipts are paid.

¹⁸ Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ei=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNF-2nwlff6jibOo9m4VuSq-Q1wUTHw (last viewed March 4, 2014).

¹⁹ Section 548.003(1), F.S.

²⁰ See *supra* note 2.

²¹ Rule 61K1-1.003, F.A.C.

²² Rule 61K1-1.005, F.A.C.

²³ Rule 61K1-1.0035, F.A.C.

²⁴ See *supra* note 21.

²⁵ Rule 61K1-1.004, F.A.C.

²⁶ Rule 61K1-1.0031, F.A.C.

²⁷ See *supra* note 22.

Promoter Records Requirements

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report shall be accompanied by a tax payment in the amount of 5 percent of the total gross receipts, exclusive of any federal taxes; however, the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event. For the purposes of ch. 548, F.S., "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges.
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.
- The face value of all tickets sold and complimentary tickets issued, provided, or given.
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Currently, ch. 548, F.S., does not provide an exemption from the public records for any documents or information provided in the reports submitted to the commission pursuant to s. 548.06, F.S.

CS/HB 773 (2014)

CS/HB 773 amends s. 548.06, F.S., to include the following in gross receipts:

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. In effect, this provision reinstates a form of the "pay-per-view" tax for in-state matches, which was eliminated in 2012.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above 5 percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

CS/HB 773 further amends s. 548.06, F.S., to permit promoters to issue, provide, or give complimentary tickets for up to 5 percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding taxes on them. The promoter may request the Commission's authorization to issue, provide, or give more than 5 percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 773, creates a public records exemption under newly created s. 548.062, F.S. The public records exemption is for certain documentation relating to reports submitted pursuant to s. 548.06, F.S.

Specifically, proprietary confidential business information provided with the written report required to be filed with the Commission or through an audit of the promoter's books and records pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.

"Proprietary confidential business information" means information that is intended to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations, and that has not been disclosed unless disclosed pursuant to a statutory

provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. The term includes:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the promoter providing the information.

The bill provides that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a statement of public necessity, which finds that:

The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information. For these reasons, the Legislature declares that any proprietary confidential business information provided in the written report that is required to be filed with the commission after a match pursuant to s. 548.06, Florida Statutes, is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 548.062, F.S., providing an exemption from public records requirements for proprietary confidential business information held by the Commission pursuant to submission of reports by the promoters or obtained by audit of the Commission pursuant to s. 548.06, F.S.

Section 2 provides the Legislative statement of public necessity for the public records exemption.

Section 3 provides a contingent effective date.

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:

The exclusion of certain business-related documents from public records will permit promoters to maintain privacy and protect their business from industry competitors.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the Commission. Staff responsible for complying with public record requests could require training related to creation of the public record exemption, and the Commission may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Commission.

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:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain proprietary confidential business information submitted to the Commission.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Public Necessity Statement

As drafted, the public necessity statement appears to only address the need to protect certain types of information included in the definition of proprietary confidential business information. As such, it is recommended that the public necessity statement be revised to either discuss the need to protect proprietary confidential business information in general, or to specifically address each type of information included in the definition of proprietary confidential business information.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Business & Professional Regulation Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified that the public records exemption applies only to the documents listed.
- Clarified that the documents that are exempt may be obtained by the Commission through an audit of the promoter's books and records in addition to the required report submitted by the promoter.

The staff analysis is drafted to reflect the committee substitute as adopted by the Business & Professional Regulation Subcommittee.

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A bill to be entitled
 An act relating to public records; creating s.
 548.062, F.S.; providing an exemption from public
 records requirements for the information in the
 reports required to be submitted to the Florida State
 Boxing Commission by a promoter or obtained by the
 commission through an audit of the promoter's books
 and records; providing for future legislative review
 and repeal of the exemption; providing a statement of
 public necessity; providing a contingent effective
 date.

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

Section 1. Section 548.062, Florida Statutes, is created
 to read:

548.062 Public records exemption.-

(1) As used in this section, the term "proprietary
 confidential business information" means information that is
 held by the commission which is intended to be and is treated by
 the promoter providing such information as private in that the
 disclosure of the information would cause harm to the promoter
 or its business operations, and that has not been disclosed
 unless disclosed pursuant to a statutory provision, an order of
 a court or administrative body, or a private agreement that
 provides that the information will not be released to the

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

27 public. The term includes:

28 (a) The number of ticket sales for a match.

29 (b) The amount of gross receipts after a match.

30 (c) Trade secrets.

31 (d) Business plans.

32 (e) Internal auditing controls and reports of internal
 33 auditors.

34 (f) Security measures, systems, or procedures.

35 (g) Information relating to competitive interests, the
 36 disclosure of which would impair the competitive business of the
 37 promoter providing the information.

38 (2) Proprietary confidential business information provided
 39 in the written report required to be filed with the commission
 40 after a match or obtained by the commission through an audit of
 41 the promoter's books and records pursuant to s. 548.06 is
 42 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 43 of the State Constitution. Information made confidential and
 44 exempt by this subsection may be disclosed to another
 45 governmental entity in the performance of its duties and
 46 responsibilities.

47 (3) This section is subject to the Open Government Sunset
 48 Review Act in accordance with s. 119.15 and shall stand repealed
 49 on October 2, 2019, unless reviewed and saved from repeal
 50 through reenactment by the Legislature.

51 Section 2. The Legislature finds that it is a public
 52 necessity that proprietary confidential business information be

53 protected from disclosure. The disclosure of proprietary
54 confidential business information could injure a promoter in the
55 marketplace by giving the promoter's competitors insights into
56 its financial status and business plan, thereby putting the
57 promoter at a competitive disadvantage. The Legislature also
58 finds that the harm to a promoter in disclosing proprietary
59 confidential business information significantly outweighs any
60 public benefit derived from disclosure of the information. For
61 these reasons, the Legislature declares that any proprietary
62 confidential business information provided in the written report
63 that is required to be filed with the commission after a match
64 pursuant to s. 548.06, Florida Statutes, is confidential and
65 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
66 Article I of the State Constitution.

67 Section 3. This act shall take effect on the same date
68 that HB 773 or similar legislation takes effect, if such
69 legislation is adopted in the same legislative session or an
70 extension thereof and becomes 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	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representative Hutson offered the following:

Amendment

Remove lines 51-66 and insert:

7 Section 2. The Legislature finds that it is a public
8 necessity that proprietary confidential business information
9 provided in the written report required to be filed with the
10 Florida State Boxing Commission by a promoter after a match, or
11 obtained by the commission through an audit of the promoter's
12 books and records, pursuant to s. 548.06, Florida Statutes, be
13 made confidential and exempt from s. 119.07(1), Florida
14 Statutes, and s. 24(a), Article I of the State Constitution.
15 Proprietary confidential business information is information
16 that a promoter does not intend to be released or disclosed. It
17 includes the number of ticket sales for a match; the amount of



Amendment No.

18 gross receipts after a match; trade secrets; business plans;
19 internal auditing controls and reports of internal auditors;
20 security measures, systems, or procedures; and information
21 relating to competitive interests of the promoter. The
22 disclosure of such information would adversely affect the
23 business interests of the promoter providing the information by
24 harming the promoter in the marketplace and by impairing the
25 competitive business interests of the promoter providing the
26 information. Disclosure of such information would reveal the
27 business interests of the promoter, including its financial
28 status and business plan, thereby putting the promoter at a
29 competitive disadvantage. Competitors can use such information
30 to impair fair competition and impede competition. Thus, the
31 public and private harm in disclosing proprietary confidential
32 business information of a promoter significantly outweighs any
33 public benefit derived from disclosure.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 993 Pub. Rec./Animal Researchers at Public Research Facilities
SPONSOR(S): Higher Education & Workforce Subcommittee and Cummings
TIED BILLS: IDEN./SIM. BILLS: SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	11 Y, 1 N, As CS	Thomas	Sherry
2) Government Operations Subcommittee		Williamson	Williamson
3) Education Committee			

SUMMARY ANALYSIS

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchase and billing records related to animal research or activities.
- Animal care and committee records.
- Facility and laboratory records related to animal research or activities.

The bill provides for retroactive application of the public record exemption.

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

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

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

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.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) 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

Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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; or
- Protects trade or business secrets.

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

Effect of Proposed Changes

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchase and billing records related to animal research or activities.

¹ Art. I, s. 24(c), Fla. Const. The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions. It requires the automatic repeal of such an October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

² Section 119.15, F.S.

- Animal care and committee records.
- Facility and laboratory records related to animal research or activities.

The bill provides for retroactive application of the public record exemption.³

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Provides an exemption from public records requirement for personal identifying information of certain animal researchers at public research facilities, including state universities; provides for retroactive applicability of the exemption; provides for future legislative review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2014.

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:

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

³ 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 as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information of certain employees and volunteers of a public research facility that conducts animal research or is engaged in activities related to such research. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Higher Education & Workforce Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Provided a public records exemption for a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research.
- Provided a public records exemption for personal identifying information when such information is contained in certain records.
- Provided for retroactive applicability of the public records exemption.
- Provided for future legislative review and repeal of the public records exemption.
- Provided a statement of public necessity as required by the State Constitution.

This analysis is drafted to the committee substitute as passed by the Higher Education & Workforce Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; providing an
 3 exemption from public records requirements for
 4 personal identifying information of certain animal
 5 researchers at public research facilities, including
 6 state universities; providing for retroactive
 7 applicability of the exemption; providing for future
 8 legislative review and repeal of the exemption;
 9 providing a statement of public necessity; providing
 10 an effective date.

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

13
 14 Section 1. (1) Personal identifying information of a
 15 person employed by, under contract with, or volunteering for a
 16 public research facility, including a state university, that
 17 conducts animal research or is engaged in activities related to
 18 animal research, is exempt from s. 119.07(1), Florida Statutes,
 19 and s. 24(a), Article I of the State Constitution, when such
 20 information is contained in the following records:

21 (a) Animal records, including animal care and treatment
 22 records.

23 (b) Research protocols and approvals.

24 (c) Purchasing, funding, and billing records related to
 25 animal research or activities.

26 (d) Animal care and use committee records.

27 | (e) Facility and laboratory records related to animal
 28 | research or activities.

29 | (2) This exemption applies to personal identifying
 30 | information as described in subsection (1) held by a public
 31 | research facility, including a state university, before, on, or
 32 | after the effective date of this exemption.

33 | (3) This section is subject to the Open Government Sunset
 34 | Review Act in accordance with s. 119.15, Florida Statutes, and
 35 | shall stand repealed on October 2, 2019, unless reviewed and
 36 | saved from repeal through reenactment by the Legislature.

37 | Section 2. The Legislature finds that it is a public
 38 | necessity that personal identifying information of a person who
 39 | is employed by, under contract with, or volunteering for a
 40 | public research facility, including a state university, that
 41 | conducts animal research or is engaged in activities related to
 42 | animal research, be made exempt from s. 119.07(1), Florida
 43 | Statutes, and s. 24(a), Article I of the State Constitution. The
 44 | Legislature also finds that it is a public necessity that this
 45 | exemption apply to such personal identifying information held by
 46 | a public research facility, including a state university,
 47 | before, on, or after the effective date of the exemption. The
 48 | Legislature finds that the release of such personal identifying
 49 | information will place such persons in danger of threats and
 50 | harassment as well as physical and emotional harm from those who
 51 | advocate against such research. University employees have been
 52 | harassed and threatened after animal care records that included

53 | their personal identifying information were disclosed pursuant
54 | to public records requests. Thus, the Legislature finds that the
55 | harm and threat to such persons' safety that results from the
56 | release of personal identifying information in records about the
57 | animals or about the animal research outweighs any public
58 | benefit that may be derived from the disclosure of the
59 | information. The public research facilities, including state
60 | universities, remain responsible and accountable for the animal
61 | research conducted at their institutions.

62 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1083 Pub. Rec./CDD Surveillance Recordings
SPONSOR(S): Artiles
TIED BILLS: IDEN./SIM. BILLS: SB 1218

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Transportation & Highway Safety Subcommittee, 14 Y, 0 N, Thompson, Miller. Row 2: 2) Government Operations Subcommittee, Williamson, Williamson. Row 3: 3) Economic Affairs Committee.

SUMMARY ANALYSIS

Community development districts (CDD) are special districts that are local units of special purpose government, created pursuant to ch 190, F.S., and limited to the authority provided in that act. CDDs are governed by a five member board of supervisors, and have governmental authority to manage and finance infrastructure for planned developments.

Some CDDs utilize video cameras to provide security and surveillance within their community. The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide leads in the event of a crime on CDD property, or violations regarding misuse of CDD property or rules.

A CDD is considered an "agency" pursuant to the state's public policy regarding access to government records; thus its records are subject to Florida's public record disclosure requirements. Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record disclosure requirements. As a result, CDD surveillance recordings must be disclosed to anyone who makes a request.

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from public records requirements.

The bill allows a CDD to disclose surveillance recordings to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on CDDs.

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. 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 Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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

Community Development Districts

Community development districts (CDD) are special districts that are local units of special purpose government, created pursuant to ch 190, F.S., the "Uniform Community Development District Act of 1980," and limited to the authority provided in that act. CDDs are governed by a five member board of supervisors,³ and have governmental authority to manage and finance infrastructure for planned developments.⁴ They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments on public improvements and community facilities.

Some CDDs utilize video cameras to provide security and surveillance within their community. The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide a CDD board or law enforcement with leads in the event of a crime on CDD property, or violations regarding the misuse of CDD property or rules.⁵

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

² See s. 119.15, F.S.

³ See s. 190.006, F.S.

⁴ See s. 190.002(1)(a), F.S.

⁵ For more information on CDD surveillance cameras, see the Ballantrae Communicator article, *CDD cameras should protect us* (April-June 2014), by Jim Flateau, CDD Chair. This document is on file with the Transportation and Highway Safety Subcommittee.

Currently, the Florida Department of State's record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.⁶ After 30 days, the recordings can be deleted or written over, or stored for longer periods of time. This includes CDD surveillance recordings.

A CDD is considered an "agency"⁷ pursuant to Florida's public record requirements, and unless a specific public record exemption exists that would protect the recordings from public access, a CDD is required to allow access to the records to anyone for inspection or copying.⁸

Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record disclosure requirements. As a result, unless a CDD chooses to discard or record over the recordings after 30 days, they must be disclosed to anyone who makes a request.

Proposed Changes

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt⁹ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

A CDD may disclose such recording to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 190.0121, F.S., relating to the creation of a public record exemption for surveillance recordings held by a community development district.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁶ According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, October 1, 2013, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at http://dhis.dos.state.fl.us/barm/genschedules/GS1-SL-2013_Final.pdf. (Last viewed 3/9/14).

⁷ Section 119.011(2), F.S., defines agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁸ Section 119.07(1), F.S.

⁹ There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Florida Attorney General Opinion 85-62. If instead, the record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

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:

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

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 expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

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

law. The bill creates the public record exemption to protect from public disclosure surveillance recordings captures by a community development district.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

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.¹⁰ The bill does not contain a provision requiring retroactive application. According to reports, CDDs have been utilizing surveillance cameras for several years. Although the Florida Department of State's record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days, after 30 days the recordings can be deleted or written over. However, surveillance recordings may also be stored for longer periods of time.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁰ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 190.0121, F.S.; providing an exemption from public
 4 records requirements for surveillance recordings held
 5 by a community development district; providing for
 6 future legislative review and repeal of the exemption;
 7 providing a statement of public necessity; providing
 8 an effective date.

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

11
 12 Section 1. Section 190.0121, Florida Statutes, is created
 13 to read:

14 190.0121 Public records exemption; surveillance
 15 recordings.-

16 (1) Any surveillance recording created to monitor
 17 activities occurring inside or outside of a public building or
 18 on public property that is held by a community development
 19 district is confidential and exempt from s. 119.07(1) and s.
 20 24(a), Art. I of the State Constitution.

21 (2) A district may disclose such a recording:

22 (a) To a law enforcement agency in the furtherance of its
 23 official duties and responsibilities; or

24 (b) Pursuant to a court order.

25 (3) This section is subject to the Open Government Sunset
 26 Review Act in accordance with s. 119.15 and shall stand repealed

27 | on October 2, 2019, unless reviewed and saved from repeal
 28 | through reenactment by the Legislature.

29 | Section 2. The Legislature finds that it is a public
 30 | necessity that any surveillance recording created to monitor
 31 | activities occurring inside or outside of a public building or
 32 | on public property that is held by a community development
 33 | district be made confidential and exempt from s. 119.07(1),
 34 | Florida Statutes, and s. 24(a), Article I of the State
 35 | Constitution. Community development districts provide
 36 | surveillance of public areas in order to monitor activities
 37 | occurring within the district and to ensure the security of the
 38 | residents. The exemption for surveillance recordings allows
 39 | community development districts to effectively and efficiently
 40 | provide security and surveillance while maintaining the privacy
 41 | of the residents and the guests of the residents, including
 42 | those who use community facilities. Without the public records
 43 | exemption, coverage and other technical aspects of the
 44 | surveillance system would be revealed and would make it easier
 45 | for individuals who wish to evade detection by the surveillance
 46 | systems to do so. As such, the Legislature finds that it is a
 47 | public necessity to protect the disclosure of such surveillance
 48 | recordings held by a community development district.

49 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1189 Publicly Funded Retirement Programs
SPONSOR(S): Eagle
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington <i>H</i>	Williamson <i>W</i>
2) Finance & Tax Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Marvin B. Clayton Firefighters Pension Trust Fund Act (act) provides a uniform retirement system for the benefit of municipal firefighters. All municipal firefighter retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighter pension trust funds. The act provides an incentive – access to premium tax revenues – to encourage the establishment of firefighter retirement plans by cities. The act only applies to municipalities organized and established by law, and it does not apply to unincorporated areas of any county or counties.

The bill expands the applicability of the act. It provides that the act applies to municipalities providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement and authorizes the receipt of premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the firefighters.

The bill may have an indeterminate negative fiscal impact on state government and an indeterminate positive fiscal impact on local government revenues. See Fiscal Comments for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Firefighters Pension Trust Fund

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. The act declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters. All municipal and special district firefighter retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' pension trust funds.¹

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive – access to premium tax revenues – to encourage the establishment of firefighter pension plans by cities. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

The act sets forth the minimum benefits or minimum standards for pensions for municipal firefighters. The benefits provided in the act may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.² It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division). In 2012, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$72.4 million.³

To qualify for insurance premium tax dollars, plans must meet requirements found in chapter 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the division deems that a firefighter pension plan created pursuant to chapter 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.

Counties Furnishing Municipal Services

The legislative and governing body of a county has the power to carry on county government. This power includes the power to establish Municipal Services Taxing Units (MSTUs) for any part or all of the unincorporated area of a county.⁴ The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund

¹ See s. 175.021(1), F.S.

² Section 175.101, F.S.

³ A copy of the 2012 Premium Tax Distribution report is available online at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 19, 2014).

⁴ Section 125.01(1)(q), F.S.

a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to 10 mills.⁵

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.⁶

Effect of Proposed Changes

The bill expands the applicability of the act. It provides that the act applies to municipalities providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement and authorizes the receipt of premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the firefighters. It conforms chapter 175, F.S., to authorize MSTUs to receive premium tax distributions and to provide for firefighter pension benefits.

The bill requires municipalities to provide the division with a certified copy of the ordinance assessing and imposing the premium tax.

The bill also permits the MSTU to revoke its participation; such revocation terminates eligibility for premium tax distributions provided for in chapter 175, F.S.

B. SECTION DIRECTORY:

Section 1. amends s. 175.041, F.S.; revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; providing that any MSTU that provides fire protection to another municipality under an interlocal agreement is eligible to receive property insurance premium tax.

Section 2. amends s. 175.101, F.S.; authorizing a MSTU that enters into an interlocal agreement for fire protection services with another municipality to impose an excise tax on property insurance premiums.

Section 3. amends s. 175.111, F.S.; requiring MSTUs to provide the division with a certified copy of the ordinance assessing and imposing certain taxes.

Sections 4 and 5. amend ss. 175.122 and 175.351, F.S.; revising provisions relating to the limitation of disbursement to conform to changes made by the act.

Section 6. amends s. 175.411, F.S.; authorizing a MSTU, under certain conditions, to revoke its participation and cease to receive property insurance premium taxes.

Section 7. provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

⁵ Section 200.071(3), F.S.

⁶ *Supra* at FN 4.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a municipality is entitled to premium tax distributions provided by chapter 175, F.S., by providing fire services to MSTUs. As a result, this bill may have a fiscal impact on state revenues because state premium taxes paid by an insurer to fund a municipal firefighter retirement plan are credited against the premium taxes paid to the state by the insurance company.⁷ The fiscal impact is indeterminate, but likely minimal.

The bill may result in a positive fiscal impact on local governments because the bill provides that a municipality may collect premium tax revenues collected by the municipality receiving firefighter services if the consolidated government provides a municipal firefighter retirement plan, as provided for in chapter 175, F.S.

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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The title of the bill may need to be changed to reflect that the MSTU is the entity that will receive the fire protection services, and the municipality is the entity that will receive the premium taxes. In addition, the language in the bill may need to be clarified to reflect that MSTUs will not be providing pension benefits.

⁷ Section 624.509(4), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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Section 1. Subsection (3) of section 175.041, Florida Statutes, is amended to read:

175.041 Firefighters' Pension Trust Fund created; applicability of provisions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

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

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

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and

53 | one or more municipalities, consolidated pursuant to s. 3 or s.
 54 | 6(e), Art. VIII of the State Constitution, is also eligible to
 55 | participate under this chapter. The consolidated government
 56 | shall notify the division when it has entered into an interlocal
 57 | agreement to provide fire services to a municipality within its
 58 | boundaries. The municipality may enact an ordinance levying the
 59 | tax as provided in s. 175.101. Upon being provided copies of the
 60 | interlocal agreement and the municipal ordinance levying the
 61 | tax, the division may distribute any premium taxes reported for
 62 | the municipality to the consolidated government as long as the
 63 | interlocal agreement is in effect.

64 | (c) Any municipality that has entered into an interlocal
 65 | agreement to provide fire protection services to any other
 66 | incorporated municipality or a municipal services taxing unit in
 67 | an unincorporated area, in its entirety, for a period of 12
 68 | months or more may be eligible to receive the premium taxes
 69 | reported for such other municipality or municipal services
 70 | taxing unit. In order to be eligible for such premium taxes, the
 71 | municipality providing the fire services must notify the
 72 | division that it has entered into an interlocal agreement with
 73 | another municipality or a county on behalf of a municipal
 74 | services taxing unit. The municipality receiving the fire
 75 | services may enact an ordinance levying the tax as provided in
 76 | s. 175.101. Upon being provided copies of the interlocal
 77 | agreement and the municipal ordinance levying the tax, the
 78 | division may distribute any premium taxes reported for the

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

79 | municipality or municipal services taxing unit receiving the
 80 | fire services to the participating municipality providing the
 81 | fire services as long as the interlocal agreement is in effect.

82 | Section 2. Subsections (1) and (3) of section 175.101,
 83 | Florida Statutes, are amended to read:

84 | 175.101 State excise tax on property insurance premiums
 85 | authorized; procedure.—For any municipality, special fire
 86 | control district, chapter plan, local law municipality, local
 87 | law special fire control district, or local law plan under this
 88 | chapter:

89 | (1) Each municipality, ~~or~~ special fire control district,
 90 | or municipal services taxing unit in this state described and
 91 | classified in s. 175.041, having a lawfully established
 92 | firefighters' pension trust fund or municipal fund or special
 93 | fire control district fund, by whatever name known, providing
 94 | pension benefits to firefighters as provided under this chapter,
 95 | may assess and impose on every insurance company, corporation,
 96 | or other insurer now engaged in or carrying on, or who shall
 97 | hereinafter engage in or carry on, the business of property
 98 | insurance as shown by the records of the Office of Insurance
 99 | Regulation of the Financial Services Commission, an excise tax
 100 | in addition to any lawful license or excise tax now levied by
 101 | each of the municipalities, ~~or~~ special fire control districts,
 102 | or municipal services taxing units, respectively, amounting to
 103 | 1.85 percent of the gross amount of receipts of premiums from
 104 | policyholders on all premiums collected on property insurance

105 policies covering property within the corporate limits of such
 106 municipalities or within the legally defined boundaries of
 107 special fire control districts or municipal services taxing
 108 units, respectively. Whenever the boundaries of a special fire
 109 control district or municipal services taxing unit that has
 110 lawfully established a firefighters' pension trust fund
 111 encompass a portion of the corporate territory of a municipality
 112 that has also lawfully established a firefighters' pension trust
 113 fund, that portion of the tax receipts attributable to insurance
 114 policies covering property situated both within the municipality
 115 and the special fire control district or municipal services
 116 taxing unit shall be given to the fire service provider. For the
 117 purpose of this section, the boundaries of a special fire
 118 control district or municipal services taxing unit include an
 119 area that has been annexed until the completion of the 4-year
 120 period provided for in s. 171.093(4), or other agreed-upon
 121 extension, or if a special fire control district or municipal
 122 services taxing unit is providing services under an interlocal
 123 agreement executed in accordance with s. 171.093(3). The agent
 124 shall identify the fire service provider on the property owner's
 125 application for insurance. Remaining revenues collected pursuant
 126 to this chapter shall be distributed to the municipality, ~~or~~
 127 special fire control district, or municipal services taxing unit
 128 according to the location of the insured property.

129 (3) This excise tax shall be payable annually on March 1
 130 of each year after the passage of an ordinance, in the case of a

131 | municipality, or resolution, in the case of a special fire
 132 | control district or municipal services taxing unit, assessing
 133 | and imposing the tax authorized by this section. Installments of
 134 | taxes shall be paid according to the provision of s.
 135 | 624.5092(2)(a), (b), and (c).

136 |
 137 | This section also applies to any municipality consisting of a
 138 | single consolidated government which is made up of a former
 139 | county and one or more municipalities, consolidated pursuant to
 140 | the authority in s. 3 or s. 6(e), Art. VIII of the State
 141 | Constitution, and to property insurance policies covering
 142 | property within the boundaries of the consolidated government,
 143 | regardless of whether the properties are located within one or
 144 | more separately incorporated areas within the consolidated
 145 | government, provided the properties are being provided fire
 146 | protection services by the consolidated government. This section
 147 | also applies to any municipality, as provided in s.
 148 | 175.041(3)(c), which has entered into an interlocal agreement to
 149 | receive fire protection services from another municipality
 150 | participating under this chapter. The excise tax may be levied
 151 | on all premiums collected on property insurance policies
 152 | covering property located within the corporate limits of the
 153 | municipality receiving the fire protection services, but will be
 154 | available for distribution to the municipality providing the
 155 | fire protection services.

156 | Section 3. Section 175.111, Florida Statutes, is amended

157 | to read:
 158 | 175.111 Certified copy of ordinance or resolution filed;
 159 | insurance companies' annual report of premiums; duplicate files;
 160 | book of accounts.—For any municipality, municipal services
 161 | taxing unit, special fire control district, chapter plan, local
 162 | law municipality, local law special fire control district, or
 163 | local law plan under this chapter, whenever any municipality
 164 | passes an ordinance or whenever any special fire control
 165 | district passes a resolution establishing a chapter plan or
 166 | local law plan assessing and imposing the taxes authorized in s.
 167 | 175.101, a certified copy of such ordinance or resolution shall
 168 | be deposited with the division. Thereafter every insurance
 169 | company, association, corporation, or other insurer carrying on
 170 | the business of property insurance on real or personal property,
 171 | on or before the succeeding March 1 after date of the passage of
 172 | the ordinance or resolution, shall report fully in writing and
 173 | under oath to the division and the Department of Revenue a just
 174 | and true account of all premiums by such insurer received for
 175 | property insurance policies covering or insuring any real or
 176 | personal property located within the corporate limits of each
 177 | such municipality, municipal services taxing unit, or special
 178 | fire control district during the period of time elapsing between
 179 | the date of the passage of the ordinance or resolution and the
 180 | end of the calendar year. The report shall include the code
 181 | designation as prescribed by the division for each piece of
 182 | insured property, real or personal, located within the corporate

183 | limits of each municipality and municipal services taxing unit,
184 | and within the legally defined boundaries of each special fire
185 | control district. The aforesaid insurer shall annually
186 | thereafter, on March 1, file with the Department of Revenue a
187 | similar report covering the preceding year's premium receipts,
188 | and every such insurer at the same time of making such reports
189 | shall pay to the Department of Revenue the amount of the tax
190 | hereinbefore mentioned. Every insurer engaged in carrying on
191 | such insurance business in the state shall keep accurate books
192 | of accounts of all such business done by it within the corporate
193 | limits of each such municipality and municipal services taxing
194 | unit and within the legally defined boundaries of each such
195 | special fire control district, and in such manner as to be able
196 | to comply with the provisions of this chapter. Based on the
197 | insurers' reports of premium receipts, the division shall
198 | prepare a consolidated premium report and shall furnish to any
199 | municipality, municipal services taxing unit, or special fire
200 | control district requesting the same a copy of the relevant
201 | section of that report.

202 | Section 4. Section 175.122, Florida Statutes, is amended
203 | to read:

204 | 175.122 Limitation of disbursement.—For any municipality,
205 | municipal services taxing unit, special fire control district,
206 | chapter plan, local law municipality, local law special fire
207 | control district, or local law plan under this chapter, any
208 | municipality, municipal services taxing unit, or special fire

209 control district participating in the firefighters' pension
 210 trust fund pursuant to the provisions of this chapter, whether
 211 under a chapter plan or local law plan, shall be limited to
 212 receiving any moneys from such fund in excess of that produced
 213 by one-half of the excise tax, as provided for in s. 175.101;
 214 however, any such municipality, municipal services taxing unit,
 215 or special fire control district receiving less than 6 percent
 216 of its fire department payroll from such fund shall be entitled
 217 to receive from such fund the amount determined under s.
 218 175.121, in excess of one-half of the excise tax, not to exceed
 219 6 percent of its fire department payroll. Payroll amounts of
 220 members included in the Florida Retirement System shall not be
 221 included.

222 Section 5. Subsection (1) of section 175.351, Florida
 223 Statutes, is amended to read:

224 175.351 Municipalities, municipal services taxing units,
 225 and special fire control districts having their own pension
 226 plans for firefighters.—For any municipality, municipal services
 227 taxing unit, special fire control district, local law
 228 municipality, local law special fire control district, or local
 229 law plan under this chapter, in order for municipalities,
 230 municipal services taxing units, and special fire control
 231 districts with their own pension plans for firefighters, or for
 232 firefighters and police officers if included, to participate in
 233 the distribution of the tax fund established pursuant to s.
 234 175.101, local law plans must meet the minimum benefits and

235 minimum standards set forth in this chapter.

236 (1) If a municipality has a pension plan for firefighters,
 237 or a pension plan for firefighters and police officers if
 238 included, which in the opinion of the division meets the minimum
 239 benefits and minimum standards set forth in this chapter, the
 240 board of trustees of the pension plan, as approved by a majority
 241 of firefighters of the municipality, may:

242 (a) Place the income from the premium tax in s. 175.101 in
 243 such pension plan for the sole and exclusive use of its
 244 firefighters, or for firefighters and police officers if
 245 included, where it shall become an integral part of that pension
 246 plan and shall be used to pay extra benefits to the firefighters
 247 included in that pension plan; or

248 (b) Place the income from the premium tax in s. 175.101 in
 249 a separate supplemental plan to pay extra benefits to
 250 firefighters, or to firefighters and police officers if
 251 included, participating in such separate supplemental plan.

252 Section 6. Section 175.411, Florida Statutes, is amended
 253 to read:

254 175.411 Optional participation.—A municipality, municipal
 255 services taxing unit, or special fire control district may
 256 revoke its participation under this chapter by rescinding the
 257 legislative act, ordinance, or resolution which assesses and
 258 imposes the taxes authorized in s. 175.101, and by furnishing a
 259 certified copy of such legislative act, ordinance, or resolution
 260 to the division. Thereafter, the municipality, municipal

261 services taxing unit, or special fire control district shall be
 262 prohibited from participating under this chapter, and shall not
 263 be eligible for future premium tax moneys. Premium tax moneys
 264 previously received shall continue to be used for the sole and
 265 exclusive benefit of firefighters, or firefighters and police
 266 officers where included, and no amendment, legislative act,
 267 ordinance, or resolution shall be adopted which shall have the
 268 effect of reducing the then-vested accrued benefits of the
 269 firefighters, retirees, or their beneficiaries. The
 270 municipality, municipal services taxing unit, or special fire
 271 control district shall continue to furnish an annual report to
 272 the division as provided in s. 175.261. If the municipality,
 273 municipal services taxing unit, or special fire control district
 274 subsequently terminates the defined benefit plan, they shall do
 275 so in compliance with the provisions of s. 175.361.

276 Section 7. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 95-118 and insert:

7 or receiving fire protection services from a municipality
 8 participating under this chapter, may assess and impose on every
 9 insurance company, corporation, or other insurer now engaged in
 10 or carrying on, or who shall hereinafter engage in or carry on,
 11 the business of property insurance as shown by the records of
 12 the Office of Insurance Regulation of the Financial Services
 13 Commission, an excise tax in addition to any lawful license or
 14 excise tax now levied by each of the municipalities, ~~or~~ special
 15 fire control districts, or municipal services taxing units,
 16 respectively, amounting to 1.85 percent of the gross amount of
 17 receipts of premiums from policyholders on all premiums



Amendment No.

18 collected on property insurance policies covering property
 19 within the corporate limits of such municipalities or within the
 20 legally defined boundaries of special fire control districts or
 21 municipal services taxing units, respectively. Whenever the
 22 boundaries of a special fire control district that has lawfully
 23 established a firefighters' pension trust fund encompass a
 24 portion of the corporate territory of a municipality that has
 25 also lawfully established a firefighters' pension trust fund, or
 26 a municipal services taxing unit receiving fire protection
 27 services from a municipality that participates under this
 28 chapter, that portion of the tax receipts attributable to
 29 insurance policies covering property situated both within the
 30 municipality, or municipal services taxing unit, and the special
 31 fire control district shall be given to the fire service
 32 provider. For the purpose of this section, the boundaries of a
 33 special fire control district include an

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

Remove lines 5-8 and insert:

Pension Trust Fund Act; providing that any municipality that
 provides fire protection services to a municipal services taxing
 unit under an interlocal agreement is eligible to receive
 property insurance



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Eagle offered the following:

Amendment

Remove lines 183-195 and insert:

7 limits of each municipality and within the legally defined
 8 boundaries of each special fire control district and municipal
 9 services taxing unit. The aforesaid insurer shall annually
 10 thereafter, on March 1, file with the Department of Revenue a
 11 similar report covering the preceding year's premium receipts,
 12 and every such insurer at the same time of making such reports
 13 shall pay to the Department of Revenue the amount of the tax
 14 hereinbefore mentioned. Every insurer engaged in carrying on
 15 such insurance business in the state shall keep accurate books
 16 of accounts of all such business done by it within the corporate
 17 limits of each such municipality and within the legally defined

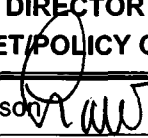


Amendment No.

18 | boundaries of each such special fire control district and
19 | municipal services taxing unit, and in such manner as to be able
20 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 Government Data Practices
SPONSOR(S): Beshears
TIED BILLS: IDEN./SIM. BILLS: CS/SB 782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		JS Stramski	Williamson 
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill directs the Division of Library and Information Services of the Department of State to develop procedures for establishing schedules for the disposal of records held by an agency that contain personal identification information. It requires an agency that collects and retains personal identification information through a website to post a privacy notice which contains specified privacy disclosures, including a general description of the security measures in place to protect the information and the nature of public records requirements relating to the information.

The bill requires an agency that installs a cookie on an individual's electronic device to inform the individual and request permission to install a cookie, unless the cookie is installed temporarily and is deleted when the website application is closed. An individual who declines to have a cookie installed must still have access to the website. A contractor who contracts with a public agency also must abide by the privacy notice and cookie provisions of the bill.

The bill requires the Agency for Healthcare Administration (AHCA) to provide electronic access to a searchable database containing specified information relating to assisted living facilities. AHCA may provide a comment webpage to allow members of the public to comment on licensed assisted living facilities.

The bill dissolves the Florida Center for Health Information and Policy Analysis within AHCA. The bill establishes the Florida Health Information Transparency Initiative (Transparency Initiative). The purpose of the Transparency Initiative is to coordinate a comprehensive health information system in order to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources.

The bill authorizes AHCA to contract with vendors to disseminate and convert such data into easily usable electronic formats. The bill specifies the data to be included in the comprehensive health information system, directs AHCA to coordinate the collection, sharing, and use of such information, and provides that AHCA shall monitor data collection procedures to ensure that data collected and disseminated under the initiative are accurate, valid, reliable, and complete.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to monitor AHCA's implementation of the comprehensive health information system required by the bill. It also creates reporting requirements for OPPAGA.

The bill may have a fiscal impact on state and local government. See FISCAL COMMENTS.

This bill may be a county or municipality mandate. See Section III.A.1 of the analysis.

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 State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Retention and Disposal

State law establishes a records and information management system within the Division of Library and Information Services of the Department of State (division).² The division is directed by law to establish and administer a records management program relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

The division is tasked with establishing rules relating to the destruction and disposition of records that are binding on all agencies.³ The rules must provide, at a minimum, procedures for complying with and submitting to the division records retention schedules, procedures for the physical destruction of records, and standards for the reproduction of records for security or with a view to the disposal of the original record.⁴ Public records may only be destroyed or otherwise disposed of in accordance with records retention schedules established by the division.⁵

Pursuant to this authority, the division has established a General Records Schedule for State and Local Government Agencies⁶ that establishes minimum retention and disposal requirements for records held by agencies.⁷ Agencies must ensure that all destruction of records is conducted in a manner that safeguards the interests of the state and the safety, security, and privacy of individuals. An agency destroying records containing information that is confidential or exempt from public records requirements must ensure that destruction methods used prevent unauthorized access to the information and that it cannot be practicably read, reconstructed, or recovered following destruction.⁸

¹ For the purpose of public records laws, an "agency" is defined as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Section 119.011, F.S.

² Section 257.36(1), F.S.

³ Section 119.021(2)(a), F.S.

⁴ Section 257.36(1), F.S.

⁵ Section 257.36(6), F.S.

⁶ *General Records Schedule GS1-SL for State and Local Government Agencies* (October 1, 2013), available at http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL-2013_Final.pdf (last visited March 18, 2014). The General Records Schedule provides a baseline for records retention. The division has developed 14 additional retention schedules applicable to specific public entities. Available at http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm (last visited March 20, 2014).

⁷ Rule 1B-24.003, Fla. Admin. Code.

⁸ Rule 1B-24.003(10), Fla. Admin. Code.

While the division has promulgated retention and records disposal rules and schedules that apply to a variety of records that contain personal identification information,⁹ it has not promulgated record destruction or disposal rules specifically relating to records that contain personal identification information.

Agency Website Collection of Personal Identification Information

Current law requires any agency¹⁰ or legislative entity that operates a website and uses electronic mail to post the following notice in a conspicuous location:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.¹¹

There does not appear to be any other provision in law requiring agency disclosures on websites relative to the collection of personal identification information. Personal identification information collected by an agency through a website must be retained and disposed of in accordance with the record retention and disposal schedules developed by the division, which vary depending on the type of record created by the website. For example, computer logs used to maintain the integrity and security of an agency's computer systems must be retained for 30 days or until a review of such logs is complete, whichever occurs first.¹²

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of one, that provides housing, meals, and one or more personal services to one or more adults who are not relatives of the owner or administrator.¹³

The Agency for Healthcare Administration (AHCA) is the state agency tasked with licensing and regulating assisted living facilities.¹⁴ In carrying out these licensing and regulatory responsibilities, AHCA collects and maintains a broad range of information relating to assisted living facilities.¹⁵

AHCA currently makes available on its website¹⁶ a facility search function that provides certain information related to assisted living facilities. The search function reveals information such as the name and address of the facility, the number and types of licensed beds in the facility, the licenses held by the facility and the status of the licenses, and a link to enforcement actions, final orders, and inspection reports and details for the facility.

Florida Center for Health Information and Policy Analysis

The Florida Center for Health Information and Policy Analysis (Florida Center) is established within AHCA¹⁷ and is funded through appropriations in the General Appropriations Act, through grants, gifts,

⁹ See *General Records Schedule*, *supra* fn. 6.

¹⁰ "Agency" is defined by reference to s. 119.011, F.S., which defines "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for purposes of ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹¹ Section 668.6076, F.S.

¹² *General Records Schedule*, p. 9, *supra* fn. 6.

¹³ Section 429.02(5), F.S. A "personal service" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the Department of Elderly Affairs may define by rule. Section 429.02(16), F.S.

¹⁴ Section 429.04(1), F.S.

¹⁵ For example, s. 429.11, F.S., requires an applicant for licensure as an assisted living facility to furnish documentation of a satisfactory sanitation inspection, a satisfactory firesafety inspection, and proof of liability insurance, among others.

¹⁶ <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 18, 2014).

¹⁷ Section 408.05(1), F.S.

and other payments, and through fees charged for services.¹⁸ The Florida Center provides a comprehensive health information system (information system) that includes the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of health-related data.¹⁹ There are five offices within the Florida Center, which serve different functions.²⁰ The offices are:

- Data Collection and Quality Assurance, which collects patient discharge data from all licensed acute care hospitals (including psychiatric and comprehensive rehabilitation units), comprehensive rehabilitation hospitals, ambulatory surgical centers, and emergency departments.²¹
- Risk Management and Patient Safety, which conducts in-depth analyses of reported incidents to determine what happened and how the health care facility responded to the incident.²²
- Data Dissemination and Communication, which maintains AHCA's health information website,²³ provides technical assistance to data users, and creates consumer brochures and other publications.²⁴
- Health Policy and Research, which conducts research and analysis of health care data from facilities and develops policy recommendations aimed at improving the delivery of health care services in Florida.²⁵
- Health Information Exchange, which monitors innovations in health information technology, informatics, and the exchange of health information and provides a clearinghouse of technical resources on health information exchange, electronic prescribing, privacy and security, and other relevant issues.²⁶

AHCA is required to perform certain functions related to the information system, in order to produce comparable and uniform health information and statistics for the development of policy recommendations.²⁷

Data Collection

The Florida Center identifies existing health-related data and collects data for use in the information system. The information collected by the Florida Center must include:

- The extent and nature of illness and disability of the state population;
- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;
- Environmental, social, and other health hazards;
- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status;
- Health resources;
- Utilization of health care by type of provider;
- Health care costs and financing;
- Family formation, growth, and dissolution;
- The extent of public and private health insurance coverage in this state; and

¹⁸ Section 408.05(7), F.S.

¹⁹ Section 408.05(1), F.S.

²⁰ Florida Center for Health Information and Policy Analysis, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/index.shtml> (last visited on March 19, 2014).

²¹ Office of Data Collection & Quality Assurance, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#DataC> (last visited on March 19, 2014).

²² Office of Risk Management and Patient Safety, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#PatientSafety> (last visited on March 19, 2014).

²³ www.FloridaHealthFinder.gov.

²⁴ Office of Data Dissemination and Communication, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#DataD> (last visited on March 19, 2014).

²⁵ Office of Health Policy and Research, the Agency for Health Care Administration, *accessible at*: http://ahca.myflorida.com/SCHS/division.shtml#Policy_Research (last visited on March 19, 2014).

²⁶ Office of Health Information Exchange, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#HIE> (last visited on March 19, 2014).

²⁷ Section 408.05(3), F.S.

- The quality of care provided by various health care providers.²⁸

The Florida Center electronically collects patient data from every Florida licensed inpatient hospital, ambulatory surgery center, emergency department, and comprehensive rehabilitation hospital on a quarterly basis. The data is validated for accuracy and maintained in three major databases: the hospital inpatient database, the ambulatory surgery database, and the emergency department database.²⁹

- The hospital inpatient database contains records for each patient stay at Florida acute care facilities, including long-term care hospitals and psychiatric hospitals. These records contain extensive patient information including discharge records, patient demographics, admission information, medical information, and charge data.³⁰ This database also includes comprehensive inpatient rehabilitation data on patient-level discharge information from Florida's licensed freestanding comprehensive inpatient rehabilitation hospitals and acute care hospital distinct part rehabilitation units.³¹
- The ambulatory surgery database contains "same-day surgery" data on reportable patient visits to Florida health care facilities, including freestanding ambulatory surgery centers, short-term acute care hospitals, lithotripsy centers, and cardiac catheterization laboratories.³² Ambulatory surgery data records include, but are not limited to, patient demographics, medical information, and charge data.³³
- The emergency department database collects reports of all patients who visited an emergency department, but were not admitted for inpatient care. Reports are electronically submitted to AHCA and include the hour of arrival, patient's chief complaint, principal diagnosis, race, ethnicity, and external causes of injury.³⁴

In addition to these databases, the Office of Risk Management and Patient Safety collects adverse incident reports from health care providers including, hospitals, ambulatory surgical centers, nursing homes, and assisted living facilities.³⁵

Reporting

The Florida Center is required to publish and make available the following reports:

- Member satisfaction surveys;
- Publications providing health statics on topical health policy issues;
- Publications providing health status profiles of people in Florida;
- Various topical health statics publications;
- Results of special health surveys, health care research, and health care evaluations; and
- An annual report on the Florida Center's activities.³⁶

The Florida Center also must provide indexing, abstracting, translation, publication and other services leading to a more effective and timely dissemination of health care statistics. The Florida Center is responsible for conducting a variety of special studies and surveys to expand the health care information and statistics available for policy analyses.³⁷

²⁸ Section 408.05(2), F.S.

²⁹ Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 2, found at: https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

³⁰ *Id.*, p. 3.

³¹ *Id.*, p. 4.

³² *Id.*, p. 3.

³³ *Id.*, p. 4.

³⁴ *Id.*, p. 4-5.

³⁵ *Id.*, p. 5.

³⁶ Section 408.05(5), F.S.

³⁷ *Id.*

Public Access to Data

The Office of Data Dissemination and Communication makes data collected available to the public in three ways: by updating and maintaining AHCA's health information website³⁸, issuing standard and ad hoc reports, and responding to requests for de-identified data.³⁹

The Florida Center maintains www.FloridaHealthFinder.gov, which was established to assist consumers in making informed health care decisions and improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public that allow easy access to information on hospitals, ambulatory surgery centers, emergency departments, hospice providers, physician volume, health plans, nursing homes, and prices for prescription drugs in Florida. The website also provides tools to researchers and professionals that allow specialized data queries, but requires users to have some knowledge of medical coding and terminology.⁴⁰

The Florida Center disseminates three standard reports that detail hospital fiscal data including a prior year report, an audited financial statement, and a hospital financial data report. Also, ad hoc reports may be requested for customers looking for specific information not included on a standard report or for customers who do not wish to purchase an entire data set to obtain information. The Center charges a set fee for standard reports⁴¹ and a variable fee based on the extensiveness of an ad hoc report.⁴²

The Florida Center also sells hospital inpatient, ambulatory surgery, and emergency department data to the general public in a non-confidential format. However, the requester must sign a limited set data use agreement which binds the requester to only using the data in a way specified in the agreement. Information not available in these limited data sets include: patient ID number, medical record number, social security number, dates of admission and discharge, visit beginning and end dates, age in days, payer, date of birth, and procedure dates.⁴³

State Consumer Health Information and Policy Advisory Council

The State Consumer Health Information and Policy Advisory Council (Advisory Council) assists the Florida Center in reviewing the information system. This includes the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information.⁴⁴ The Advisory Council assists AHCA in determining the method and format for the public disclosure of data collected by the Florida Center and works with the Florida Center in the development and implementation of a long-range plan for making available health care quality measures and financial data to allow consumers to compare health care services.⁴⁵ The Advisory Council consists of 13 members meet at least quarterly. The Advisory Council has the following responsibilities:

- Develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities;

³⁸ www.FloridaHealthFinder.gov

³⁹ Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 6-9, found at: https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

⁴⁰ *Id.*, p. 9.

⁴¹ The price list for purchasing data from the Center is available at:

<http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/OrderData/documents/PriceList%20Jan%202011.pdf>, (last visited on March 19, 2014).

⁴² Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 7, found at:

https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

⁴³ *Id.*, p. 7.

⁴⁴ Section 408.05(8), F.S.

⁴⁵ State Consumer Health Information and Policy Advisory Council, *Executive Summary*, found at:

<http://ahca.myflorida.com/SCHS/CommitteesCouncils/docs/AC-ExecutiveSummary0113.pdf>, (last visited on March 19, 2014).

- Develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data; and
- Create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the Advisory Council.⁴⁶

Effect of Bill

Public Records Retention and Disposal

The bill directs the division to adopt rules that include procedures for establishing schedules for the physical destruction or other disposal of records held by an agency that contain personal identification information. Personal identification information is defined as an item, collection, or grouping of information that may be used, alone or in conjunction with other information, to identify a unique individual. The definition includes, but is not limited to, name, postal or e-mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or other number or information that can be used to access an individual's financial resources, education records, medical records, license plate number of a registered motor vehicle, images, including facial images, biometric identification, criminal history, and employment history.

Unless otherwise required by law, an agency may indefinitely retain records containing information that is not identifiable as related to a unique individual. The Department of State has indicated that such procedures are already in place by rule.⁴⁷

Agency Website Collection of Personal Identification Information

The bill creates part IV of chapter 282, F.S., relating to government data collection practices. The bill requires an agency⁴⁸ that collects personal identification information on a website and retains such information to maintain and conspicuously post a privacy policy on the website. The privacy policy must provide at a minimum:

- A description of the services the website provides;
- A description of the personal identification information that the agency collects and maintains from an individual accessing or using the website;
- An explanation of whether the agency's data collecting and sharing practices are mandatory or allow a user to opt out of those practices;
- Available alternatives to using the website;
- A statement as to how the agency uses the personal identification information, including, but not limited to, whether and under what circumstances the agency discloses such information;
- Information stating whether any other person, as defined in s. 671.201, F.S.,⁴⁹ collects personal identification information through the website;
- A general description of the security measures in place to protect personal identification information; however, such description must not compromise the integrity of the security measures; and

⁴⁶ Section 408.05(8), F.S.

⁴⁷ Department of State Legislative Bill Analysis for HB 1231 (dated March 14, 2014), on file with the Government Operations Subcommittee.

⁴⁸ Agency is defined by reference to s. 119.011, F.S., which defines "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁴⁹ Section 671.201, F.S., defines "person" as "an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity."

- An explanation of public records requirements relating to the personal identification information of an individual using the website and whether such information may be disclosed in response to a public records request.

The bill requires an agency website that installs a cookie on an individual's computer or electronic device to inform the individual of the use of cookies and request permission to install the cookies on the individual's computer. An individual who declines to have cookies installed must still be able to access and use the website. These requirements do not apply to a cookie temporarily installed if the cookie is only installed in the memory of the computer or electronic device and is deleted from such memory when the website browser or application is closed.

The bill provides that any contract between a public agency⁵⁰ and a contractor⁵¹ must specify that the contractor is subject to the personal identification information disclosure requirements and the requirements related to cookies. The failure of an agency to comply with the personal identification information disclosure requirements or the provisions related to cookies does not create a civil cause of action.

The bill directs the OPPAGA to submit a report to the President of the Senate and the Speaker of the House of Representatives by July 1, 2015, that:

- Identifies personal identification information, and the records in which such information is contained, held by an agency of the executive or legislative branch of state government;
- Describes the processes by which an individual may currently view and verify his or her personal identification information held by an agency, including how an individual may request the correction of incorrect personal identification information; and
- Identifies any obstacles that inhibit an individual's access to such records.

Data on Assisted Living Facilities

The bill requires AHCA to provide, by November 1, 2014, electronic access to data on assisted living facilities. The data must be searchable, downloadable, and available in generally acceptable formats.

The data must contain information on each licensed assisted living facility including, at a minimum:

- The name and address of the facility.
- The number and type of licensed beds in the facility.
- The types of licenses held by the facility.
- The facility's license expiration date and status.
- Other relevant information that AHCA currently collects.
- A list of the facility's violations, including a summary of the violation presented in a manner understandable by the general public, sanctions imposed by final order, and the date the corrective action was confirmed by AHCA.
- Links to inspection reports on file with AHCA.

The bill authorizes AHCA to provide a monitored comment webpage that allows members of the public to comment on specific assisted living facilities. If a comment webpage is provided, it must, at a minimum, allow members of the public to identify themselves, provide comments on their experiences and observations of an assisted living facility, and view others' comments. AHCA must review comments for profane content and redact profane content before posting the comments to the webpage. AHCA must maintain comments in their original form and must make the comments available

⁵⁰ Public agency is defined by reference to s. 119.0701(1)(b), F.S., which defines a "public agency" as a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

⁵¹ Contractor is defined by reference to s. 119.0701(1)(a), F.S., which defines a "contractor" as "an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2)."

for viewing without redaction. A controlling interest⁵² or employee of an assisted living facility is prohibited from posting comments on the page, but may respond to other comments. The bill requires AHCA to ensure that such responses are identified as being submitted by a representative of the facility.

AHCA may provide links to third-party websites that use the data published about assisted living facilities to assist consumers in evaluating the quality of care and service in assisted living facilities.

Florida Health Information Transparency Initiative

The bill dissolves the Florida Center within AHCA. It also abolishes the State Consumer Health Information and Policy Advisory Council.

The bill establishes the Florida Health Information Transparency Initiative (Transparency Initiative). The purpose of the Transparency Initiative is to coordinate a comprehensive health information system in order to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources.

The bill provides that AHCA is responsible for making state-collected health data available in a manner that allows for and encourages multiple and innovative uses of data sets collected under the state. Subject to funding by the General Appropriations Act, the bill requires AHCA to contract with one or more vendors to develop new methods of dissemination and to convert the data into easily useable electronic formats.

The bill revises the information required to be contained in the information system. It requires the information system to include:

- Health resources including licensed health professionals, licensed health care facilities, managed care organizations, and other health services regulated or funded by the state. This is required instead of including health resources related to physicians, dentist, nurses and other health professionals.
- Information regarding the utilization of health resources. This is required instead of including the utilization of health care by type of provider.
- Health care costs and financing, including Medicaid claims and encounter data and data from other public and private payers in the health care costs and financing. This is required instead of including trends in health care prices and costs, sources of payment for health care services, and federal, state, and local expenditures for healthcare in the healthcare costs and financing.
- The extent, source, and type of public and private health insurance coverage in Florida. This is required instead of including only the extent of public and private health insurance coverage in Florida.
- The data necessary to measure the value and quality of care provided by various health care providers, including applicable credentials, accreditation status, utilization, revenues and expenses, outcomes, site visits, and other regulatory reports, and the results of administrative and civil litigation. This is required instead of including data on the quality of care provided by various health care providers.

Under the bill, the information system would no longer be required to include data on:

- The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality;
- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;

⁵² A “controlling interest” is an applicant or licensee, a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee, or a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. Section 408.803, F.S.

- Environmental, social, and other health hazards;
- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status; and
- Family formation, growth, and dissolution.

The bill also revises AHCA's functions related to the information system. It requires AHCA to:

- Collect and compile data from all state agencies and programs involved in providing, regulating, and paying for health services. This is required instead of the current requirement that AHCA coordinate the activities of state agencies involved in the design and implementation of the information system.
- Promote data sharing through the dissemination of state-collected health data by making such data available, transferable, and readily useable. This is required instead of the current requirement that AHCA undertake research, development, and evaluation regarding the information system for the purpose of creating comparable health information.
- Enable and facilitate the sharing and use of all state-collected health data to the maximum extent possible. This is required instead of the current requirement that AHCA establish by rule the types of data collected, compiled, processed, used, or shared.
- Monitor data collection procedures, test data quality, and take corrective actions as necessary to ensure that data and information disseminated under the initiative are accurate, valid, reliable, and complete. This is required instead of the current requirement that AHCA prescribe standards for the publication of health-care-related data, which ensures the reporting of accurate, valid, reliable, complete, and comparable data.
- Initiate and maintain activities necessary to collect, edit, verify, archive, and retrieve data compiled. This is required instead of the current requirement that AHCA prescribe standards for the maintenance and preservation of the Florida Center's data.

The bill deletes a number of functions currently required to be performed by AHCA in relation to the information system. The functions deleted by the bill include:

- Reviewing the statistical activities of state agencies to ensure that they are consistent with the information system.
- Establishing minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data.
- Establishing advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.
- Ensuring that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.
- Developing and implementing a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services.
- Administering, managing, and monitoring grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network.
- Initiating, overseeing, managing, and evaluating the integration of healthcare data from each state agency that collects, stores, and reports on health care issues and make the data available to any health care practitioner through a state health information network.

The bill removes the requirement that technical assistance be provided to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the Florida Center. It also removes the requirement that the written agreements (for the sharing of health-care-related data with local, state, and federal agencies) specify the types, methods, and periodicity of data exchanges and specify the types of data to be transferred.

The bill directs AHCA to implement the Transparency Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management. AHCA must ensure that a vendor who enters into a contract with the state does not inhibit or impede consumer access to state-collected health data and information.

AHCA may accept payments and use such funds for undertaking special studies and projects. The bill removes the prohibition on the use of such funds to offset annual appropriations from the General Revenue Fund.

The bill directs OPPAGA to monitor AHCA's implementation of the comprehensive health information system required by the bill. No later than one year after AHCA completes implementation, OPPAGA must provide a report to the President of the Senate and the Speaker of the House of Representatives containing recommendations regarding the application of data practices made pursuant to this bill to other executive agencies.

Miscellaneous Provisions

The bill reenacts s. 120.54(8), F.S., for the purpose of incorporating an amendment made by the bill. It also makes conforming changes.

B. SECTION DIRECTORY:

Section 1 amends s. 257.36, F.S., requiring the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information.

Section 2 creates part IV of ch. 282, F.S., consisting of s. 282.801, F.S.; providing definitions; requiring an agency that collects and maintains personal identification information to post a privacy policy on its website; prescribing minimum requirements for a privacy policy; providing requirements and exceptions regarding an agency's use of cookies on its website; requiring that privacy policy requirements be specified in a contract between a public agency and a contractor; and specifying that a violation does not create a civil cause of action.

Section 3 requires the OPPAGA to submit to the Legislature a report relating to records containing personal identification information by a specified date.

Section 4 requires AHCA to provide specified data on assisted living facilities by a certain date; provides minimum requirements for such data; authorizes AHCA to create a comment webpage regarding assisted living facilities; provides minimum requirements for the website; authorizes AHCA to provide links to certain third-party websites; and authorizes AHCA to adopt rules to implement this section of the bill.

Section 5 amends s. 408.05, F.S.; dissolving the Center for Health Information and Policy Analysis within AHCA; requiring AHCA to coordinate a system to promote access to certain data and information; requiring that certain health-related data be included within the system; assigning duties to AHCA relating to the collection and dissemination of data; and establishing conditions for the funding of the system.

Section 6 requires OPPAGA to monitor AHCA's implementation of the health information system and to submit a report to the Legislature after completion of the implementation.

Section 7 reenacts s. 120.54(8), F.S., relating to rulemaking, to incorporate the amendment made to s. 257.36, F.S., in the bill.

Sections 8 through 17 respectively amend ss. 20.42, 381.026, 395.301, 395.602, 395.6025, 408.07, 408.18, 465.0244, 627.6499, and 641.54, F.S.; conforming provisions to changes made by the bill.

Section 18 provides an effective date of July 1, 2014.

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:

The bill may have a negative economic impact on the private sector because it subjects contractors to the disclosure provisions regarding personal identification information and cookies. These requirements might require certain contractors to modify their websites.

D. FISCAL COMMENTS:

The bill requires state and local agencies that collect personal identification information or use cookies on their websites to implement certain notice requirements. Modification of agency websites to comply with these requirements may have an indeterminate negative fiscal impact on affected state and local agencies.

The bill requires OPPAGA to prepare two reports. Preparing those reports will require the use of certain resources, and may have a negative fiscal impact on the legislative branch.

The bill may save AHCA approximately \$2,000 in annual recurring travel costs that it reimburses to the State Consumer Health Information and Policy Advisory Council.⁵³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments that collect personal identification information or use cookies on their websites to modify the website in order to comply with the notice requirements provided in the bill. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates

⁵³ Agency analysis for SB 1258 (2013), Agency for Health Care Administration, April 15, 2013. SB 1258 (2013) was substantially identical to those portions of this bill that address the replacement of the Florida Center for Health Information and Policy Analysis with the Florida Health Information Transparency Initiative.

provision of Art. VII, s. 18 of the State Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

The bill authorizes AHCA to develop a comment webpage that allows members of the public to comment on assisted living facilities; however, the bill requires AHCA to prohibit controlling interests and employees from commenting on the webpage, except in response to other comments.

When government creates a public forum for the expression of ideas, the First Amendment to the United States Constitution generally prohibits restrictions on speech in that forum unless such restrictions are content neutral, narrowly tailored to serve an important government interest, and allow alternative channels of communication.⁵⁴ If the prohibition on commenting by controlling interests and employees of assisted living facilities is a content-based speech restriction, a reviewing court may find that it is an unconstitutional abridgement of the freedom of speech.

Additionally, the bill requires AHCA to monitor and redact those comments that contain profanity. The bill does not define what constitutes profane content for the purpose redacting comments. This profanity provision might be impermissibly vague if it fails to give an ordinary person fair notice of what speech is forbidden,⁵⁵ and may be an impermissible grant of discretion to monitor speech if it does not provide sufficiently defined standards for AHCA to apply the law.⁵⁶

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the division to adopt rules that include procedures for establishing schedules for the physical destruction or other disposal of records held by an agency which contain personal identification. The Department of State has indicated that such procedures are already in place by rule.⁵⁷

The bill grants rule-making authority to AHCA for the purpose of implementing requirements to provide electronic access to data on assisted living facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Contractor Websites

The bill provides that any contract between a public agency⁵⁸ and a contractor⁵⁹ must specify that the contractor is subject to the personal identification information and cookies disclosure requirements in this bill. As drafted, the bill may impose the personal identification information and cookies disclosure requirements on any website operated by a contractor, not just a website operated pursuant to a contract with a public agency. If this requirement is intended to apply only to those websites operated by a contractor pursuant to a contract with a public agency, as opposed to any website operated by the contractor, it is recommended that the bill be amended to provide so explicitly.

Other Comments: Assisted Living Facility Comment Webpage and Profanity

The bill authorizes AHCA to develop a comment webpage that allows members of the public to comment on assisted living facilities. The bill requires AHCA to monitor and redact those comments

⁵⁴ See *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

⁵⁵ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972).

⁵⁶ See *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992).

⁵⁷ Department of State Legislative Bill Analysis for HB 1231 (dated March 14, 2014), on file with the Government Operations Subcommittee.

⁵⁸ Public agency is defined by reference to s. 119.0701(1)(b), F.S., which defines a "public agency" as a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

⁵⁹ Contractor is defined by reference to s. 119.0701(1)(a), F.S., which defines a "contractor" as "an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2)."

that contain profanity. The bill does not define what constitutes profane content for the purpose of redacting comments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 facilities; providing minimum requirements;
 28 authorizing the agency to provide links to certain
 29 third-party websites; authorizing the agency to adopt
 30 rules; amending s. 408.05, F.S.; dissolving the Center
 31 for Health Information and Policy Analysis within the
 32 Agency for Health Care Administration; requiring the
 33 agency to coordinate a system to promote access to
 34 certain data and information; requiring that certain
 35 health-related data be included within the system;
 36 assigning duties to the agency relating to the
 37 collection and dissemination of data; establishing
 38 conditions for the funding of the system; requiring
 39 the Office of Program Policy Analysis and Government
 40 Accountability to monitor the agency's implementation
 41 of the health information system; requiring the Office
 42 of Program Policy Analysis and Government
 43 Accountability to submit a report to the Legislature
 44 after completion of the implementation; providing
 45 report requirements; reenacting s. 120.54(8), F.S.,
 46 relating to rulemaking, to incorporate the amendment
 47 made to s. 257.36, F.S., in a reference thereto;
 48 amending ss. 20.42, 381.026, 395.301, 395.602,
 49 395.6025, 408.07, 408.18, 465.0244, 627.6499, and
 50 641.54, F.S.; conforming provisions to changes made by
 51 the act; providing an effective date.
 52

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

54

55 Section 1. Subsection (6) of section 257.36, Florida
 56 Statutes, is amended to read:

57 257.36 Records and information management.—

58 (6) A public record may be destroyed or otherwise disposed
 59 of only in accordance with retention schedules established by
 60 the division. The division shall adopt ~~reasonable~~ rules
 61 consistent not inconsistent with this chapter which are ~~shall be~~
 62 binding on all agencies relating to the destruction and
 63 disposition of records. Such rules shall include ~~provide~~, but
 64 need not be limited to:

65 (a) Procedures for complying and submitting to the
 66 division records-retention schedules.

67 (b) Procedures for the physical destruction or other
 68 disposal of records.

69 (c) Procedures for establishing schedules for the physical
 70 destruction or other disposal of records held by an agency which
 71 contain personal identification information, as defined in s.
 72 282.801, after meeting retention requirements. Unless otherwise
 73 required by law, an agency may indefinitely retain records
 74 containing information that is not identifiable as related to a
 75 unique individual.

76 ~~(d)(e)~~ Standards for the reproduction of records for
 77 security or with a view to the disposal of the original record.

78 Section 2. Part IV of chapter 282, Florida Statutes,

79 consisting of section 282.801, Florida Statutes, is created to
 80 read:

81 PART IV

82 GOVERNMENT DATA COLLECTION PRACTICES

83 282.801 Government data practices.-

84 (1) For purposes of this part, the term:

85 (a) "Agency" has the same meaning as in s. 119.011.

86 (b) "Cookie" means data sent from a website which is
 87 electronically installed on a computer or electronic device of
 88 an individual who has accessed the website and transmits certain
 89 information to the server of that website.

90 (c) "Individual" means a human being and does not include
 91 a corporation, partnership, or other business entity.

92 (d) "Personal identification information" means an item,
 93 collection, or grouping of information that may be used, alone
 94 or in conjunction with other information, to identify a unique
 95 individual, including, but not limited to, the individual's:

96 1. Name.

97 2. Postal or e-mail address.

98 3. Telephone number.

99 4. Social security number.

100 5. Date of birth.

101 6. Mother's maiden name.

102 7. Official state-issued or United States-issued driver
 103 license or identification number, alien registration number,
 104 government passport number, employer or taxpayer identification

105 number, or Medicaid or food assistance account number.
 106 8. Bank account number, credit or debit card number, or
 107 other number or information that can be used to access an
 108 individual's financial resources.
 109 9. Education records.
 110 10. Medical records.
 111 11. License plate number of a registered motor vehicle.
 112 12. Images, including facial images.
 113 13. Biometric identification information.
 114 14. Criminal history.
 115 15. Employment history.
 116 (2) An agency that collects personal identification
 117 information through a website and retains such information shall
 118 maintain and conspicuously post a privacy policy on such
 119 website. At a minimum, the privacy policy must provide:
 120 (a) A description of the services the website provides.
 121 (b) A description of the personal identification
 122 information that the agency collects and maintains from an
 123 individual accessing or using the website.
 124 (c) An explanation of whether the agency's data collecting
 125 and sharing practices are mandatory or allow a user to opt out
 126 of those practices.
 127 (d) Available alternatives to using the website.
 128 (e) A statement as to how the agency uses the personal
 129 identification information, including, but not limited to,
 130 whether and under what circumstances the agency discloses such

131 information.

132 (f) Information stating whether any other person, as
 133 defined in s. 671.201, collects personal identification
 134 information through the website.

135 (g) A general description of the security measures in
 136 place to protect personal identification information; however,
 137 such description must not compromise the integrity of the
 138 security measures.

139 (h) An explanation of public records requirements relating
 140 to the personal identification information of an individual
 141 using the website and whether such information may be disclosed
 142 in response to a public records request.

143 (3) (a) An agency that uses a website to install a cookie
 144 on an individual's computer or electronic device shall inform an
 145 individual accessing the website of the use of cookies and
 146 request permission to install the cookies on the individual's
 147 computer.

148 (b) If an individual accessing the website of an agency
 149 declines to have cookies installed, such individual shall still
 150 have access to and use of the website.

151 (c) This subsection does not apply to a cookie temporarily
 152 installed on an individual's computer or electronic device by an
 153 agency if the cookie is installed only in the memory of the
 154 computer or electronic device and is deleted from such memory
 155 when the website browser or website application is closed.

156 (4) Any contract between a public agency, as defined in s.

157 119.0701(1)(b), and a contractor, as defined in s.
 158 119.0701(1)(a), must specify that the contractor must comply
 159 with the requirements of subsections (2) and (3).

160 (5) The failure of an agency to comply with this section
 161 does not create a civil cause of action.

162 Section 3. The Office of Program Policy Analysis and
 163 Government Accountability shall submit a report to the President
 164 of the Senate and the Speaker of the House of Representatives by
 165 July 1, 2015, which:

166 (1) Identifies personal identification information, as
 167 defined in s. 282.801, Florida Statutes, and the records in
 168 which such information is contained, held by an agency of the
 169 executive or legislative branch of state government.

170 (2) Describes the processes by which an individual may
 171 currently view and verify his or her personal identification
 172 information held by an agency, including how an individual may
 173 request the correction of incorrect personal identification
 174 information.

175 (3) Identifies any obstacles that inhibit an individual's
 176 access to such records.

177 Section 4. (1) By November 1, 2014, the Agency for Health
 178 Care Administration shall provide electronic access to data on
 179 assisted living facilities. Such data must be searchable,
 180 downloadable, and available in generally accepted formats. At a
 181 minimum, such data must include:

182 (a) Information on each assisted living facility licensed

183 under part I of chapter 429, Florida Statutes, including:
 184 1. The name and address of the facility.
 185 2. The number and type of licensed beds in the facility.
 186 3. The types of licenses held by the facility.
 187 4. The facility's license expiration date and status.
 188 5. Other relevant information that the agency currently
 189 collects.

190 (b) A list of the facility's violations, including, for
 191 each violation:

- 192 1. A summary of the violation presented in a manner
- 193 understandable by the general public;
- 194 2. Sanctions imposed by final order; and
- 195 3. The date the corrective action was confirmed by the
- 196 agency.

197 (c) Links to inspection reports on file with the agency.

198 (2)(a) The agency may provide a monitored comment webpage
 199 that allows members of the public to comment on specific
 200 assisted living facilities licensed to operate in this state. At
 201 a minimum, the comment webpage must allow members of the public
 202 to identify themselves, provide comments on their experiences
 203 with, or observations of, an assisted living facility, and view
 204 others' comments.

205 (b) The agency shall review comments for profane content
 206 and redact profane content before posting the comments to the
 207 webpage. All comments, as originally submitted, shall be
 208 retained by the agency for inspection by the public without

209 | redaction pursuant to chapter 119, Florida Statutes.

210 | (c) A controlling interest, as defined in s. 408.803,
 211 | Florida Statutes, in an assisted living facility, or an employee
 212 | or owner of an assisted living facility, is prohibited from
 213 | posting comments on the page. A controlling interest, employee,
 214 | or owner may respond to comments on the page, and the agency
 215 | shall ensure that such responses are identified as being
 216 | submitted by a representative of the facility.

217 | (3) The agency may provide links to third-party websites
 218 | that use the data published pursuant to this section to assist
 219 | consumers in evaluating the quality of care and service in
 220 | assisted living facilities.

221 | (4) The agency may adopt rules to administer this section.

222 | Section 5. Section 408.05, Florida Statutes, is amended to
 223 | read:

224 | 408.05 Florida Health Information Transparency Initiative
 225 | ~~Center for Health Information and Policy Analysis.~~

226 | (1) CREATION AND PURPOSE ESTABLISHMENT.—The agency shall
 227 | create a comprehensive health information system to promote
 228 | accessibility, transparency, and utility of state-collected data
 229 | and information about health providers, facilities, services,
 230 | and payment sources. The agency is responsible for making state-
 231 | collected health data available in a manner that allows for and
 232 | encourages multiple and innovative uses of data sets. Subject to
 233 | funding by the General Appropriations Act, the agency shall
 234 | develop and deploy, through a contract award with one or more

235 vendors or through internal development, new methods of
 236 dissemination and ways to convert data into easily usable
 237 electronic formats ~~establish a Florida Center for Health~~
 238 ~~Information and Policy Analysis. The center shall establish a~~
 239 ~~comprehensive health information system to provide for the~~
 240 ~~collection, compilation, coordination, analysis, indexing,~~
 241 ~~dissemination, and utilization of both purposefully collected~~
 242 ~~and extant health-related data and statistics. The center shall~~
 243 ~~be staffed with public health experts, biostatisticians,~~
 244 ~~information system analysts, health policy experts, economists,~~
 245 ~~and other staff necessary to carry out its functions.~~

246 (2) HEALTH-RELATED DATA.—The comprehensive health
 247 information system must include the following data and
 248 information ~~operated by the Florida Center for Health~~
 249 ~~Information and Policy Analysis shall identify the best~~
 250 ~~available data sources and coordinate the compilation of extant~~
 251 ~~health-related data and statistics and purposefully collect data~~
 252 ~~on:~~

253 ~~(a) The extent and nature of illness and disability of the~~
 254 ~~state population, including life expectancy, the incidence of~~
 255 ~~various acute and chronic illnesses, and infant and maternal~~
 256 ~~morbidity and mortality.~~

257 ~~(b) The impact of illness and disability of the state~~
 258 ~~population on the state economy and on other aspects of the~~
 259 ~~well-being of the people in this state.~~

260 ~~(c) Environmental, social, and other health hazards.~~

261 ~~(d) Health knowledge and practices of the people in this~~
 262 ~~state and determinants of health and nutritional practices and~~
 263 ~~status.~~

264 (a)(e) Health resources, including licensed health
 265 professionals, licensed health care facilities, managed care
 266 organizations, and other health services regulated or funded by
 267 the state physicians, dentists, nurses, and other health
 268 professionals, by specialty and type of practice and acute,
 269 long-term care and other institutional care facility supplies
 270 and specific services provided by hospitals, nursing homes, home
 271 health agencies, and other health care facilities.

272 (b)(f) Utilization of health resources care by type of
 273 provider.

274 (c)(g) Health care costs and financing, including Medicaid
 275 claims and encounter data and data from other public and private
 276 payors trends in health care prices and costs, the sources of
 277 payment for health care services, and federal, state, and local
 278 expenditures for health care.

279 ~~(h) Family formation, growth, and dissolution.~~

280 (d)(i) The extent, source, and type of public and private
 281 health insurance coverage in this state.

282 (e)(j) The data necessary for measuring value and quality
 283 of care provided by various health care providers, including
 284 applicable credentials, accreditation status, use, revenues and
 285 expenses, outcomes, site visits, and other regulatory reports,
 286 and the results of administrative and civil litigation related

287 | to health care.

288 | (3) COORDINATION ~~COMPREHENSIVE HEALTH INFORMATION SYSTEM.~~-

289 | In order to collect comprehensive ~~produce comparable and uniform~~
 290 | health information and statistics and to disseminate such
 291 | information to for the public, as well as for the development of
 292 | policy recommendations, the agency shall perform the following
 293 | functions:

294 | (a) Collect and compile data from all agencies and
 295 | programs that provide, regulate, and pay for health services
 296 | ~~Coordinate the activities of state agencies involved in the~~
 297 | ~~design and implementation of the comprehensive health~~
 298 | ~~information system.~~

299 | (b) Promote data sharing through the ~~Undertake research,~~
 300 | development, dissemination, and evaluation of state-collected
 301 | health data and by making such data available, transferable, and
 302 | readily usable ~~respecting the comprehensive health information~~
 303 | ~~system.~~

304 | ~~(c) Review the statistical activities of state agencies to~~
 305 | ~~ensure that they are consistent with the comprehensive health~~
 306 | ~~information system.~~

307 | ~~(c)(d)~~ Develop written agreements with local, state, and
 308 | federal agencies for the sharing of health-care-related data or
 309 | using the facilities and services of such agencies. State
 310 | agencies, local health councils, and other agencies under state
 311 | contract shall assist the agency ~~center~~ in obtaining, compiling,
 312 | and transferring health-care-related data maintained by state

313 and local agencies. ~~Written agreements must specify the types,~~
 314 ~~methods, and periodicity of data exchanges and specify the types~~
 315 ~~of data that will be transferred to the center.~~

316 (d)-(e) Enable and facilitate the sharing and use of all
 317 state-collected health data to the maximum extent allowed by law
 318 ~~Establish by rule the types of data collected, compiled,~~
 319 ~~processed, used, or shared. Decisions regarding center data sets~~
 320 ~~should be made based on consultation with the State Consumer~~
 321 ~~Health Information and Policy Advisory Council and other public~~
 322 ~~and private users regarding the types of data which should be~~
 323 ~~collected and their uses. The center shall establish~~
 324 ~~standardized means for collecting health information and~~
 325 ~~statistics under laws and rules administered by the agency.~~

326 ~~(f) Establish minimum health care related data sets which~~
 327 ~~are necessary on a continuing basis to fulfill the collection~~
 328 ~~requirements of the center and which shall be used by state~~
 329 ~~agencies in collecting and compiling health care related data.~~
 330 ~~The agency shall periodically review ongoing health care data~~
 331 ~~collections of the Department of Health and other state agencies~~
 332 ~~to determine if the collections are being conducted in~~
 333 ~~accordance with the established minimum sets of data.~~

334 ~~(g) Establish advisory standards to ensure the quality of~~
 335 ~~health statistical and epidemiological data collection,~~
 336 ~~processing, and analysis by local, state, and private~~
 337 ~~organizations.~~

338 (e)-(h) Monitor data collection procedures, test data

339 quality, and take such corrective actions as are necessary to
 340 ensure that data and information disseminated under the
 341 initiative are accurate, valid, reliable, and complete ~~Prescribe~~
 342 ~~standards for the publication of health care related data~~
 343 ~~reported pursuant to this section which ensure the reporting of~~
 344 ~~accurate, valid, reliable, complete, and comparable data. Such~~
 345 ~~standards should include advisory warnings to users of the data~~
 346 ~~regarding the status and quality of any data reported by or~~
 347 ~~available from the center.~~

348 (f)(i) Initiate and maintain activities necessary to
 349 collect, edit, verify, archive, and retrieve data compiled
 350 pursuant to this section ~~Prescribe standards for the maintenance~~
 351 ~~and preservation of the center's data. This should include~~
 352 ~~methods for archiving data, retrieval of archived data, and data~~
 353 ~~editing and verification.~~

354 ~~(j) Ensure that strict quality control measures are~~
 355 ~~maintained for the dissemination of data through publications,~~
 356 ~~studies, or user requests.~~

357 ~~(k) Develop, in conjunction with the State Consumer Health~~
 358 ~~Information and Policy Advisory Council, and implement a long-~~
 359 ~~range plan for making available health care quality measures and~~
 360 ~~financial data that will allow consumers to compare health care~~
 361 ~~services. The health care quality measures and financial data~~
 362 ~~the agency must make available include, but are not limited to,~~
 363 ~~pharmaceuticals, physicians, health care facilities, and health~~
 364 ~~plans and managed care entities. The agency shall update the~~

365 ~~plan and report on the status of its implementation annually.~~
 366 ~~The agency shall also make the plan and status report available~~
 367 ~~to the public on its Internet website. As part of the plan, the~~
 368 ~~agency shall identify the process and timeframes for~~
 369 ~~implementation, barriers to implementation, and recommendations~~
 370 ~~of changes in the law that may be enacted by the Legislature to~~
 371 ~~eliminate the barriers. As preliminary elements of the plan, the~~
 372 ~~agency shall:~~

373 ~~1. Make available patient safety indicators, inpatient~~
 374 ~~quality indicators, and performance outcome and patient charge~~
 375 ~~data collected from health care facilities pursuant to s.~~
 376 ~~408.061(1)(a) and (2). The terms "patient safety indicators" and~~
 377 ~~"inpatient quality indicators" have the same meaning as that~~
 378 ~~ascribed by the Centers for Medicare and Medicaid Services, an~~
 379 ~~accrediting organization whose standards incorporate comparable~~
 380 ~~regulations required by this state, or a national entity that~~
 381 ~~establishes standards to measure the performance of health care~~
 382 ~~providers, or by other states. The agency shall determine which~~
 383 ~~conditions, procedures, health care quality measures, and~~
 384 ~~patient charge data to disclose based upon input from the~~
 385 ~~council. When determining which conditions and procedures are to~~
 386 ~~be disclosed, the council and the agency shall consider~~
 387 ~~variation in costs, variation in outcomes, and magnitude of~~
 388 ~~variations and other relevant information. When determining~~
 389 ~~which health care quality measures to disclose, the agency:~~

390 ~~a. Shall consider such factors as volume of cases, average~~

391 ~~patient charges, average length of stay, complication rates,~~
 392 ~~mortality rates, and infection rates, among others, which shall~~
 393 ~~be adjusted for case mix and severity, if applicable.~~

394 ~~b. May consider such additional measures that are adopted~~
 395 ~~by the Centers for Medicare and Medicaid Studies, an accrediting~~
 396 ~~organization whose standards incorporate comparable regulations~~
 397 ~~required by this state, the National Quality Forum, the Joint~~
 398 ~~Commission on Accreditation of Healthcare Organizations, the~~
 399 ~~Agency for Healthcare Research and Quality, the Centers for~~
 400 ~~Disease Control and Prevention, or a similar national entity~~
 401 ~~that establishes standards to measure the performance of health~~
 402 ~~care providers, or by other states.~~

403
 404 ~~When determining which patient charge data to disclose, the~~
 405 ~~agency shall include such measures as the average of~~
 406 ~~undiscounted charges on frequently performed procedures and~~
 407 ~~preventive diagnostic procedures, the range of procedure charges~~
 408 ~~from highest to lowest, average net revenue per adjusted patient~~
 409 ~~day, average cost per adjusted patient day, and average cost per~~
 410 ~~admission, among others.~~

411 ~~2. Make available performance measures, benefit design,~~
 412 ~~and premium cost data from health plans licensed pursuant to~~
 413 ~~chapter 627 or chapter 641. The agency shall determine which~~
 414 ~~health care quality measures and member and subscriber cost data~~
 415 ~~to disclose, based upon input from the council. When determining~~
 416 ~~which data to disclose, the agency shall consider information~~

417 ~~that may be required by either individual or group purchasers to~~
 418 ~~assess the value of the product, which may include membership~~
 419 ~~satisfaction, quality of care, current enrollment or membership,~~
 420 ~~coverage areas, accreditation status, premium costs, plan costs,~~
 421 ~~premium increases, range of benefits, copayments and~~
 422 ~~deductibles, accuracy and speed of claims payment, credentials~~
 423 ~~of physicians, number of providers, names of network providers,~~
 424 ~~and hospitals in the network. Health plans shall make available~~
 425 ~~to the agency such data or information that is not currently~~
 426 ~~reported to the agency or the office.~~

427 ~~3. Determine the method and format for public disclosure~~
 428 ~~of data reported pursuant to this paragraph. The agency shall~~
 429 ~~make its determination based upon input from the State Consumer~~
 430 ~~Health Information and Policy Advisory Council. At a minimum,~~
 431 ~~the data shall be made available on the agency's Internet~~
 432 ~~website in a manner that allows consumers to conduct an~~
 433 ~~interactive search that allows them to view and compare the~~
 434 ~~information for specific providers. The website must include~~
 435 ~~such additional information as is determined necessary to ensure~~
 436 ~~that the website enhances informed decisionmaking among~~
 437 ~~consumers and health care purchasers, which shall include, at a~~
 438 ~~minimum, appropriate guidance on how to use the data and an~~
 439 ~~explanation of why the data may vary from provider to provider.~~

440 ~~4. Publish on its website undiscounted charges for no~~
 441 ~~fewer than 150 of the most commonly performed adult and~~
 442 ~~pediatric procedures, including outpatient, inpatient,~~

443 ~~diagnostic, and preventative procedures.~~

444 ~~(4) TECHNICAL ASSISTANCE.~~

445 ~~(a) The center shall provide technical assistance to~~
 446 ~~persons or organizations engaged in health planning activities~~
 447 ~~in the effective use of statistics collected and compiled by the~~
 448 ~~center. The center shall also provide the following additional~~
 449 ~~technical assistance services:~~

450 ~~1. Establish procedures identifying the circumstances~~
 451 ~~under which, the places at which, the persons from whom, and the~~
 452 ~~methods by which a person may secure data from the center,~~
 453 ~~including procedures governing requests, the ordering of~~
 454 ~~requests, timeframes for handling requests, and other procedures~~
 455 ~~necessary to facilitate the use of the center's data. To the~~
 456 ~~extent possible, the center should provide current data timely~~
 457 ~~in response to requests from public or private agencies.~~

458 ~~2. Provide assistance to data sources and users in the~~
 459 ~~areas of database design, survey design, sampling procedures,~~
 460 ~~statistical interpretation, and data access to promote improved~~
 461 ~~health care related data sets.~~

462 ~~3. Identify health care data gaps and provide technical~~
 463 ~~assistance to other public or private organizations for meeting~~
 464 ~~documented health care data needs.~~

465 ~~4. Assist other organizations in developing statistical~~
 466 ~~abstracts of their data sets that could be used by the center.~~

467 ~~5. Provide statistical support to state agencies with~~
 468 ~~regard to the use of databases maintained by the center.~~

469 ~~6. To the extent possible, respond to multiple requests~~
 470 ~~for information not currently collected by the center or~~
 471 ~~available from other sources by initiating data collection.~~

472 ~~7. Maintain detailed information on data maintained by~~
 473 ~~other local, state, federal, and private agencies in order to~~
 474 ~~advise those who use the center of potential sources of data~~
 475 ~~which are requested but which are not available from the center.~~

476 ~~8. Respond to requests for data which are not available in~~
 477 ~~published form by initiating special computer runs on data sets~~
 478 ~~available to the center.~~

479 ~~9. Monitor innovations in health information technology,~~
 480 ~~informatics, and the exchange of health information and maintain~~
 481 ~~a repository of technical resources to support the development~~
 482 ~~of a health information network.~~

483 ~~(b) The agency shall administer, manage, and monitor~~
 484 ~~grants to not-for-profit organizations, regional health~~
 485 ~~information organizations, public health departments, or state~~
 486 ~~agencies that submit proposals for planning, implementation, or~~
 487 ~~training projects to advance the development of a health~~
 488 ~~information network. Any grant contract shall be evaluated to~~
 489 ~~ensure the effective outcome of the health information project.~~

490 ~~(c) The agency shall initiate, oversee, manage, and~~
 491 ~~evaluate the integration of health care data from each state~~
 492 ~~agency that collects, stores, and reports on health care issues~~
 493 ~~and make that data available to any health care practitioner~~
 494 ~~through a state health information network.~~

495 ~~(5) PUBLICATIONS, REPORTS, SPECIAL STUDIES. The center~~
 496 ~~shall provide for the widespread dissemination of data which it~~
 497 ~~collects and analyzes. The center shall have the following~~
 498 ~~publication, reporting, and special study functions:~~

499 ~~(a) The center shall publish and make available~~
 500 ~~periodically to agencies and individuals health statistics~~
 501 ~~publications of general interest, including health plan consumer~~
 502 ~~reports and health maintenance organization member satisfaction~~
 503 ~~surveys, publications providing health statistics on topical~~
 504 ~~health policy issues, publications that provide health status~~
 505 ~~profiles of the people in this state, and other topical health~~
 506 ~~statistics publications.~~

507 ~~(b) The center shall publish, make available, and~~
 508 ~~disseminate, promptly and as widely as practicable, the results~~
 509 ~~of special health surveys, health care research, and health care~~
 510 ~~evaluations conducted or supported under this section. Any~~
 511 ~~publication by the center must include a statement of the~~
 512 ~~limitations on the quality, accuracy, and completeness of the~~
 513 ~~data.~~

514 ~~(c) The center shall provide indexing, abstracting,~~
 515 ~~translation, publication, and other services leading to a more~~
 516 ~~effective and timely dissemination of health care statistics.~~

517 ~~(d) The center shall be responsible for publishing and~~
 518 ~~disseminating an annual report on the center's activities.~~

519 ~~(e) The center shall be responsible, to the extent~~
 520 ~~resources are available, for conducting a variety of special~~

521 ~~studies and surveys to expand the health care information and~~
 522 ~~statistics available for health policy analyses, particularly~~
 523 ~~for the review of public policy issues. The center shall develop~~
 524 ~~a process by which users of the center's data are periodically~~
 525 ~~surveyed regarding critical data needs and the results of the~~
 526 ~~survey considered in determining which special surveys or~~
 527 ~~studies will be conducted. The center shall select problems in~~
 528 ~~health care for research, policy analyses, or special data~~
 529 ~~collections on the basis of their local, regional, or state~~
 530 ~~importance; the unique potential for definitive research on the~~
 531 ~~problem; and opportunities for application of the study~~
 532 ~~findings.~~

533 (4)~~(6)~~ PROVIDER DATA REPORTING.—This section does not
 534 confer on the agency the power to demand or require that a
 535 health care provider or professional furnish information,
 536 records of interviews, written reports, statements, notes,
 537 memoranda, or data other than as expressly required by law.

538 (5)~~(7)~~ HEALTH INFORMATION ENTERPRISE BUDGET; FEES.—

539 (a) The agency shall implement the comprehensive health
 540 information system in a manner that recognizes state-collected
 541 data as an asset and rewards taxpayer investment in information
 542 collection and management ~~Legislature intends that funding for~~
 543 ~~the Florida Center for Health Information and Policy Analysis be~~
 544 ~~appropriated from the General Revenue Fund.~~

545 (b) The agency ~~Florida Center for Health Information and~~
 546 ~~Policy Analysis~~ may apply for, and receive, and accept grants,

547 gifts, and other payments, including property and services, from
 548 a any governmental or other public or private entity or person
 549 and make arrangements for ~~as to~~ the use of such funds ~~same~~,
 550 including the undertaking of special studies and other projects
 551 relating to health-care-related topics. ~~Funds obtained pursuant~~
 552 ~~to this paragraph may not be used to offset annual~~
 553 ~~appropriations from the General Revenue Fund.~~

554 (c) The agency shall ensure that a vendor who enters into
 555 a contract with the state under this section does not inhibit or
 556 impede public access to state-collected health data and
 557 information ~~center may charge such reasonable fees for services~~
 558 ~~as the agency prescribes by rule. The established fees may not~~
 559 ~~exceed the reasonable cost for such services. Fees collected may~~
 560 ~~not be used to offset annual appropriations from the General~~
 561 ~~Revenue Fund.~~

562 ~~(8) STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY~~
 563 ~~COUNCIL.—~~

564 ~~(a) There is established in the agency the State Consumer~~
 565 ~~Health Information and Policy Advisory Council to assist the~~
 566 ~~center in reviewing the comprehensive health information system,~~
 567 ~~including the identification, collection, standardization,~~
 568 ~~sharing, and coordination of health-related data, fraud and~~
 569 ~~abuse data, and professional and facility licensing data among~~
 570 ~~federal, state, local, and private entities and to recommend~~
 571 ~~improvements for purposes of public health, policy analysis, and~~
 572 ~~transparency of consumer health care information. The council~~

573 ~~shall consist of the following members:~~

574 ~~1. An employee of the Executive Office of the Governor, to~~
 575 ~~be appointed by the Governor.~~

576 ~~2. An employee of the Office of Insurance Regulation, to~~
 577 ~~be appointed by the director of the office.~~

578 ~~3. An employee of the Department of Education, to be~~
 579 ~~appointed by the Commissioner of Education.~~

580 ~~4. Ten persons, to be appointed by the Secretary of Health~~
 581 ~~Care Administration, representing other state and local~~
 582 ~~agencies, state universities, business and health coalitions,~~
 583 ~~local health councils, professional health care-related~~
 584 ~~associations, consumers, and purchasers.~~

585 ~~(b) Each member of the council shall be appointed to serve~~
 586 ~~for a term of 2 years following the date of appointment, except~~
 587 ~~the term of appointment shall end 3 years following the date of~~
 588 ~~appointment for members appointed in 2003, 2004, and 2005. A~~
 589 ~~vacancy shall be filled by appointment for the remainder of the~~
 590 ~~term, and each appointing authority retains the right to~~
 591 ~~reappoint members whose terms of appointment have expired.~~

592 ~~(c) The council may meet at the call of its chair, at the~~
 593 ~~request of the agency, or at the request of a majority of its~~
 594 ~~membership, but the council must meet at least quarterly.~~

595 ~~(d) Members shall elect a chair and vice chair annually.~~

596 ~~(e) A majority of the members constitutes a quorum, and~~
 597 ~~the affirmative vote of a majority of a quorum is necessary to~~
 598 ~~take action.~~

599 ~~(f) The council shall maintain minutes of each meeting and~~
 600 ~~shall make such minutes available to any person.~~

601 ~~(g) Members of the council shall serve without~~
 602 ~~compensation but shall be entitled to receive reimbursement for~~
 603 ~~per diem and travel expenses as provided in s. 112.061.~~

604 ~~(h) The council's duties and responsibilities include, but~~
 605 ~~are not limited to, the following:~~

606 ~~1. To develop a mission statement, goals, and a plan of~~
 607 ~~action for the identification, collection, standardization,~~
 608 ~~sharing, and coordination of health related data across federal,~~
 609 ~~state, and local government and private sector entities.~~

610 ~~2. To develop a review process to ensure cooperative~~
 611 ~~planning among agencies that collect or maintain health-related~~
 612 ~~data.~~

613 ~~3. To create ad hoc issue-oriented technical workgroups on~~
 614 ~~an as-needed basis to make recommendations to the council.~~

615 ~~(9) APPLICATION TO OTHER AGENCIES. Nothing in this section~~
 616 ~~shall limit, restrict, affect, or control the collection,~~
 617 ~~analysis, release, or publication of data by any state agency~~
 618 ~~pursuant to its statutory authority, duties, or~~
 619 ~~responsibilities.~~

620 Section 6. The Office of Program Policy Analysis and
 621 Government Accountability (OPPAGA) shall monitor the Agency for
 622 Health Care Administration's implementation of s. 408.05,
 623 Florida Statutes, as amended by this act. No later than 1 year
 624 after the agency completes implementation, OPPAGA shall provide

625 a report to the President of the Senate and the Speaker of the
 626 House of Representatives containing recommendations regarding
 627 the application of data practices made pursuant to s. 408.05,
 628 Florida Statutes, to other executive branch agencies.

629 Section 7. For the purpose of incorporating the amendment
 630 made by this act to section 257.36, Florida Statutes, in a
 631 reference thereto, subsection (8) of section 120.54, Florida
 632 Statutes, is reenacted to read:

633 120.54 Rulemaking.—

634 (8) RULEMAKING RECORD.—In all rulemaking proceedings the
 635 agency shall compile a rulemaking record. The record shall
 636 include, if applicable, copies of:

637 (a) All notices given for the proposed rule.

638 (b) Any statement of estimated regulatory costs for the
 639 rule.

640 (c) A written summary of hearings on the proposed rule.

641 (d) The written comments and responses to written comments
 642 as required by this section and s. 120.541.

643 (e) All notices and findings made under subsection (4).

644 (f) All materials filed by the agency with the committee
 645 under subsection (3).

646 (g) All materials filed with the Department of State under
 647 subsection (3).

648 (h) All written inquiries from standing committees of the
 649 Legislature concerning the rule.

650

651 Each state agency shall retain the record of rulemaking as long
 652 as the rule is in effect. When a rule is no longer in effect,
 653 the record may be destroyed pursuant to the records-retention
 654 schedule developed under s. 257.36(6).

655 Section 8. Subsection (3) of section 20.42, Florida
 656 Statutes, is amended to read:

657 20.42 Agency for Health Care Administration.—

658 (3) The department is ~~shall be~~ the chief health policy and
 659 planning entity for the state. The department is responsible for
 660 health facility licensure, inspection, and regulatory
 661 enforcement; investigation of consumer complaints related to
 662 health care facilities and managed care plans; the
 663 implementation of the certificate of need program; ~~the operation~~
 664 ~~of the Florida Center for Health Information and Policy~~
 665 ~~Analysis~~; the administration of the Medicaid program; the
 666 administration of the contracts with the Florida Healthy Kids
 667 Corporation; the certification of health maintenance
 668 organizations and prepaid health clinics as set forth in part
 669 III of chapter 641; and any other duties prescribed by statute
 670 or agreement.

671 Section 9. Paragraph (c) of subsection (4) of section
 672 381.026, Florida Statutes, is amended to read:

673 381.026 Florida Patient's Bill of Rights and
 674 Responsibilities.—

675 (4) RIGHTS OF PATIENTS.—Each health care facility or
 676 provider shall observe the following standards:

677 (c) *Financial information and disclosure.*—

678 1. A patient has the right to be given, upon request, by
 679 the responsible provider, his or her designee, or a
 680 representative of the health care facility full information and
 681 necessary counseling on the availability of known financial
 682 resources for the patient's health care.

683 2. A health care provider or a health care facility shall,
 684 upon request, disclose to each patient who is eligible for
 685 Medicare, before treatment, whether the health care provider or
 686 the health care facility in which the patient is receiving
 687 medical services accepts assignment under Medicare reimbursement
 688 as payment in full for medical services and treatment rendered
 689 in the health care provider's office or health care facility.

690 3. A primary care provider may publish a schedule of
 691 charges for the medical services that the provider offers to
 692 patients. The schedule must include the prices charged to an
 693 uninsured person paying for such services by cash, check, credit
 694 card, or debit card. The schedule must be posted in a
 695 conspicuous place in the reception area of the provider's office
 696 and must include, but is not limited to, the 50 services most
 697 frequently provided by the primary care provider. The schedule
 698 may group services by three price levels, listing services in
 699 each price level. The posting must be at least 15 square feet in
 700 size. A primary care provider who publishes and maintains a
 701 schedule of charges for medical services is exempt from the
 702 license fee requirements for a single period of renewal of a

703 professional license under chapter 456 for that licensure term
 704 and is exempt from the continuing education requirements of
 705 chapter 456 and the rules implementing those requirements for a
 706 single 2-year period.

707 4. If a primary care provider publishes a schedule of
 708 charges pursuant to subparagraph 3., the provider shall ~~he or~~
 709 ~~she must~~ continually post it at all times for the duration of
 710 active licensure in this state when primary care services are
 711 provided to patients. If a primary care provider fails to post
 712 the schedule of charges in accordance with this subparagraph,
 713 the provider shall ~~be required to~~ pay any license fee and comply
 714 with ~~any~~ continuing education requirements for which an
 715 exemption was received.

716 5. A health care provider or a health care facility shall,
 717 upon request, furnish a person, before the provision of medical
 718 services, a reasonable estimate of charges for such services.
 719 The health care provider or the health care facility shall
 720 provide an uninsured person, before the provision of a planned
 721 nonemergency medical service, a reasonable estimate of charges
 722 for such service and information regarding the provider's or
 723 facility's discount or charity policies for which the uninsured
 724 person may be eligible. Such estimates by a primary care
 725 provider must be consistent with the schedule posted under
 726 subparagraph 3. To the extent possible, estimates shall, ~~to the~~
 727 ~~extent possible,~~ be written in language comprehensible to an
 728 ordinary layperson. Such reasonable estimate does not preclude

729 the health care provider or health care facility from exceeding
 730 the estimate or making additional charges based on changes in
 731 the patient's condition or treatment needs.

732 6. Each licensed facility not operated by the state shall
 733 make available to the public on its ~~Internet~~ website or by other
 734 electronic means a description of and a link to the performance
 735 outcome and financial data that is published by the agency
 736 ~~pursuant to s. 408.05(3)(k)~~. The facility shall place in its
 737 reception area a notice stating that the ~~in the reception area~~
 738 ~~that such~~ information is available electronically and providing
 739 the facility's website address. The licensed facility may
 740 indicate that the pricing information is based on a compilation
 741 of charges for the average patient and that each patient's bill
 742 may vary from the average depending upon the severity of illness
 743 and individual resources consumed. The licensed facility may
 744 also indicate that the price of service is negotiable for
 745 eligible patients based upon the patient's ability to pay.

746 7. A patient has the right to receive a copy of an
 747 itemized bill and upon request. ~~A patient has a right to be~~
 748 ~~given~~ an explanation of charges upon request.

749 Section 10. Subsection (11) of section 395.301, Florida
 750 Statutes, is amended to read:

751 395.301 Itemized patient bill; form and content prescribed
 752 by the agency.-

753 (11) Each licensed facility shall make available on its
 754 ~~Internet~~ website a link to the performance outcome and financial

755 data that is published by the Agency for Health Care
 756 Administration ~~pursuant to s. 408.05(3)(k)~~. The facility shall
 757 place in its reception area a notice stating ~~in the reception~~
 758 ~~area~~ that the information is available electronically and
 759 providing the facility's ~~Internet~~ website address.

760 Section 11. Paragraph (e) of subsection (2) of section
 761 395.602, Florida Statutes, is amended to read:

762 395.602 Rural hospitals.—

763 (2) DEFINITIONS.—As used in this part:

764 (e) "Rural hospital" means an acute care hospital licensed
 765 under this chapter, having 100 or fewer licensed beds and an
 766 emergency room, which is:

767 1. The sole provider within a county with a population
 768 density of no greater than 100 persons per square mile;

769 2. An acute care hospital, in a county with a population
 770 density of no greater than 100 persons per square mile, which is
 771 at least 30 minutes of travel time, on normally traveled roads
 772 under normal traffic conditions, from any other acute care
 773 hospital within the same county;

774 3. A hospital supported by a tax district or subdistrict
 775 whose boundaries encompass a population of 100 persons or fewer
 776 per square mile;

777 4. A hospital in a constitutional charter county with a
 778 population of more than ~~over~~ 1 million persons that has imposed
 779 a local option health service tax pursuant to law and in an area
 780 that was directly impacted by a catastrophic event on August 24,

781 1992, for which the Governor of Florida declared a state of
 782 emergency pursuant to chapter 125, and has 120 beds or less that
 783 serves an agricultural community with an emergency room
 784 utilization of no less than 20,000 visits and a Medicaid
 785 inpatient utilization rate greater than 15 percent;

786 5. A hospital with a service area that has a population of
 787 100 persons or fewer per square mile. As used in this
 788 subparagraph, the term "service area" means the fewest number of
 789 zip codes that account for 75 percent of the hospital's
 790 discharges for the most recent 5-year period, based on
 791 information available from the agency's hospital inpatient
 792 discharge database ~~in the Florida Center for Health Information~~
 793 ~~and Policy Analysis at the agency;~~ or

794 6. A hospital designated as a critical access hospital, as
 795 defined in s. 408.07.

796
 797 Population densities used in this paragraph must be based upon
 798 the most recently completed United States census. A hospital
 799 that received funds under s. 409.9116 for a quarter beginning no
 800 later than July 1, 2002, is deemed to have been and shall
 801 continue to be a rural hospital from that date through June 30,
 802 2015, if the hospital continues to have 100 or fewer licensed
 803 beds and an emergency room, or meets the criteria of
 804 subparagraph 4. An acute care hospital that has not previously
 805 been designated as a rural hospital and that meets the criteria
 806 of this paragraph shall be granted such designation upon

807 application, including supporting documentation, to the agency.
 808 A hospital that was licensed as a rural hospital during the
 809 2010-2011 or 2011-2012 fiscal year shall continue to be a rural
 810 hospital from the date of designation through June 30, 2015, if
 811 the hospital continues to have 100 or fewer licensed beds and an
 812 emergency room.

813 Section 12. Section 395.6025, Florida Statutes, is amended
 814 to read:

815 395.6025 Rural hospital replacement facilities.—

816 Notwithstanding ~~the provisions of~~ s. 408.036, a hospital defined
 817 as a statutory rural hospital in accordance with s. 395.602, or
 818 a not-for-profit operator of rural hospitals, is not required to
 819 obtain a certificate of need for the construction of a new
 820 hospital located in a county with a population of at least
 821 15,000 but no more than 18,000 and a density of less than 30
 822 persons per square mile, or a replacement facility, if provided
 823 ~~that~~ the replacement, or new, facility is located within 10
 824 miles of the site of the currently licensed rural hospital and
 825 within the current primary service area. As used in this
 826 section, the term "service area" means the fewest number of zip
 827 codes that account for 75 percent of the hospital's discharges
 828 for the most recent 5-year period, based on information
 829 available from the Agency for Health Care Administration's
 830 hospital inpatient discharge database ~~in the Florida Center for~~
 831 ~~Health Information and Policy Analysis at the Agency for Health~~
 832 ~~Care Administration.~~

833 Section 13. Subsection (43) of section 408.07, Florida
 834 Statutes, is amended to read:

835 408.07 Definitions.—As used in this chapter, with the
 836 exception of ss. 408.031-408.045, the term:

837 (43) "Rural hospital" means an acute care hospital
 838 licensed under chapter 395, having 100 or fewer licensed beds
 839 and an emergency room, and which is:

840 (a) The sole provider within a county with a population
 841 density of no greater than 100 persons per square mile;

842 (b) An acute care hospital, in a county with a population
 843 density of no greater than 100 persons per square mile, which is
 844 at least 30 minutes of travel time, on normally traveled roads
 845 under normal traffic conditions, from another acute care
 846 hospital within the same county;

847 (c) A hospital supported by a tax district or subdistrict
 848 whose boundaries encompass a population of 100 persons or fewer
 849 per square mile;

850 (d) A hospital with a service area that has a population
 851 of 100 persons or fewer per square mile. As used in this
 852 paragraph, the term "service area" means the fewest number of
 853 zip codes that account for 75 percent of the hospital's
 854 discharges for the most recent 5-year period, based on
 855 information available from the Agency for Health Care
 856 Administration's hospital inpatient discharge database ~~in the~~
 857 ~~Florida Center for Health Information and Policy Analysis at the~~
 858 ~~Agency for Health Care Administration;~~ or

859 (e) A critical access hospital.

860

861 Population densities used in this subsection must be based upon
 862 the most recently completed United States census. A hospital
 863 that received funds under s. 409.9116 for a quarter beginning no
 864 later than July 1, 2002, is deemed to have been and shall
 865 continue to be a rural hospital from that date through June 30,
 866 2015, if the hospital continues to have 100 or fewer licensed
 867 beds and an emergency room, or meets the criteria of s.

868 395.602(2)(e)4. An acute care hospital that has not previously
 869 been designated as a rural hospital and that meets the criteria
 870 of this subsection shall be granted such designation upon
 871 application, including supporting documentation, to the Agency
 872 for Health Care Administration.

873 Section 14. Paragraph (a) of subsection (4) of section
 874 408.18, Florida Statutes, is amended to read:

875 408.18 Health Care Community Antitrust Guidance Act;
 876 antitrust no-action letter; market-information collection and
 877 education.—

878 (4) (a) Members of the health care community who seek
 879 antitrust guidance may request a review of their proposed
 880 business activity by the Attorney General's office. In
 881 conducting its review, the Attorney General's office may seek
 882 whatever documentation, data, or other material it deems
 883 necessary from the Agency for Health Care Administration, ~~the~~
 884 ~~Florida Center for Health Information and Policy Analysis,~~ and

HB 1231

2014

885 the Office of Insurance Regulation of the Financial Services
886 Commission.

887 Section 15. Section 465.0244, Florida Statutes, is amended
888 to read:

889 465.0244 Information disclosure.—Every pharmacy shall make
890 available on its ~~Internet~~ website a link to the performance
891 outcome and financial data that is published by the Agency for
892 Health Care Administration ~~pursuant to s. 408.05(3)(k)~~ and shall
893 place in the area where customers receive filled prescriptions
894 notice that such information is available electronically and the
895 address of its ~~Internet~~ website.

896 Section 16. Subsection (2) of section 627.6499, Florida
897 Statutes, is amended to read:

898 627.6499 Reporting by insurers and third-party
899 administrators.—

900 (2) Each health insurance issuer shall make available on
901 its ~~Internet~~ website a link to the performance outcome and
902 financial data that is published by the Agency for Health Care
903 Administration ~~pursuant to s. 408.05(3)(k)~~ and shall include in
904 every policy delivered or issued for delivery to any person in
905 the state or any materials provided as required by s. 627.64725
906 notice that such information is available electronically and the
907 address of its ~~Internet~~ website.

908 Section 17. Subsection (7) of section 641.54, Florida
909 Statutes, is amended to read:

910 641.54 Information disclosure.—

911 (7) Each health maintenance organization shall make
 912 available on its ~~Internet~~ website a link to the performance
 913 outcome and financial data that is published by the Agency for
 914 Health Care Administration ~~pursuant to s. 408.05(3)(k)~~ and shall
 915 include in every policy delivered or issued for delivery to any
 916 person in the state or ~~any~~ materials provided as required by s.
 917 627.64725 notice that such information is available
 918 electronically and the address of its ~~Internet~~ website.

919 Section 18. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Ahern offered the following:

Amendment (with title amendment)

Remove lines 177-221 and insert:

4
 5
 6
 7 Section 4. The Legislature finds that consumers need
 8 additional information on the quality of care and service in
 9 assisted living facilities in order to select the best facility
 10 for themselves or their loved ones. Therefore, by November 1,
 11 2014, the Agency for Health Care Administration shall create
 12 content that is easily accessible through the front page of the
 13 agency's Internet website either directly or indirectly through
 14 links to one or more other established websites of the agency's
 15 choosing. The website must be searchable by facility name, city,
 16 or zip code. At a minimum, the content must include:



Amendment No.

17 (1) Information on each licensed assisted living facility,
18 including, but not limited to:

19 (a) The name and address of the facility.

20 (b) The number and type of licensed beds in the facility.

21 (c) The types of licenses held by the facility.

22 (d) The facility's license expiration date and status.

23 (e) Proprietary or nonproprietary status of the licensee.

24 (f) Any affiliation with a company or other organization
25 owning or managing more than one assisted living facility in
26 this state.

27 (g) The total number of clients that the facility is
28 licensed to serve and the most recently available occupancy
29 levels.

30 (h) The number of private and semiprivate rooms offered.

31 (i) The bed-hold policy.

32 (j) The religious affiliation, if any, of the assisted
33 living facility.

34 (k) The languages spoken by the staff.

35 (l) Availability of nurses.

36 (m) Forms of payment accepted, including, but not limited
37 to, Medicaid, Medicaid long-term managed care, private
38 insurance, health maintenance organization, United States
39 Department of Veterans Affairs, CHAMPUS program, or workers'
40 compensation coverage.

41 (n) Indication if the licensee is operating under
42 bankruptcy protection.



Amendment No.

43 (o) Recreational and other programs available.

44 (p) Special care units or programs offered.

45 (q) Whether the facility provides mental health services,
46 as defined in s. 394.67, Florida Statutes, to residents with
47 mental illness and the number of mental health residents.

48 (r) Whether the facility is a part of a retirement
49 community that offers other services pursuant to part II or part
50 III of chapter 400, part I or part III of chapter 429, or
51 chapter 651, Florida Statutes.

52 (s) Links to the State Long-Term Care Ombudsman Program
53 website and the program's statewide toll-free telephone number.

54 (t) Links to the Internet websites of the providers or
55 their affiliates.

56 (u) Other relevant information that the agency currently
57 collects.

58 (2) Survey and violation information for the facility,
59 including a list of the facility's violations committed during
60 the previous 60 months, which on July 1, 2014, may include
61 violations committed on or after July 1, 2009. The list shall be
62 updated monthly and include for each violation:

63 (a) A summary of the violation, including all licensure,
64 revisit, and complaint survey information, presented in a manner
65 understandable by the general public.

66 (b) Any sanctions imposed by final order.

67 (c) The date the corrective action was confirmed by the
68 agency.



Amendment No.

69 (3) Links to inspection reports that the agency has on
70 file.

71

72

73

74

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

75

Remove lines 23-30 and insert:

76

Administration to provide specified information on assisted

77

living facilities by a certain date; providing minimum

78

requirements for such information; amending s. 408.05, F.S.;


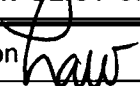
79

dissolving the Center

80

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Government Accountability
SPONSOR(S): Metz
TIED BILLS: IDEN./SIM. BILLS: SB 1628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington 	Williamson 
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The position of the Auditor General is created in the State Constitution. The Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Specified reports on such audit findings must be submitted to the President of the Senate, Speaker of the House, and the Legislative Auditing Committee.

The bill revises auditing provisions governing state agencies, the state courts system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities. The bill requires such entities to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

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

This bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Auditor General

The position of Auditor General is established by s. 2, Art. III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.³ At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and must have not less than 10 years' experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office and must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees.⁶

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary traveling, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position's functions in the state capital and in other areas of the state.⁷

All payrolls and vouchers for the operations of the Auditor General's office must be submitted to the Chief Financial Officer for payment.⁸ The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.⁹

The Auditor General must:¹⁰

- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.42(4), F.S.

⁴ Section 11.42(2), F.S.

⁵ Section 11.42(3)(a), F.S.

⁶ *Id.*

⁷ Section 11.42(6)(a), F.S.

⁸ Section 11.42(6)(b), F.S.

⁹ Section 11.42(7), F.S.

¹⁰ Section 11.45(2), F.S.

- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, and Florida Clerks of Court Operations, water management districts, and the Florida School of Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws;
- Once every three years, review a sample of internal audit reports at each state agency¹¹ to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards; and
- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:¹²

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;
- The accounts and records of any direct-support organization or citizen support organization created or established by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity;
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- The Florida Special Disability Trust Fund Financing Corporation;
- Workforce Florida, Inc., or other programs or entities created by Workforce Florida, Inc.;
- The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;

¹¹ Section 20.055, F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system.

¹² Section 11.45(3), F.S.

- The Florida Engineers Management Corporation;
- The books and records of any permitholder that conducts race meetings or jai alai exhibitions;
- The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
- The Florida Virtual School; and
- Virtual education providers receiving state funds or funds from local ad valorem taxes.

Auditor General Reports

The Auditor General must conduct audits, examinations, or reviews of government programs.¹³ Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.¹⁴ The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1; such report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.¹⁵ In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.¹⁶

The annual report for the Auditor General for November 1, 2012, through October 31, 2013, recommended, among others, the following two changes to the current law:¹⁷

- Require each state and local government to maintain internal controls designed to prevent fraud and detect fraud, waste, and abuse; ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; promote and encourage economic and efficient operations; ensure the reliability of financial records and reports; and safeguard assets; and
- Require the Justice Administration Commission, whose agencies are currently not audited by an internal auditor, to jointly employ an internal auditor or provide for internal audit services by interagency agreement with a state agency.

Effect of Proposed Changes

The bill requires each agency head, state attorney, public defender, criminal conflict and civil regional counsel, Guardian Ad Litem program, Florida Clerk of Courts Operations Corporation, local government entity, charter school, Florida College System institution, and state university, as well as the Supreme Court and the Justice Administrative Commission to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

¹³ Section 11.45(7), F.S.

¹⁴ Section 11.45(7)(f), F.S.

¹⁵ Section 11.45(7)(h), F.S.

¹⁶ *Id.*

¹⁷ A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/whatsnew.htm> (last visited March 21, 2014).

B. SECTION DIRECTORY:

Sections 1., 3., 4., 5., and 7. amend ss. 20.05, 25.382, 43.16, 218.33, and 1002.33, F.S., revising the responsibilities of department heads, the Supreme Court as it relates to the state courts system, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, the Florida Clerk of Court Operations Corporation, local governmental entities, and governing bodies of charter schools to include the responsibility of establishing certain internal controls.

Section 2. amends s. 20.055, F.S., revising provisions relating to agency inspectors general; revising the definition of "state agency" to include the Justice Administration Commission and the agencies it administratively supports; expanding the definition of the term "agency head."

Section 6. amends s. 1001.42, F.S., revising the responsibilities of a district school board's internal auditor to perform certain audits and reviews.

Section 8. amends s. 1010.01, F.S., requiring each Florida College System institution to file certain annual financial statements with the State Board of Education; requiring each school district, Florida College System institution, and state university to establish certain internal controls.

Section 9. provides an effective date of July 1, 2014.

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 requires state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities to establish, maintain, and document the effective use of specified internal controls. Such requirement may require additional time and expense to create the internal controls and document the effective operation of such internal controls.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments to establish, maintain, and document the effective operation of internal controls; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the State Board of Education to prescribe by rule the filing deadline for the required financial statements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 effective date.

28

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

30

31 Section 1. Paragraphs (g) and (h) of subsection (1) of
 32 section 20.05, Florida Statutes, are amended, and paragraph (i)
 33 is added to that subsection, to read:

34 20.05 Heads of departments; powers and duties.—

35 (1) Each head of a department, subject to the allotment of
 36 executive power under Article IV of the State Constitution, and
 37 except as otherwise provided by law, must:

38 (g) If a department is under the direct supervision of a
 39 board, including a board consisting of the Governor and Cabinet,
 40 however designated, employ an executive director to serve at its
 41 pleasure; ~~and~~

42 (h) Make recommendations concerning more effective
 43 internal structuring of the department to the Legislature.
 44 Unless otherwise required by law, such recommendations must be
 45 provided to the Legislature at least 30 days before the first
 46 day of the regular session at which they are to be considered,
 47 when practicable; and

48 (i) Establish, maintain, and document the effective
 49 operation of internal controls, including controls designed to
 50 prevent and detect fraud, waste, and abuse; to ensure the
 51 administration of assigned public duties and responsibilities in
 52 accordance with applicable laws, rules, contracts, grant

53 agreements, and best practices; to promote and encourage
 54 economic and efficient operations; to ensure the reliability of
 55 financial records and reports; and to safeguard assets.

56 Section 2. Paragraphs (a) and (b) of subsection (1) of
 57 section 20.055, Florida Statutes, are amended to read:

58 20.055 Agency inspectors general.—

59 (1) For the purposes of this section:

60 (a) "State agency" means each department created pursuant
 61 to this chapter, and also includes the Executive Office of the
 62 Governor, the Department of Military Affairs, the Fish and
 63 Wildlife Conservation Commission, the Office of Insurance
 64 Regulation of the Financial Services Commission, the Office of
 65 Financial Regulation of the Financial Services Commission, the
 66 Public Service Commission, the Board of Governors of the State
 67 University System, the Florida Housing Finance Corporation, the
 68 Justice Administrative Commission and the agencies it
 69 administratively supports pursuant to s. 43.16(5), and the state
 70 courts system.

71 (b) "Agency head" means the Governor, a Cabinet officer, a
 72 secretary as defined in s. 20.03(5), or an executive director as
 73 defined in s. 20.03(6). It also includes the chair of the Public
 74 Service Commission, the Director of the Office of Insurance
 75 Regulation of the Financial Services Commission, the Director of
 76 the Office of Financial Regulation of the Financial Services
 77 Commission, the chair of the board of directors of the Florida
 78 Housing Finance Corporation, the chair of the Justice

79 Administrative Commission, and the Chief Justice of the ~~State~~
 80 Supreme Court.

81 Section 3. Subsection (5) is added to section 25.382,
 82 Florida Statutes, to read:

83 25.382 State courts system.—

84 (5) The Supreme Court shall ensure that the state courts
 85 system establishes, maintains, and documents the effective
 86 operation of internal controls, including controls designed to
 87 prevent and detect fraud, waste, and abuse; to ensure the
 88 administration of assigned public duties and responsibilities in
 89 accordance with applicable laws, rules, contracts, grant
 90 agreements, and best practices; to promote and encourage
 91 economic and efficient operations; to ensure the reliability of
 92 financial records and reports; and to safeguard assets.

93 Section 4. Subsections (6) and (7) of section 43.16,
 94 Florida Statutes, are renumbered as subsections (7) and (8),
 95 respectively, and a new subsection (6) is added to that section
 96 to read:

97 43.16 Justice Administrative Commission; membership,
 98 powers and duties.—

99 (6) The commission, each state attorney, public defender,
 100 and criminal conflict and civil regional counsel, the Guardian
 101 Ad Litem program, and the Florida Clerks of Court Operations
 102 Corporation must establish, maintain, and document the effective
 103 operation of internal controls, including controls designed to
 104 prevent and detect fraud, waste, and abuse; to ensure the

105 administration of assigned public duties and responsibilities in
 106 accordance with applicable laws, rules, contracts, grant
 107 agreements, and best practices; to promote and encourage
 108 economic and efficient operations; to ensure the reliability of
 109 financial records and reports; and to safeguard assets.

110 Section 5. Subsection (3) of section 218.33, Florida
 111 Statutes, is renumbered as subsection (4), and a new subsection
 112 (3) is added to that section to read:

113 218.33 Local governmental entities; establishment of
 114 uniform fiscal years and accounting practices and procedures.—

115 (3) Each local governmental entity must establish,
 116 maintain, and document the effective operation of internal
 117 controls designed to prevent and detect fraud, waste, and abuse;
 118 to ensure the administration of assigned public duties and
 119 responsibilities in accordance with applicable laws, rules,
 120 contracts, grant agreements, and best practices; to promote and
 121 encourage economic and efficient operations; to ensure the
 122 reliability of financial records and reports; and to safeguard
 123 assets.

124 Section 6. Paragraph (1) of subsection (12) of section
 125 1001.42, Florida Statutes, is amended to read:

126 1001.42 Powers and duties of district school board.—The
 127 district school board, acting as a board, shall exercise all
 128 powers and perform all duties listed below:

129 (12) FINANCE.—Take steps to assure students adequate
 130 educational facilities through the financial procedure

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131 authorized in chapters 1010 and 1011 and as prescribed below:

132 (1) Internal auditor.—May employ an internal auditor to
133 perform ongoing financial verification of the financial records
134 of the school district and such other audits and reviews as the
135 district school board directs for the purpose of establishing,
136 maintaining, and documenting the effective operation of internal
137 controls, including controls designed to prevent and detect
138 fraud, waste, and abuse; to ensure the administration of
139 assigned public duties and responsibilities in accordance with
140 applicable laws, rules, contracts, grant agreements, school
141 board-approved policies, and best practices; to promote and
142 encourage economic and efficient operations; to ensure the
143 reliability of financial records and reports; and to safeguard
144 assets. The internal auditor shall report directly to the
145 district school board or its designee.

146 Section 7. Paragraph (j) of subsection (9) of section
147 1002.33, Florida Statutes, is amended to read:

148 1002.33 Charter schools.—

149 (9) CHARTER SCHOOL REQUIREMENTS.—

150 (j) The governing body of the charter school shall be
151 responsible for:

152 1. Establishing, maintaining, and documenting the
153 effective operation of internal controls, including controls
154 designed to prevent and detect fraud, waste, and abuse; to
155 ensure the administration of assigned public duties and
156 responsibilities in accordance with applicable laws, rules,

157 contracts, grant agreements, and best practices; to promote and
 158 encourage economic and efficient operations; to ensure the
 159 reliability of financial records and reports; and to safeguard
 160 assets.

161 ~~2.4.~~ Ensuring that the charter school has retained the
 162 services of a certified public accountant or auditor for the
 163 annual financial audit, pursuant to s. 1002.345(2), who shall
 164 submit the report to the governing body.

165 ~~3.2.~~ Reviewing and approving the audit report, including
 166 audit findings and recommendations for the financial recovery
 167 plan.

168 ~~4.3.~~a. Performing the duties in s. 1002.345, including
 169 monitoring a corrective action plan.

170 b. Monitoring a financial recovery plan in order to ensure
 171 compliance.

172 ~~5.4.~~ Participating in governance training approved by the
 173 department which must include government in the sunshine,
 174 conflicts of interest, ethics, and financial responsibility.

175 Section 8. Subsections (3) and (4) of section 1010.01,
 176 Florida Statutes, are renumbered as subsections (4) and (5),
 177 respectively, and new subsections (3) and (6) are added to that
 178 section to read:

179 1010.01 Uniform records and accounts.—

180 (3) Each Florida College System institution shall annually
 181 file with the State Board of Education financial statements
 182 prepared in conformity with accounting principles generally

183 accepted by the United States and the uniform classification of
 184 accounts prescribed by the State Board of Education. The State
 185 Board of Education's rules shall prescribe the filing deadline
 186 for the financial statements.

187 (6) Each school district, Florida College System
 188 institution, and state university shall establish, maintain, and
 189 document the effective operation of internal controls, including
 190 controls designed to prevent and detect fraud, waste, and abuse;
 191 to ensure the administration of assigned public duties and
 192 responsibilities in accordance with applicable laws, rules,
 193 contracts, grant agreements, and best practices; to promote and
 194 encourage economic and efficient operations; to ensure the
 195 reliability of financial records and reports; and to safeguard
 196 assets.

197 Section 9. This act shall take effect July 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Metz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (j) of subsection (2) and paragraph (j) of subsection (7) of section 11.45, Florida Statutes, are amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to



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18 determine the audited entity's progress in addressing the
19 findings and recommendations contained within the Auditor
20 General's previous report. The Auditor General shall notify each
21 member of the audited entity's governing body and the
22 Legislative Auditing Committee of the results of his or her
23 determination. For purposes of this paragraph, local
24 governmental entities do not include water management districts.
25

26 The Auditor General shall perform his or her duties
27 independently but under the general policies established by the
28 Legislative Auditing Committee. This subsection does not limit
29 the Auditor General's discretionary authority to conduct other
30 audits or engagements of governmental entities as authorized in
31 subsection (3).

32 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

33 (j) The Auditor General shall notify the Legislative
34 Auditing Committee of any financial or operational audit report
35 prepared pursuant to this section which indicates that a
36 district school board, state university, or Florida College
37 System institution has failed to take full corrective action in
38 response to a recommendation that was included in the two
39 preceding financial or operational audit reports.

40 1. The committee may direct the governing body of the
41 district school board, state university, or Florida College
42 System institution to provide a written statement to the
43 committee explaining why full corrective action has not been



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44 taken or, if the governing body intends to take full corrective
45 action, describing the corrective action to be taken and when it
46 will occur.

47 2. If the committee determines that the written statement
48 is not sufficient, the committee may require the chair of the
49 governing body of the district school board, state university,
50 or Florida College System institution, or the chair's designee,
51 to appear before the committee.

52 3. If the committee determines that the district school
53 board, state university, or Florida College System institution
54 has failed to take full corrective action for which there is no
55 justifiable reason or has failed to comply with committee
56 requests made pursuant to this section, the committee shall
57 refer the matter to the State Board of Education or the Board of
58 Governors, as appropriate, to proceed in accordance with s.
59 1008.32 or s. 1008.322, respectively.

60 Section 2. Paragraphs (g) and (h) of subsection (1) of
61 section 20.05, Florida Statutes, are amended, and paragraph (i)
62 is added to that subsection, to read:

63 20.05 Heads of departments; powers and duties.—

64 (1) Each head of a department, subject to the allotment of
65 executive power under Article IV of the State Constitution, and
66 except as otherwise provided by law, must:

67 (g) If a department is under the direct supervision of a
68 board, including a board consisting of the Governor and Cabinet,



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69 however designated, employ an executive director to serve at its
70 pleasure; ~~and~~

71 (h) Make recommendations concerning more effective
72 internal structuring of the department to the Legislature.
73 Unless otherwise required by law, such recommendations must be
74 provided to the Legislature at least 30 days before the first
75 day of the regular session at which they are to be considered,
76 when practicable; and

77 (i) Establish and maintain internal controls designed to
78 prevent and detect fraud, waste, and abuse; to ensure the
79 administration of assigned public duties and responsibilities in
80 accordance with applicable laws, rules, contracts, grant
81 agreements, and best practices; to promote and encourage
82 economic and efficient operations; to ensure the reliability of
83 financial records and reports; and to safeguard assets.

84 Section 3. Paragraph (b) of subsection (1) of section
85 20.055, Florida Statutes, is amended to read:

86 20.055 Agency inspectors general.—

87 (1) For the purposes of this section:

88 (b) "Agency head" means the Governor, a Cabinet officer, a
89 secretary as defined in s. 20.03(5), or an executive director as
90 defined in s. 20.03(6). It also includes the chair of the Public
91 Service Commission, the Director of the Office of Insurance
92 Regulation of the Financial Services Commission, the Director of
93 the Office of Financial Regulation of the Financial Services
94 Commission, the chair of the board of directors of the Florida



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95 Housing Finance Corporation, and the Chief Justice of the State
96 Supreme Court.

97 Section 4. Subsection (5) is added to section 25.382,
98 Florida Statutes, to read:

99 25.382 State courts system.—

100 (5) The Supreme Court shall ensure that the state courts
101 system establishes and maintains internal controls designed to
102 prevent and detect fraud, waste, and abuse; to ensure the
103 administration of assigned public duties and responsibilities in
104 accordance with applicable laws, rules, contracts, grant
105 agreements, and best practices; to promote and encourage
106 economic and efficient operations; to ensure the reliability of
107 financial records and reports; and to safeguard assets.

108 Section 5. Paragraph (i) is added to subsection (2) of
109 section 28.35, Florida Statutes, to read:

110 28.35 Florida Clerks of Court Operations Corporation.—

111 (2) The duties of the corporation shall include the
112 following:

113 (i) Establishing and maintaining internal controls
114 designed to prevent and detect fraud, waste, and abuse; to
115 ensure the administration of assigned public duties and
116 responsibilities in accordance with applicable laws, rules,
117 contracts, grant agreements, and best practices; to promote and
118 encourage economic and efficient operations; to ensure the
119 reliability of records and reports; and to safeguard assets.



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120 Section 6. Subsection (6) of section 43.16, Florida
121 Statutes, is renumbered as subsection (7), and a new subsection
122 (6) is added to that section to read:

123 43.16 Justice Administrative Commission; membership,
124 powers and duties.—

125 (6) The commission, each state attorney, public defender,
126 criminal conflict and civil regional counsel, capital collateral
127 regional counsel, and the Guardian Ad Litem program must
128 establish and maintain internal controls designed to prevent and
129 detect fraud, waste, and abuse; to ensure the administration of
130 assigned public duties and responsibilities in accordance with
131 applicable laws, rules, contracts, grant agreements, and best
132 practices; to promote and encourage economic and efficient
133 operations; to ensure the reliability of financial records and
134 reports; and to safeguard assets.

135 Section 7. Subsection (11) of section 215.985, Florida
136 Statutes, is amended to read:

137 215.985 Transparency in government spending.—

138 (11) Each water management district shall provide a
139 monthly financial statement in the form and manner prescribed by
140 the Department of Financial Services to the district's ~~its~~
141 governing board and make such monthly financial statement
142 available for public access on its website.

143 Section 8. Subsection (3) of section 218.33, Florida
144 Statutes, is renumbered as subsection (4), and a new subsection
145 (3) is added to that section to read:



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146 218.33 Local governmental entities; establishment of
147 uniform fiscal years and accounting practices and procedures.-

148 (3) Each local governmental entity must establish and
149 maintain internal controls designed to prevent and detect fraud,
150 waste, and abuse; to ensure the administration of assigned
151 public duties and responsibilities in accordance with applicable
152 laws, rules, contracts, grant agreements, and best practices; to
153 promote and encourage economic and efficient operations; to
154 ensure the reliability of financial records and reports; and to
155 safeguard assets.

156 Section 9. Paragraph (e) of subsection (4) of section
157 373.536, Florida Statutes, is amended to read:

158 373.536 District budget and hearing thereon.-

159 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.-

160 (e) ~~By September 1, 2012,~~ Each district shall provide a
161 monthly financial statement in the form and manner prescribed by
162 the Department of Financial Services to the district's governing
163 board and make such monthly financial statement available for
164 public access on its website.

165 Section 10. Paragraph (1) of subsection (12) of section
166 1001.42, Florida Statutes, is amended to read:

167 1001.42 Powers and duties of district school board.-The
168 district school board, acting as a board, shall exercise all
169 powers and perform all duties listed below:



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170 (12) FINANCE.—Take steps to assure students adequate
171 educational facilities through the financial procedure
172 authorized in chapters 1010 and 1011 and as prescribed below:

173 (1) Internal auditor.—May employ an internal auditor to
174 perform ongoing financial verification of the financial records
175 of the school district and such other audits and reviews as the
176 district school board directs for the purpose of establishing
177 and maintaining internal controls designed to prevent and detect
178 fraud, waste, and abuse; to ensure the administration of
179 assigned public duties and responsibilities in accordance with
180 applicable laws, rules, contracts, grant agreements, school
181 board-approved policies, and best practices; to promote and
182 encourage economic and efficient operations; to ensure the
183 reliability of financial records and reports; and to safeguard
184 assets. The internal auditor shall report directly to the
185 district school board or its designee.

186 Section 11. Paragraph (j) of subsection (9) of section
187 1002.33, Florida Statutes, is amended to read:

188 1002.33 Charter schools.—

189 (9) CHARTER SCHOOL REQUIREMENTS.—

190 (j) The governing body of the charter school shall be
191 responsible for:

192 1. Establishing and maintaining internal controls designed
193 to prevent and detect fraud, waste, and abuse; to ensure the
194 administration of assigned public duties and responsibilities in
195 accordance with applicable laws, rules, contracts, grant



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196 agreements, and best practices; to promote and encourage
197 economic and efficient operations; to ensure the reliability of
198 financial records and reports; and to safeguard assets.

199 ~~2.1.~~ Ensuring that the charter school has retained the
200 services of a certified public accountant or auditor for the
201 annual financial audit, pursuant to s. 1002.345(2), who shall
202 submit the report to the governing body.

203 ~~3.2.~~ Reviewing and approving the audit report, including
204 audit findings and recommendations for the financial recovery
205 plan.

206 ~~4.3-a.~~ Performing the duties in s. 1002.345, including
207 monitoring a corrective action plan.

208 b. Monitoring a financial recovery plan in order to ensure
209 compliance.

210 ~~5.4.~~ Participating in governance training approved by the
211 department which must include government in the sunshine,
212 conflicts of interest, ethics, and financial responsibility.

213 Section 12. Subsections (3) and (4) of section 1010.01,
214 Florida Statutes, are renumbered as subsections (4) and (5),
215 respectively, and new subsections (3) and (6) are added to that
216 section to read:

217 1010.01 Uniform records and accounts.-

218 (3) Each Florida College System institution shall annually
219 file with the State Board of Education financial statements
220 prepared in conformity with accounting principles generally
221 accepted by the United States and the uniform classification of



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222 accounts prescribed by the State Board of Education. The State
223 Board of Education's rules shall prescribe the filing deadline
224 for the financial statements.

225 (6) Each school district, Florida College System
226 institution, and state university shall establish and maintain
227 internal controls designed to prevent and detect fraud, waste,
228 and abuse; to ensure the administration of assigned public
229 duties and responsibilities in accordance with applicable laws,
230 rules, contracts, grant agreements, and best practices; to
231 promote and encourage economic and efficient operations; to
232 ensure the reliability of financial records and reports; and to
233 safeguard assets.

234 Section 13. The Legislature finds that a proper and
235 legitimate state purpose is served when internal controls are
236 established to prevent and detect fraud, waste, and abuse, and
237 to safeguard and account for government funds and property.
238 Therefore, the Legislature determines and declares that this act
239 fulfills an important state interest.

240 Section 14. This act shall take effect July 1, 2014.

241

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246

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

Remove everything before the enacting clause and insert:



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247 An act relating to government accountability; amending s. 11.45,
248 F.S.; excluding water management districts from certain audit
249 requirements; expanding certain audit provisions to include
250 district school boards; amending ss. 20.05, 25.382, 28.35,
251 43.16, 218.33, and 1002.33, F.S.; revising the responsibilities
252 of department heads, the commission, each state attorney, public
253 defender, criminal conflict and civil regional counsel, the
254 capital collateral counsel, the Guardian Ad Litem program, the
255 Supreme Court as it relates to the state courts system, the
256 Florida Clerks of Court Operations Corporation, local
257 governmental entities, and governing bodies of charter schools
258 to include the responsibility of establishing certain internal
259 controls; amending s. 20.055, F.S.; amending the definition of
260 the term "agency head"; amending s. 215.985, F.S.; specifying
261 requirements for a monthly financial statement; amending s.
262 373.536, F.S.; deleting unnecessary date; amending s. 1001.42,
263 F.S.; revising the responsibilities of a district school board's
264 internal auditor to permit certain audits and reviews; amending
265 s. 1010.01, F.S.; requiring each Florida College System
266 institution to file certain annual financial statements with the
267 State Board of Education; requiring each school district,
268 Florida College System institution, and state university to
269 establish certain internal controls; providing that the act
270 fulfills an important state interest; providing an effective
271 date.

272

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 Inspectors General
SPONSOR(S): Raulerson
TIED BILLS: IDEN./SIM. BILLS: SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williams
2) State Affairs Committee			

SUMMARY ANALYSIS

The Office of Inspector General is established in each agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspector generals are appointed by the agency head, and may only be removed by the agency head. The Office of the Chief Inspector General (CIG) within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspector generals under the Governor's jurisdiction.

The bill provides that the CIG must be appointed by the Governor, subject to Senate confirmation. Upon a change in Governors or a reelection of Governors, the Governor must appoint, or reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after such change in Governors or reelection.

The bill increases the independence of each inspector general in a state agency under the jurisdiction of the Governor. Such inspector generals must report to the CIG, may only be hired by the CIG, and may receive independent legal counsel from the office of the CIG. Such inspector general may only be removed from the office for cause by the CIG.

In addition, the bill requires each agency office of inspector general to have its own budget, within the state agency, to meet its mission developed in consultation with the CIG.

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

Inspector Generals

Authorized under s. 20.055, F.S., the Office of Inspector General is established in each state agency¹ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspector generals under the Governor's jurisdiction.

Each agency inspector general office is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,² and recommending corrective action concerning fraud, abuses, and deficiencies, and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.³

Inspectors general are appointed by the agency head.⁴ For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the

¹ Section 20.055(1)(a), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state court system.

² Section 20.055(1)(b), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, and the Chief Justice of the State Supreme Court.

³ Section 20.055(2), F.S.

⁴ Section 20.055(3)(a), F.S.

inspector general.⁵ Each inspector general must report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.⁶

Inspectors general may be removed only by the agency head.⁷ For agencies under the direction of the Governor, the agency head must notify the Governor and the CIG in writing of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet in writing of the intention to terminate the inspector general at least seven days prior to removal.⁸

Auditing Standards

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁹ Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.¹⁰

Each auditor general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹¹ The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit must be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹²

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff must include a statement that the audit was conducted pursuant to the appropriate standards.¹³

Audit work papers and reports are considered public records to the extent they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or contain information protected under the Whistle-blower's Act.¹⁴

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.¹⁵

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit

⁵ *Id.*

⁶ Section 20.055(3)(b), F.S.

⁷ Section 20.055(3)(c), F.S.

⁸ *Id.*

⁹ *See* s. 20.055(4), F.S.

¹⁰ Section 20.055(5)(f) and (g), F.S.

¹¹ Section 20.055(5), F.S.

¹² *Id.*

¹³ Section 20.055(5)(a), F.S.

¹⁴ Section 20.055(5)(b), F.S. Sections 112.3187 – 112.31895, F.S., may be cited as the “Whistle-blower’s Act.” According to the act, it is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public’s health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of government office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. Section 112.3187(2), F.S.

¹⁵ Section 20.055(5)(c), F.S.

who must respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response, and the inspector general's rebuttal to the response, must be included in the final audit report.¹⁶

The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.¹⁷

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or OPPAGA publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.¹⁸

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. For state agencies under the Governor, the audit plans must be submitted to the Governor's CIG. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.¹⁹

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, management, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act²⁰ and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.²¹

¹⁶ Section 20.055(5)(d), F.S.

¹⁷ Section 20.055(5)(g), F.S.

¹⁸ Section 20.055(5)(h), F.S.

¹⁹ Section 20.055(5)(i), F.S.

²⁰ Sections 112.3187 – 112.31895, F.S.

²¹ Section 20.055(6), F.S.

Annually, each inspector general must submit a report to the agency head on its activities.²²

Effect of the Proposed Changes

Chief Inspector General

The bill provides that a CIG must be appointed or reappointed after a gubernatorial election, subject to Senate confirmation. Upon a change in Governors or reelection of the Governor, the Governor must appoint, or may reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after the change in Governors or reelection.

The CIG must coordinate complaint-handling activities with agencies and provide for independent legal counsel for inspector generals in state agencies under the jurisdiction of the Governor.

Agency Inspector General

Each inspector general in an agency under the jurisdiction of the Governor must keep the CIG, rather than the agency head, informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency; recommend corrective action concerning fraud, abuses, and deficiencies; and report on the progress made in implementing corrective action.

An inspector general for a state agency under the jurisdiction of the Governor must be appointed by the CIG, rather than the agency head. Such inspector general is under the general supervision of the agency head, reports to the CIG, and may hire and remove staff within his or her office in consultation with the CIG, but independently of the agency.

An inspector general for a state agency under the jurisdiction of the Governor may only be removed from office for cause by the CIG. Cause includes concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. All intentions to remove an agency inspector general, regardless of whether the position is under the jurisdiction of the Governor, must provide 21 days' notice, rather than seven of such intention to remove. If the inspector general disagrees with the removal, such inspector general may present objections in writing to the agency head or Governor within the 21-day period.

Each agency office of inspector general must have its own budget within the state agency to meet its mission developed in consultation with the CIG.

Audits

Each agency inspector general must submit a final audit report to the agency head, Auditor General, and, for state agencies under the jurisdiction of the Governor, the CIG. When responding to a report by the Auditor General or OPPAGA, the inspector general must provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the CIG on the status of the corrective action taken. Long term auditing plans of agencies under the jurisdiction of the Governor must be submitted to the agency head for review, but to the CIG for approval.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., revising provisions relating to the duties, appointment, and removal of the Chief Inspector General.

Section 2. amends s. 20.055, F.S., revising provisions relating to the duties, appointment, and removal of agency inspectors general.

Section 3. provides an effective date of July 1, 2014.

²² Section 20.055(7), F.S.

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:

Drafting Issues: Lines 127-129

The bill provides that the office of the inspector general must have its own budget within the state agency sufficient to meet its mission developed in consultation with the CIG. It is unclear if the budget must be created in consultation with the CIG, or if the mission must be created in consultation with the CIG.

In addition, it is unclear how the budget must be calculated and if the intent is to create a separate budget entity²³ for the office of the inspector general within the state agencies.

²³ Section 216.011(1)(f), F.S., defines "budget entity" as a unit or function at the lowest level to which funds are specifically appropriated in the appropriations act.

Other Comments: Other Agencies

The bill distinguishes between agencies under the jurisdiction of the Governor and other agencies. Agencies under the jurisdiction of the Governor and Cabinet would not be considered agencies under the jurisdiction of the Governor for purposes of this bill. As a result, such agencies would not be subject to the changes in this bill.

Other Comments: Removal "For Cause"

The bill provides that for state agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the CIG for cause. Inspector generals under the jurisdiction of the Governor and Cabinet, however, may be removed for any reason.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to inspectors general; amending s.
 3 14.32, F.S.; revising provisions relating to the
 4 duties, appointment, and removal of the Chief
 5 Inspector General; amending s. 20.055, F.S.; revising
 6 provisions relating to the duties, appointment, and
 7 removal of agency inspectors general; updating a
 8 cross-reference; providing an effective date.

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

11
 12 Section 1. Subsection (1) and paragraph (e) of subsection
 13 (2) of section 14.32, Florida Statutes, are amended to read:

14 14.32 Office of Chief Inspector General.—

15 (1) There is created in the Executive Office of the
 16 Governor the Office of Chief Inspector General. The Chief
 17 Inspector General is ~~shall be~~ responsible for promoting
 18 accountability, integrity, and efficiency in the agencies under
 19 the jurisdiction of the Governor. The Chief Inspector General
 20 shall be appointed by the Governor, subject to confirmation by
 21 the Senate, and shall serve at the pleasure of the Governor.
 22 However, upon a change in Governors or reelection of the
 23 Governor, the Governor shall appoint, or may reappoint, a Chief
 24 Inspector General before adjournment sine die of the first
 25 regular session of the Legislature that convenes after such
 26 change in Governors or reelection of the Governor.

27 (2) The Chief Inspector General shall:
 28 (e) Coordinate complaint-handling activities with agencies
 29 and provide for independent legal counsel for inspectors general
 30 in agencies under the jurisdiction of the Governor.

31 Section 2. Subsections (2) and (3), paragraphs (f), (h),
 32 and (i) of subsection (5), paragraph (c) of subsection (7), and
 33 subsection (8) of section 20.055, Florida Statutes, are amended
 34 to read:

35 20.055 Agency inspectors general.-

36 (2) The Office of Inspector General is ~~hereby~~ established
 37 in each state agency to provide a central point for coordination
 38 of and responsibility for activities that promote
 39 accountability, integrity, and efficiency in government. It is
 40 ~~shall be~~ the duty and responsibility of each inspector general,
 41 with respect to the state agency in which the office is
 42 established, to:

43 (a) Advise in the development of performance measures,
 44 standards, and procedures for the evaluation of state agency
 45 programs.

46 (b) Assess the reliability and validity of the information
 47 provided by the state agency on performance measures and
 48 standards, and make recommendations for improvement, if
 49 necessary, before ~~prior to~~ submission of such information ~~these~~
 50 ~~measures and standards to the Executive Office of the Governor~~
 51 pursuant to s. 216.1827 ~~216.0166(1)~~.

52 (c) Review the actions taken by the state agency to

53 improve program performance and meet program standards and make
 54 recommendations for improvement, if necessary.

55 (d) Provide direction for, supervise, and coordinate
 56 audits, investigations, and management reviews relating to the
 57 programs and operations of the state agency, except that when
 58 the inspector general does not possess the qualifications
 59 specified in subsection (4), the director of auditing shall
 60 conduct such audits.

61 (e) Conduct, supervise, or coordinate other activities
 62 carried out or financed by that state agency for the purpose of
 63 promoting economy and efficiency in the administration of, or
 64 preventing and detecting fraud and abuse in, its programs and
 65 operations.

66 (f) Keep the ~~such~~ agency head or, for state agencies under
 67 the jurisdiction of the Governor, the Chief Inspector General
 68 informed concerning fraud, abuses, and deficiencies relating to
 69 programs and operations administered or financed by the state
 70 agency, recommend corrective action concerning fraud, abuses,
 71 and deficiencies, and report on the progress made in
 72 implementing corrective action.

73 (g) Ensure effective coordination and cooperation between
 74 the Auditor General, federal auditors, and other governmental
 75 bodies with a view toward avoiding duplication.

76 (h) Review, as appropriate, rules relating to the programs
 77 and operations of such state agency and make recommendations
 78 concerning their impact.

79 (i) Ensure that an appropriate balance is maintained
 80 between audit, investigative, and other accountability
 81 activities.

82 (j) Comply with the General Principles and Standards for
 83 Offices of Inspector General as published and revised by the
 84 Association of Inspectors General.

85 (3)(a) The inspector general shall be appointed by the
 86 agency head. For state agencies under the jurisdiction ~~direction~~
 87 of the Governor, the inspector general shall be appointed by the
 88 Chief Inspector General. The agency head or Chief Inspector
 89 General shall notify ~~appointment shall be made after notifying~~
 90 the Governor ~~and the Chief Inspector General~~ in writing, ~~at~~
 91 ~~least 7 days prior to an offer of employment,~~ of his or her the
 92 ~~agency head's~~ intention to hire the inspector general at least 7
 93 days before an offer of employment. The inspector general shall
 94 be appointed without regard to political affiliation.

95 (b) The ~~Each~~ inspector general shall report to and be
 96 under the general supervision of the agency head and is ~~shall~~
 97 not ~~be~~ subject to supervision by any other employee of the state
 98 agency in which the office is established. The inspector general
 99 ~~shall be appointed without regard to political affiliation. For~~
 100 state agencies under the jurisdiction of the Governor, the
 101 inspector general shall be under the general supervision of the
 102 agency head, shall report to the Chief Inspector General, and
 103 may hire and remove staff within the office of the inspector
 104 general in consultation with the Chief Inspector General but

105 independently of the agency.

106 (c) The ~~an~~ inspector general may be removed from office by
 107 the agency head. For state agencies under the jurisdiction
 108 ~~direction~~ of the Governor, the inspector general may only be
 109 removed from office by ~~the agency head shall notify the Governor~~
 110 ~~and~~ the Chief Inspector General for cause, including concerns
 111 regarding performance, malfeasance, misfeasance, misconduct, or
 112 failure to carry out his or her duties under this section. The
 113 Chief Inspector General shall notify the Governor, in writing,
 114 of his or her ~~the~~ intention to remove ~~terminate~~ the inspector
 115 general at least 21 ~~7~~ days before ~~prior to~~ the removal. For
 116 state agencies under the jurisdiction ~~direction~~ of the Governor
 117 and Cabinet, the agency head shall notify the Governor and
 118 Cabinet in writing of his or her ~~the~~ intention to remove
 119 ~~terminate~~ the inspector general at least 21 ~~7~~ days before ~~prior~~
 120 ~~to~~ the removal. If the inspector general disagrees with the
 121 removal, the inspector general may present objections in writing
 122 to the agency head or the Governor within the 21-day period.

123 (d) The Governor, the Governor and Cabinet, the agency
 124 head, or agency staff may ~~shall~~ not prevent or prohibit the
 125 inspector general from initiating, carrying out, or completing
 126 any audit or investigation.

127 (e) The office of the inspector general shall have its own
 128 budget within the state agency sufficient to meet its mission
 129 developed in consultation with the Chief Inspector General.

130 (5) In carrying out the auditing duties and

131 | responsibilities of this act, each inspector general shall
 132 | review and evaluate internal controls necessary to ensure the
 133 | fiscal accountability of the state agency. The inspector general
 134 | shall conduct financial, compliance, electronic data processing,
 135 | and performance audits of the agency and prepare audit reports
 136 | of his or her findings. The scope and assignment of the audits
 137 | shall be determined by the inspector general; however, the
 138 | agency head may at any time direct the inspector general to
 139 | perform an audit of a special program, function, or
 140 | organizational unit. The performance of the audit shall be under
 141 | the direction of the inspector general, except that if the
 142 | inspector general does not possess the qualifications specified
 143 | in subsection (4), the director of auditing shall perform the
 144 | functions listed in this subsection.

145 | (f) The inspector general shall submit the final report to
 146 | the agency head, ~~and to the Auditor General,~~ and, for state
 147 | agencies under the jurisdiction of the Governor, the Chief
 148 | Inspector General.

149 | (h) The inspector general shall monitor the implementation
 150 | of the state agency's response to any report on the state agency
 151 | issued by the Auditor General or by the Office of Program Policy
 152 | Analysis and Government Accountability. No later than 6 months
 153 | after the Auditor General or the Office of Program Policy
 154 | Analysis and Government Accountability publishes a report on the
 155 | state agency, the inspector general shall provide a written
 156 | response to the agency head or, for state agencies under the

157 jurisdiction of the Governor, the Chief Inspector General on the
 158 status of corrective actions taken. The inspector general shall
 159 file a copy of such response with the Legislative Auditing
 160 Committee.

161 (i) The inspector general shall develop long-term and
 162 annual audit plans based on the findings of periodic risk
 163 assessments. The plan, where appropriate, should include
 164 postaudit samplings of payments and accounts. The plan shall
 165 show the individual audits to be conducted during each year and
 166 related resources to be devoted to the respective audits. The
 167 Chief Financial Officer, to assist in fulfilling the
 168 responsibilities for examining, auditing, and settling accounts,
 169 claims, and demands pursuant to s. 17.03(1), and examining,
 170 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 171 may use ~~utilize~~ audits performed by the inspectors general and
 172 internal auditors. For state agencies under the jurisdiction of
 173 the Governor, the audit plans shall be submitted to the
 174 ~~Governor's~~ Chief Inspector General. The plan shall be submitted
 175 to the agency head for review and to the Chief Inspector General
 176 for approval. A copy of the approved plan shall be submitted to
 177 the Auditor General.

178 (7)

179 (c) The final reports prepared pursuant to paragraphs (a)
 180 and (b) shall be provided ~~furnished~~ to the heads of the
 181 respective agencies and, for state agencies under the
 182 jurisdiction of the Governor, the Chief Inspector General. Such

183 reports shall include, but need not be limited to:

184 1. A description of activities relating to the
185 development, assessment, and validation of performance measures.

186 2. A description of significant abuses and deficiencies
187 relating to the administration of programs and operations of the
188 agency disclosed by investigations, audits, reviews, or other
189 activities during the reporting period.

190 3. A description of the recommendations for corrective
191 action made by the inspector general during the reporting period
192 with respect to significant problems, abuses, or deficiencies
193 identified.

194 4. The identification of each significant recommendation
195 described in previous annual reports on which corrective action
196 has not been completed.

197 5. A summary of each audit and investigation completed
198 during the reporting period.

199 (8) The inspector general in each state agency shall
200 provide to the agency head, upon receipt, all written complaints
201 concerning the duties and responsibilities in this section or
202 any allegation of misconduct related to the office of the
203 inspector general or its employees, if received from subjects of
204 audits or investigations who are individuals substantially
205 affected or entities contracting with the state, as defined in
206 this section. For state agencies ~~solely~~ under the jurisdiction
207 ~~direction~~ of the Governor, the inspector general shall also
208 provide the complaint to the Chief Inspector General.

HB 1385

2014

209

Section 3. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative Raulerson offered the following:

4

5 **Amendment**

6 Remove lines 85-106 and insert:

7 (3) (a) For state agencies under the jurisdiction of the
 8 Cabinet or the Governor and the Cabinet, the inspector general
 9 shall be appointed by the agency head. For state agencies under
 10 the jurisdiction ~~direction~~ of the Governor, the inspector
 11 general shall be appointed by the Chief Inspector General. The
 12 agency head or Chief Inspector General shall notify ~~appointment~~
 13 ~~shall be made after notifying~~ the Governor and the Chief
 14 ~~Inspector General~~ in writing, ~~at least 7 days prior to an offer~~
 15 ~~of employment,~~ of his or her ~~the agency head's~~ intention to hire
 16 the inspector general at least 7 days before an offer of



Amendment No.

17 employment. The inspector general shall be appointed without
18 regard to political affiliation.

19 (b) The ~~Each~~ inspector general shall report to and be
20 under the general supervision of the agency head and ~~is shall~~
21 not ~~be~~ subject to supervision by any other employee of the state
22 agency in which the office is established. ~~The inspector general~~
23 ~~shall be appointed without regard to political affiliation. For~~
24 state agencies under the jurisdiction of the Governor, the
25 inspector general shall be under the general supervision of the
26 agency head, shall report to the Chief Inspector General, and
27 may hire and remove staff within the office of the inspector
28 general in consultation with the Chief Inspector General but
29 independently of the agency.

30 (c) For state agencies under the jurisdiction of the
31 Cabinet or the Governor and the Cabinet, the ~~an~~ inspector
32 general may be removed from office by
33



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representative Raulerson offered the following:

4
5
6
7
8
9

Amendment

Remove lines 128-129 and insert:
budget within the state agency, developed in consultation with
the Chief Inspector General, sufficient to meet its mission.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB RORS 14-01 Administrative Procedures
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee, Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SPB 7116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N	Miller	Rubottom
1) Government Operations Subcommittee		Harrington	Williamson
2) Government Operations Appropriations Subcommittee			
3) Rules & Calendar Committee			

SUMMARY ANALYSIS

Agencies must review their existing rules to identify and correct deficiencies, improve efficiencies, reduce paperwork and costs, clarify and simplify text, and revise or delete rules that become obsolete, unnecessary, or are redundant of statute. Biennially, each agency head is required to file a report with the Speaker of the House of Representatives, President of the Senate, and the Legislature's Joint Administrative Procedures Committee (JAPC) summarizing the results of this review and revision, suggesting certain legislative changes, and addressing the economic impact of the rules on small business. In 2011, the Legislature suspended biennial reporting for that year and required all agencies to review and report on the economic effect of all then-existing rules by the end of 2013. In the same act, the Legislature required each agency to file a separate annual "regulatory plan" outlining all rulemaking the agency intended to implement in the next fiscal year, except emergency rulemaking. The act also provided some limited protection to encourage members of the public to respond to an online survey about the effect of state agency rules.

When a newly-enacted law requires an agency to adopt new or amend current administrative rules for proper implementation, current law requires the agency charged with enforcing that law to formally propose such rules within 180 days of the effective date of the law. While agencies generally comply with this deadline, there are numerous examples of agencies failing to act within 180 days or interpreting the new law as not requiring rulemaking for proper implementation. In some instances this delay or inaction persists for several years.

The bill replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The plan must be certified by the agency head and general counsel and published on the agency's internet website, with a copy of the certification filed with JAPC. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of a non-compliant agency until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals the retrospective economic review of existing rules and repeals the law pertaining to the online survey.

The bill may have an indeterminate negative fiscal impact on the state. See FISCAL COMMENTS.

The bill has an effective date of July 1, 2014, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agency Rulemaking and Reporting Requirements

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.¹ The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.² If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.³

Rulemaking authority is delegated by the Legislature⁴ by law authorizing an agency to “adopt, develop, establish, or otherwise create”⁵ a rule. Agencies do not have discretion whether to engage in rulemaking.⁶ To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.⁷ The grant of rulemaking authority itself need not be detailed.⁸ The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the agency from exercising unbridled discretion in creating policy or applying the law.⁹ A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.¹⁰ Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the agency. As such, the Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.

Section 120.54(1)(b), F.S.: The “180 Day” Requirement

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before the implementing rules are adopted.¹¹ If a law is enacted that requires agency rulemaking for proper implementation, “such rules shall be drafted and formally proposed as provided in [s. 120.54, F.S.] within 180 days after the effective date of the act, unless the act provides otherwise.”¹² This “180-day requirement” predates the 1996 revisions.¹³

¹ Section 120.52(16), F.S.; *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

² *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).

³ *McDonald v. Dept. of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Dept. of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Dept. of Transp. v. Blackhawk Quarry Co.*, 528 So. 2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).

⁴ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁵ Section 120.52(17), F.S.

⁶ Section 120.54(1)(a), F.S.

⁷ Sections 120.52(8) & 120.536(1), F.S. In 1996, the Legislature extensively revised agency rulemaking under the Administrative Procedure Act to require both the express grant of rulemaking authority and a specific law to be implemented by rule. Chapter 96-159, L.O.F.

⁸ *Save the Manatee Club, Inc.*, supra at 599.

⁹ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹⁰ *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209 (Fla.1968).

¹¹ Section 120.54(1)(c), F.S.

¹² Section 120.54(1)(b), F.S.

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.¹⁴ Proposed rules can be repeatedly, substantially revised based on public input and may also be withdrawn. Consequently, the 180-day requirement does not ensure prompt rulemaking.

JAPC Monitoring and Agency Compliance

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180-day requirement in furtherance of its rulemaking oversight duties.¹⁵ JAPC staff reviews legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules. Where the law appears to mandate new rulemaking¹⁶ or restates an existing mandate for rulemaking, JAPC sends a letter reminding the agency of the 180-day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180-days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180-day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. JAPC identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking during the period of 2007-2011. At its meeting on February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of JAPC asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement.

“Directive” vs. “Mandate”

Courts generally interpret words in statutes such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.¹⁷ A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,¹⁸ including when the agency does not act within the 180-day requirement. The Administrative Procedure Act (APA) provides no other process to enforce the 180-day requirement, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S.: Biennial Reporting

1996 Reporting Requirement

As part of the comprehensive revision of the APA in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.¹⁹

¹³ The 180 requirement was enacted as chapter 85-104, s. 7, L.O.F.

¹⁴ Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

¹⁵ Joint Rule 4.6.

¹⁶ Such as stating that the agency “shall adopt rules” or “shall establish” or “must establish” a particular standard or policy.

¹⁷ *S.R. v. State*, 346 So.2d 1018, 1019 (Fla. 1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (Fla. 1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So.2d 512, 514 (Fla. 2d DCA 2000).

¹⁸ Section 120.54(7)(a), F.S. If the agency denies the petition, the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

¹⁹ Chapter 96-159, s. 9(2), L.O.F.

Another 1996 revision required ongoing agency rulemaking review, revision, and reporting.²⁰ Under that law, as amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.²¹ Biennially, the agency head must report the results and other required information to the President of the Senate, Speaker of the House of Representatives, JAPC, and “each appropriate standing committee of the Legislature” on October 1.²²

Limited Utility of s. 120.74, F.S., Reports

Agencies as defined in the APA,²³ including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and state a finding of no undue economic impact on small businesses (a required subject of the report). For example, a 2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.²⁴

The 2013 report for the same school district states the following as “what & why the policy changed” for the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.²⁵

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.²⁶

Reports by state agencies have reflected inconsistent application of the requirement for the report to “specify any changes made to [the agency's] rules as a result of the review. . .”²⁷ One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.²⁸ In contrast, a different agency simply identified obsolete rules for repeal, without stating why the rules were obsolete, and listed a rule for amendment to update documents incorporated by reference, without identifying the documents so referenced.²⁹ Some agencies provided lengthy lists of rules identified for amendment or

²⁰ Chapter 96-399, s. 46, L.O.F, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapters 2006-82, s. 9, and 2008-149, s. 8, L.O.F.

²¹ Identify and correct deficiencies; clarify and simplify its rules; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S.

²² Section 120.74(2), F.S.

²³ Section 120.52(1), F.S.

²⁴ School Board of Manatee County, “Section 120.74 Report” (Sept. 29, 2009), received by JAPC on Nov. 3, 2009 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁵ School Board of Manatee County, “Section 120.74 Report” (Sept. 24, 2013), received by the House on Oct. 3, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁶ School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁷ Section 120.74(2), F.S.

²⁸ Dept. of Children and Families, “Biennial rule review report required by section 120.74, Florida Statutes” (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

²⁹ Dept. of Agriculture and Consumer Services, “August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review” (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.³⁰

Regulatory Plans

In 2011, the reporting requirements were amended to require that each agency file an annual regulatory plan in addition to the biennial reports.³¹ The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Effect of the Bill

The bill retains the requirement that agencies must identify and proceed with rulemaking necessitated by changes in newly-enacted law, but revises the deadlines, method for compliance, and reporting requirements in the APA.

The bill replaces the biennial reporting with an expanded annual regulatory plan. The regulatory plan requires each agency to identify those laws enacted or amended during the previous 12 months that created or modified the duties or authority of the agency. The plan also must identify whether rulemaking is necessary to implement such newly-enacted provisions.

For each law identified in the regulatory plan as requiring rulemaking, the agency must state whether a notice of rule development has been published, and the date by which the agency expects to publish the notice of proposed rule. The bill imposes specific deadlines for the agency to publish the Notice of Rule Development and Notice of Proposed Rule. Specifically, the bill requires agencies to publish a Notice of Rule Development by November 1 for each law identified in the regulatory plan for which rulemaking is necessary to implement. The bill requires agencies to move forward with rulemaking by publishing a Notice of Proposed Rule by January 1 of the year after the submission of the regulatory plan, or by a later date specified in the plan, which may be no later than April 1. If the agency is unable to publish the notice by the date specified in the plan, the agency may extend the deadline for up to 180 additional days by publishing a Notice of Extension in the Florida Administrative Register (FAR) stating the revised deadline, reason for the extension, and referencing the published Notice of Rule Development.

If the agency states rulemaking is not necessary to implement the new enactment, the regulatory plan must contain a short analysis supporting that conclusion. Agencies also are required to identify all rules adopted, amended, or repealed in the prior fiscal year and state which changes were listed in a prior year's plan.

The regulatory plan must verify that the agency continuously reviews and revises its rules to maintain conformity with applicable law. The plan must be certified by both the agency head and the agency's primary lawyer. Copies of the certification will be delivered to JAPC and included with the agency's annual budget documents filed with the House of Representatives and Senate. Agencies are responsible for publishing their regulatory plans on their websites; the agency must publish notice of publication in the Florida Administrative Register (FAR) along with a hyperlink to the regulatory plan.

The bill further requires agencies to file a certification with JAPC of compliance with the publishing requirements. The certification requires the agency to notify JAPC that rulemaking has been completed according to the timelines specified in law and the dates specified in the agency's regulatory plan.³²

³⁰ Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

³¹ Chapter 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under ss. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

³² Current law requires agencies to submit specified notices to JAPC. The bill does not remove the current notice provisions; as such, JAPC will be sent both certifications for compliance and copies of notices filed in the FAR. *See* s. 120.54, F.S.

By October 15 of each year, the Department of Business and Professional Regulation and the Department of Health must publish on their respective websites and file with JAPC a statement of whether the department concurs with each rulemaking action identified by the board's regulatory plan for the boards created in chapter 20, F.S., and established within the department.

Agencies will be required to supplement their regulatory plans if a law enacted during a special session affects their duties or authority. The bill provides that such supplements must be completed within 30 days after enactment of the law that modifies the agency's specifically legislated duties.

To ensure compliance with the law, the rulemaking authority of an agency that fails to comply with any of the following requirements of the bill, which are discussed above in detail, is suspended until the agency completes the required action or until the end of the subsequent regular legislative session, whichever occurs first:

- (1) An annual regulatory plan must be prepared by October 1 of each fiscal year.
- (2) By October 1, the agency must publish the annual regulatory plan on its website, deliver a copy to JAPC, and publish a notice in FAR.
- (3) A copy of the certification required in the annual regulatory plan must be included as part of the agency's legislative budget request.
- (4) The agency must, if applicable, publish on its website and file with JAPC a statement of whether the agency concurs with specified board rulemaking plans.
- (5) The agency must publish a Notice of Rule Development for each law identified in the annual regulatory plan by November 1.
- (6) The agency must publish a Notice of Proposed Rule by January 1, or a later date as may be specified in the annual regulatory plan for laws identified in the plan.
- (7) Within 30 days after the enactment of a law passed during a special session, the agency must supplement the regulatory plan if the law modifies the agency's specifically deleted legal duties.

During the suspension, the agency may complete any rulemaking actions required by the revised statute, including publishing Notices of Rule Development and Notices of Proposed Rules. The suspension would toll the time for filing any already-pending rules for adoption; time would resume running when the agency met the statutory requirements to remove the suspension. An agency's ability to adopt emergency rules or rules necessary to comply with federal law would not be suspended.

Educational entities, such as school districts, are exempted entirely from the bills requirements.

Retrospective Economic Review of Rules

Background

In November 2010, the Legislature enacted HB 1565 (2010)³³ overriding a gubernatorial veto. The law created a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.³⁴ The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented.³⁵ Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within 5 years of going into effect.³⁶

³³ Chapter 2010-279, L.O.F.

³⁴ Section 120.541(3), F.S.

³⁵ Sections 120.54(3)(b)1. and 120.541(1)(b), F.S.

³⁶ Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

The requirements of chapter 2010-279, L.O.F., applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011 the Legislature passed CS/CS/CS/HB 993 & HB 7239, including a provision requiring a retrospective economic analysis of those existing rules.³⁷ All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)³⁸ were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identify existing rules likely to have significant economic impacts.³⁹ At the agency's discretion, the agency may submit the compliance economic reviews in two approximately equal groups: Group 1 reviews were to be published by December 1, 2012, and the remaining reviews in Group 2 were to be published by December 1, 2013.⁴⁰

Concurrently with the development of HB 993 and HB 7239, the Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).⁴¹ Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the bill exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring compliance economic reviews in 2011⁴² and all final reviews by December 31, 2013.⁴³

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five⁴⁴ identified rules requiring compliance economic reviews.⁴⁵ Of the 161 compliance economic reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the 5 year period from July 1, 2011 to July 1, 2016.

Effect of the Bill

In December 2013, the retrospective economic reviews of all agency rules were completed with the publication of the required compliance economic reviews. Accordingly, the bill repeals s. 120.745, F.S., effective upon the bill becoming law.

Your Voice Survey

Background

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting

³⁷ Chapter 2011-225, s. 5, L.O.F, codified as s. 120.745, F.S.

³⁸ A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units. Section 120.81(1), F.S.

³⁹ Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

⁴⁰ Section 120.745(5), F.S.

⁴¹ Executive Order 11-01, subsequently revised by Executive Order 11-72 and replaced by Executive Order 11-211.

⁴² As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring compliance economic reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (last accessed February 4, 2014).

⁴³ Section 120.745(9), F.S.

⁴⁴ Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

⁴⁵ As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring compliance economic reviews to be reported in Group 1 (161) and Group 2 (182).

to comment on any rule could log in to the survey form,⁴⁶ respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period of July 1, 2011 through July 1, 2014, s. 120.7455, F.S.,⁴⁷ was enacted to provide certain limited protections from enforcement actions based on any response to the survey. Specifically, a person reporting or providing information solicited by the Legislature in conformity with the law is immune from any enforcement action or prosecution based on such reporting.⁴⁸ If a person was subject to a penalty in excess of the minimum provided by law or rule, and such person proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.⁴⁹

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. However, the survey responses were of limited value. Many respondents voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 respondents directly addressed a particular agency rule, and of those, no more than 40 respondents provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

Effect of the Bill

The bill repeals s. 120.7455, F.S., effective upon the bill becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising the deadlines and method for agencies to comply with rulemaking required to implement new laws.

Section 2: Amends s. 120.74, F.S., replacing the current biennial reports with an annual regulatory plan; requiring agencies to identify whether rulemaking is necessary to implement new or revised statutory authority; establishing deadlines for rule development and proposed rules necessary to implement new laws; suspending rulemaking authority where agencies fail to comply with the statute; excluding emergency rulemaking and rulemaking necessary for federal compliance from this suspension; and exempting educational units from the review and reporting requirements of the statute.

Section 3: Repeals ss. 120.745 and 120.7455, F.S., relating to legislative review of agency rules in effect on or before a specified date and an Internet-based public survey of regulatory impacts, respectively; rescinding any suspension of rulemaking authority under such repealed provisions.

Section 4: Provides an effective date of July 1, 2014, except as otherwise provided in this act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴⁶ At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (last accessed February 4, 2014).

⁴⁷ Chapter 2011-225, s. 6, L.O.F.

⁴⁸ Section 120.7455(3), F.S. The protection also extends to the non-reporting of such information or the use of information provided in response to the survey.

⁴⁹ Section 120.7455(4), F.S.

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 bill requires the Department of State to create a new notice, which may have an indeterminate minimal fiscal impact on the agency. It also requires agencies to publish additional information in the FAR; publication in the FAR has an associated cost. Such additional publication requirements will have an indeterminate minimal fiscal impact on agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking by any agency. The main analysis discusses particular changes to the accountability of agencies exercising rulemaking authority and to rulemaking to implement new laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Lines 159 – 163

The bill provides that each agency shall file a *separate* certificate of compliance for each certification of subsections (5) and (6), which pertain to specific notice requirements in the bill, upon each date that is required by subsection (6). The language is not clear whether the separate certifications need to be submitted upon compliance with each individual subsection or whether the separate certifications must be submitted upon the date that the agency complies with subsection (6).

Drafting Issues: Lines 175 – 177

The bill provides that during a suspension, the agency may not promulgate or apply a statement defined as a rule. Suspension of all rulemaking could have unintended consequences on the regulated community and agencies. Staff has been advised that an amendment will be filed to correct this drafting

issue and clarify that rules that have already been adopted will not be suspended for failure to comply with the requirements in the bill.

Other Comments: Department of Highway Safety and Motor Vehicles

The department indicated that suspending an agencies rulemaking authority for failure to comply with the requirements of the bill may cause unintended consequences for the department, public, and stakeholders.⁵⁰

Other Comments: Department of Children and Families

The department stated the “deadlines for publishing a proposed rule, and the consequences for failing to meet those deadlines, fail to appreciate the difficulty in producing a proposed rule to implement comprehensive or complex litigation.” Additionally, the agency noted that the deadlines and consequences imposed may cause an agency to rush to publish rules, which could ultimately be more inefficient.⁵¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 5, 2013, the Rulemaking Oversight & Repeal Subcommittee adopted four amendments to the draft PCB and approved PCB RORS 14-01 as amended.

- Amendment 1a revised notice and compliance requirements in section 2 of the bill. Agencies will be required to certify with JAPC their compliance with reporting, filing, and publication requirements. Paragraph (8)(d) was added to exclude emergency rulemaking and rulemaking necessary to comply with federal law from any suspension under this subsection.
- Amendment 2 revised publication requirements, clarifying the agency is responsible for publishing certain notices in the Florida Administrative Register together with a hyperlink providing direct access to the regulatory plan or supplement.
- Amendment 3 added a reference to the statute mandating the filing of annual budget requests by each agency.
- Amendment 4 provided agencies the ability to extend the time for publishing a notice of proposed rule required as a result of this statutory review for up to 180 days.

The final engrossment of the PCB and amendments resulted in changes to some of the internal subsections of the text, a necessary reference to s. 216.351, F.S., and renumbering some of the bill sections. This analysis is drawn to the bill as amended.

⁵⁰ A copy of the department’s analysis is on file with the Government Operations Subcommittee.

⁵¹ *Id.*

27 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
 28 EMERGENCY RULES.—

29 (b) Whenever an act of the Legislature is enacted which
 30 requires implementation of the act by rules of an agency within
 31 the executive branch of state government, such rules shall be
 32 drafted and formally proposed as provided in this section within
 33 the times provided in s. 120.74(5)-(7) ~~180 days after the~~
 34 ~~effective date of the act, unless the act provides otherwise.~~

35 Section 2. Section 120.74, Florida Statutes, is amended to
 36 read:

37 (Substantial rewording of section. See
 38 s. 120.74, F.S., for present text.)

39 120.74 Agency annual rulemaking and regulatory plans;
 40 reports.—

41 (1) REGULATORY PLAN.—By October 1 of each fiscal year,
 42 each agency shall prepare a regulatory plan identifying each law
 43 enacted or amended during the previous 12 months that created or
 44 modified the duties or authority of the agency and each law that
 45 the agency expects to implement by rulemaking before the end of
 46 that fiscal year, the reasons for the rulemaking, and whether
 47 the rulemaking is intended to simplify, clarify, increase
 48 efficiency, improve coordination with other agencies, reduce
 49 regulatory costs, or delete obsolete, unnecessary, or redundant
 50 rules.

51 (a) The plan may exclude emergency rules.

52 (b) The plan may exclude a law that creates or modifies

53 the duties or authority of all or most state agencies, if the
 54 laws is identified as such by letter to the committee from the
 55 Governor, the Attorney General, the President of the Senate, or
 56 the Speaker of the House of Representatives.

57 (c) For each law identified in the plan as enacted or
 58 amended during the previous 12 months, the plan must state:

59 1. Whether the agency must adopt rules to implement the
 60 law.

61 2. If rulemaking is necessary to implement the law,
 62 whether a notice of rule development has been published, and the
 63 date by which the agency expects to publish the notice of
 64 proposed rule under s. 120.54(3)(a).

65 3. If rulemaking is not necessary to implement the law, a
 66 concise written explanation of the reasons that the law may be
 67 implemented without rulemaking.

68 (d) The plan shall also include a list of all rules
 69 adopted, repealed, or amended by the agency during the previous
 70 fiscal year, identifying which rule changes were itemized in a
 71 prior year's regulatory plan.

72 (e) The plan shall include the following certification
 73 executed on behalf of the agency by both the agency head or, if
 74 the agency head is a collegial body, the chair or equivalent
 75 presiding officer, and the agency general counsel or, if the
 76 agency does not have a general counsel, the individual acting as
 77 principal legal advisor to the agency head:

78 1. Verifying that the plan is accurate.

79 2. Verifying that the agency regularly reviews all of its
 80 rules and the period during which all rules have most recently
 81 been reviewed to determine if they remain consistent with the
 82 agency's rulemaking authority and the law implemented.

83 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

84 (a) By October 1 of each year, each agency shall:

85 1. Publish its regulatory plan on its website. A clearly
 86 labeled hyperlink to the plan must be included on the agency's
 87 primary website homepage.

88 2. Deliver by electronic communication to the committee a
 89 copy of the certification required in paragraph (1)(e).

90 3. Publish in the Florida Administrative Register a notice
 91 of publishing the agency's regulatory plan, which notice shall
 92 include a hyperlink or website address providing direct access
 93 to the published plan.

94 (b) To satisfy the requirements of paragraph (a), each
 95 board established by s. 20.165(4) may coordinate with the
 96 Department of Business and Professional Regulation, and each
 97 board established by s. 20.43(3) may coordinate with the
 98 Department of Health, for inclusion of the board's plan and
 99 notice of publication in the coordinating department's plan and
 100 notice and for the delivery of the required documentation to the
 101 committee.

102 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition
 103 to the requirements of s. 216.023 and pursuant to s. 216.351, a
 104 copy of the most recent certification executed under paragraph

105 (1)(e), clearly designated as such, shall be included as part of
 106 the agency's legislative budget request.

107 (4) AGENCY CONCURRENCE WITH BOARD PLAN.—By October 15 of
 108 each year:

109 (a) For each board established under s. 20.165(4), the
 110 Department of Business and Professional Regulation shall publish
 111 on its website and file with the committee a statement of
 112 whether the department concurs with each rulemaking action
 113 identified by the board's regulatory plan.

114 (b) For each board established under s. 20.43(3), the
 115 Department of Health shall publish on its website and file with
 116 the committee a statement of whether the department concurs with
 117 each rulemaking action identified by the board's regulatory
 118 plan.

119 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
 120 year, each agency shall publish a notice of rule development
 121 under s. 120.54(2) for each law identified in the agency's plan
 122 pursuant to subparagraph(1)(c)1. for which rulemaking is
 123 necessary to implement but for which the agency did not report
 124 the publication of a notice of rule development under
 125 subparagraph (1)(c)2.

126 (6) DEADLINE TO PUBLISH PROPOSED RULE.—The agency shall
 127 publish a notice of proposed rule pursuant to s. 120.54(3)(a)
 128 for each rule implementing a law identified in the agency's plan
 129 pursuant to subparagraph(1)(c)1. for which rulemaking is
 130 necessary by January 1 of the year after the deadline for the

131 plan or a later date specified pursuant to subparagraph
 132 (1)(c)2., which must be no later than April 1 after the deadline
 133 for the plan. If the agency is unable to publish the notice of
 134 proposed rule by that date, the agency may extend the deadline
 135 by no more than 180 days by publishing a notice of extension in
 136 the Florida Administrative Register. The notice shall set forth
 137 the revised deadline and the reason for the extension and shall
 138 cite the applicable notice of rule development by rule number
 139 and title, publication date, volume, and number of the Florida
 140 Administrative Register.

141 (7) SUPPLEMENTING THE REGULATORY PLAN.—After the
 142 preparation of the plan, the agency shall supplement the plan
 143 within 30 days after enactment of a law that is enacted before
 144 the next regular session of the Legislature if the law
 145 substantively modifies the agency's specifically delegated legal
 146 duties. The supplement shall include the information required in
 147 paragraphs (1)(b) and (1)(c) and shall be published, with
 148 documentation delivered to the committee, as required in
 149 subsection (2). The agency shall publish in the Florida
 150 Administrative Register notice of publishing the supplement, and
 151 include a hyperlink for direct access to the published
 152 supplement. For each law reported in the supplement, if
 153 rulemaking is necessary to implement the law, the agency shall
 154 publish a notice of rule development by the later of the date
 155 provided in subsection (5) or 60 days after the effective date
 156 of the law, and a notice of proposed rule shall be published by

157 the later of the date provided in subsection (6) or 120 days
 158 after the effective date of the law.

159 (8) FAILURE TO COMPLY.—Each agency shall file a
 160 certification with the committee upon compliance with subsection
 161 (5) and a separate certification of compliance with subsection
 162 (6) for each date upon which compliance is required by
 163 subsection (6). The date of compliance shall be noted in each
 164 certification. If an agency fails to comply with a requirement
 165 of subsections (1)-(7), the entire rulemaking authority
 166 delegated to the agency by the Legislature under any statute or
 167 law shall be suspended automatically as of the due date of the
 168 required action and shall remain suspended until the date the
 169 agency completes the required action, as noted in a
 170 certification of compliance, or until the end of the next
 171 regular session of the Legislature, whichever occurs first.

172 (a) During a period of suspension under this subsection,
 173 the agency has no authority to file rules for adoption under s.
 174 120.54, but may complete any action required by this section.

175 (b) A suspension under this subsection does not authorize
 176 an agency to promulgate or apply a statement defined as a rule
 177 under s. 120.52(16).

178 (c) A suspension under this subsection shall toll the time
 179 requirements under s. 120.54 for filing any rule for adoption in
 180 a rulemaking proceeding the agency initiated before the date of
 181 the suspension, which time requirements shall resume on the date
 182 the suspension ends.

183 (d) This subsection does not suspend the adoption of
 184 emergency rules under s. 120.54(4) or rulemaking necessary to
 185 ensure the state's compliance with federal law.

186 (9) EDUCATIONAL UNITS.—This section does not apply to
 187 educational units.

188 Section 3. Effective upon this act becoming a law:

189 (1) Sections 120.745 and 120.7455, Florida Statutes, are
 190 repealed.

191 (2) Any suspension of rulemaking authority under s.
 192 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is
 193 rescinded. This subsection does not affect any restriction,
 194 suspension, or prohibition of rulemaking authority under any
 195 other provision of law.

196 (3) This section serves no other purpose and shall not be
 197 codified in the Florida Statutes.

198 Section 4. Except as otherwise expressly provided in this
 199 act and except for this section, which shall take effect upon
 200 this act becoming a law, this act shall take effect July 1,
 201 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Santiago offered the following:
 4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (b) of subsection (1) of section
 8 120.54, Florida Statutes, is amended to read:

9 120.54 Rulemaking.—

10 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
 11 EMERGENCY RULES.—

12 (b) Whenever an act of the Legislature is enacted which
 13 requires implementation of the act by rules of an agency within
 14 the executive branch of state government, such rules shall be
 15 drafted and formally proposed as provided in this section within
 16 the times provided in s. 120.74(5)-(6) ~~180 days after the~~
 17 ~~effective date of the act, unless the act provides otherwise.~~



Amendment No.

18 Section 2. Section 120.74, Florida Statutes, is amended to
19 read:

20 (Substantial rewording of section. See
21 s. 120.74, F.S., for present text.)

22 120.74 Agency annual rulemaking and regulatory plans;
23 reports.-

24 (1) REGULATORY PLAN.-By October 1 of each fiscal year,
25 each agency shall prepare an implementation and rulemaking plan.

26 (a) The plan shall include a listing of each law enacted
27 or amended during the previous 12 months that created or
28 modified the duties or authority of the agency. The plan may
29 exclude any law affecting all or most state agencies, if the law
30 is identified as such by letter to the committee from the
31 Governor or the Attorney General. For each law listed under this
32 paragraph the plan must state:

33 1. Whether the agency must adopt rules to implement the
34 law.

35 2. If rulemaking is necessary to implement the law:

36 a. Whether a notice of rule development has been
37 published, and if so, the Florida Administrative Register
38 citation for such notice; and

39 b. The date by which the agency expects to publish the
40 notice of proposed rule under s. 120.54(3)(a).

41 3. If rulemaking is not necessary to implement the law, a
42 concise written explanation of the reasons that the law may be
43 implemented without rulemaking.



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44 (b) The plan shall include a listing of every other law
45 that the agency expects to implement by rulemaking, except
46 emergency rulemaking, before the end of that fiscal year. For
47 each law listed under this paragraph, the plan must state
48 whether the rulemaking is intended to simplify, clarify,
49 increase efficiency, improve coordination with other agencies,
50 reduce regulatory costs, or delete obsolete, unnecessary, or
51 redundant rules.

52 (c) The plan shall include any desired update to the prior
53 year's regulatory plan or supplement published pursuant to
54 subsection (8). If in a prior year a law was identified under
55 this paragraph or under subparagraph (1)(a)1. as a law requiring
56 rulemaking to implement but a notice of proposed rule has not
57 been published:

58 1. The agency may identify and re-list such law noting the
59 applicable notice of rule development by citation to the Florida
60 Administrative Register; or

61 2. If the agency has subsequently determined that
62 rulemaking is not necessary to implement the law, the agency may
63 identify such law, note the applicable notice of rule
64 development by citation to the Florida Administrative Register,
65 and state a concise written explanation of the reason that the
66 law may be implemented without rulemaking.

67 (d) The plan shall include the following certification
68 executed on behalf of the agency by both the agency head or, if
69 the agency head is a collegial body, the chair or equivalent



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70 presiding officer, and the agency general counsel or, if the
71 agency does not have a general counsel, the individual acting as
72 principal legal advisor to the agency head:

73 1. Verifying that the persons certifying have reviewed the
74 plan.

75 2. Verifying that the agency regularly reviews all of its
76 rules and noting the period during which all rules have most
77 recently been reviewed to determine if they remain consistent
78 with the agency's rulemaking authority and the law implemented.

79 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

80 (a) By October 1 of each year, each agency shall:

81 1. Publish its regulatory plan on its website or on
82 another state website established for publication of
83 administrative law records. A clearly labeled hyperlink to the
84 current plan must be included on the agency's primary website
85 homepage.

86 2. Deliver by electronic communication to the committee a
87 copy of the certification required in paragraph (1)(d).

88 3. Publish in the Florida Administrative Register a notice
89 of the date of publication of the agency's regulatory plan,
90 which notice shall include a hyperlink or website address
91 providing direct access to the published plan.

92 (b) To satisfy the requirements of paragraph (a), each
93 board established by s. 20.165(4), and any other board or
94 commission receiving administrative support from the Department
95 of Business and Professional Regulation, may coordinate with the



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96 Department of Business and Professional Regulation, and each
97 board established by s. 20.43(3) may coordinate with the
98 Department of Health, for inclusion of the board's or
99 commission's plan and notice of publication in the coordinating
100 department's plan and notice and for the delivery of the
101 required documentation to the committee.

102 (c) A regulatory plan, including any regulatory plan
103 published under s. 120.74(3), F.S. (2011), shall be maintained
104 at an active website address for 10 years from the date of
105 initial publication.

106 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition
107 to the requirements of s. 216.023 and pursuant to s. 216.351, a
108 copy of the most recent certification executed under paragraph
109 (1)(d), clearly designated as such, shall be included as part of
110 the agency's legislative budget request.

111 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each
112 year:

113 (a) For each board established under s. 20.165(4), and any
114 other board or commission receiving administrative support from
115 the Department of Business and Professional Regulation, the
116 Department of Business and Professional Regulation shall file
117 with the committee a certification that the department has
118 reviewed the board's regulatory plan. A certification may relate
119 to more than one board.

120 (b) For each board established under s. 20.43(3), the
121 Department of Health shall file with the committee a



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122 certification that the department has reviewed the board's
123 regulatory plan. A certification may relate to more than one
124 board.

125 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
126 year, each agency shall publish a notice of rule development
127 under s. 120.54(2) for each law identified in the agency's plan
128 pursuant to subparagraph (1)(a)1. for which rulemaking is
129 necessary to implement but for which the agency did not report
130 the publication of a notice of rule development under
131 subparagraph (1)(a)2.

132 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
133 which implementing rulemaking is necessary as identified in the
134 agency's plan pursuant to subparagraph(1)(a)1. or paragraph
135 (1)(c)1., the agency shall publish a notice of proposed rule
136 pursuant to s. 120.54(3)(a) by April 1 of the year after the
137 deadline for the plan. This deadline may be extended if the
138 agency publishes a notice of extension in the Florida
139 Administrative Register identifying each rulemaking proceeding
140 for which an extension is being noticed by citation to the
141 applicable notice of rule development as published in the
142 Florida Administrative Register. An extension shall expire on
143 the October 1 following the April 1 deadline, provided that the
144 regulatory plan due on such date may further extend the
145 rulemaking proceeding by identification pursuant to paragraph
146 (1)(c)1. or conclude the rulemaking proceeding by identification
147 pursuant to paragraph (1)(c)2. A published regulatory plan may

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148 be corrected at any time to accomplish the purpose of extending
149 or concluding an affected rulemaking proceeding and shall be
150 deemed corrected as of the October 1 due date. Upon publication
151 of any such correction, the agency shall publish in the Florida
152 Administrative Register a notice of the date of the correction
153 identifying any affected rulemaking proceeding by applicable
154 citation to the Florida Administrative Register.

155 (7) CERTIFICATIONS.—Each agency shall file a certification
156 with the committee upon compliance with subsection (5), upon
157 filing a notice under subsection (6) of a deadline extension or
158 a regulatory plan correction and upon the completion of any act
159 that terminates a suspension under subsection (9). A
160 certification may relate to more than one notice or
161 contemporaneous act. The date or dates of compliance shall be
162 noted in each certification.

163 (8) SUPPLEMENTING THE REGULATORY PLAN.—After the
164 preparation of the plan, the agency shall supplement the plan
165 within 30 days after enactment of a law that is enacted before
166 the next regular session of the Legislature if the law
167 substantively modifies the agency's specifically delegated legal
168 duties, unless the law affects all or most state agencies as
169 identified by letter to the committee from the Governor or the
170 Attorney General. The supplement shall include the information
171 required in paragraph (1)(a) and shall be published as required
172 in subsection (2), but no certification or delivery to the
173 committee is required. The agency shall publish in the Florida

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174 Administrative Register notice of publishing the supplement, and
175 include a hyperlink or web address for direct access to the
176 published supplement. For each law reported in the supplement,
177 if rulemaking is necessary to implement the law, the agency
178 shall publish a notice of rule development by the later of the
179 date provided in subsection (5) or 60 days after the effective
180 date of the law, and a notice of proposed rule shall be
181 published by the later of the date provided in subsection (6) or
182 120 days after the effective date of the law. The proposed rule
183 deadline may be extended to the following October 1 by notice as
184 provided in subsection (6). If such proposed rule has not been
185 filed by October 1, a law included in a supplement shall also be
186 included in the next annual plan pursuant to subsection (1).

187 (9) FAILURE TO COMPLY.—If an agency fails to comply with a
188 requirement of paragraph (2)(a) or subsection (6), the entire
189 rulemaking authority delegated to the agency by the Legislature
190 under any statute or law shall be suspended automatically as of
191 the due date of the required action and shall remain suspended
192 until the date the agency completes the required act or until
193 the end of the next regular session of the Legislature,
194 whichever occurs first.

195 (a) During a period of suspension under this subsection,
196 the agency has no authority to file rules for adoption under s.
197 120.54, but may complete any action required by this section and
198 may conduct any public hearings that were noticed prior to the
199 period of suspension.

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200 (b) A suspension under this subsection does not authorize
201 an agency to promulgate or apply a statement defined as a rule
202 under s. 120.52(16) unless the statement was filed for adoption
203 under s. 120.54(3) prior to the suspension.

204 (c) A suspension under this subsection shall toll the time
205 requirements under s. 120.54 for filing any rule for adoption in
206 a rulemaking proceeding initiated by the agency before the date
207 of the suspension, which time requirements shall resume on the
208 date the suspension ends.

209 (d) This subsection does not suspend the adoption of
210 emergency rules under s. 120.54(4) or rulemaking necessary to
211 ensure the state's compliance with federal law.

212 (10) EDUCATIONAL UNITS.—This section does not apply to
213 educational units.

214 Section 3. Effective upon this act becoming a law:

215 (1) Sections 120.745 and 120.7455, Florida Statutes, are
216 repealed.

217 (2) Any suspension of rulemaking authority under s.
218 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is
219 rescinded. This subsection does not affect any restriction,
220 suspension, or prohibition of rulemaking authority under any
221 other provision of law.

222 (3) This section serves no other purpose and shall not be
223 codified in the Florida Statutes.

224 Section 4. Except as otherwise expressly provided in this
225 act and except for this section, which shall take effect upon



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226 this act becoming a law, this act shall take effect July 1,
227 2014.

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

232

Remove everything before the enacting clause and insert:

233

An act relating to administrative procedures; amending s.

234

120.54, F.S.; revising the deadline to propose rules

235

implementing new laws; amending s. 120.74, F.S.; revising

236

requirements for the periodic review of agency rules; requiring

237

agencies to annually review rulemaking and prepare and publish

238

regulatory plans; specifying requirements for such plans;

239

requiring publication by specified dates of notices of rule

240

development and of proposed rules necessary to implement new

241

laws; providing for applicability; providing for suspension of

242

an agency's rulemaking authority for failure to comply with

243

specified provisions; repealing ss. 120.745 and 120.7455, F.S.,

244

relating to legislative review of agency rules in effect on or

245

before a specified date and an Internet-based public survey of

246

regulatory impacts, respectively; providing for rescission of

247

the suspension of rulemaking authority under such repealed

248

provisions; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7087 PCB CJS 14-05 Pub. Rec./Notices of Data Breach and Investigations/DLA
SPONSOR(S): Civil Justice Subcommittee, Metz
TIED BILLS: HB 7085 **IDEN./SIM. BILLS:** SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	11 Y, 0 N	Cary	Bond
1) Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

House Bill 7085 creates the Florida Information Protection Act of 2014 (Act). It requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach.

The bill, which is linked to passage of House Bill 7085, creates a public records exemption relating to the Act. All information received by the DLA pursuant to a notice of a security breach, or received pursuant to a subsequent investigation by DLA or another law enforcement agency, is confidential and exempt from public record requirements. The exemption applies so long as the investigation is considered active.

During an active investigation, the DLA may disclose confidential and exempt information:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the DLA determines that such release would assist in notifying the public or locating or identifying a person the DLA believes to have been a victim of the breach; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

Upon conclusion of an active investigation, the following information remains confidential and exempt from public record requirements:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's trade secrets or proprietary information.

The bill provides a public necessity statement as required by the State Constitution.

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

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 creates a public record exemption for certain information related to the investigation of a violation of the Florida Information and Protection Act of 2014; 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. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of 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. An exemption 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.

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.² If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.³ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁴ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁵

House Bill 7085 (2014), Florida Information Protection Act of 2014

House Bill 7085 creates the Florida Information Protection Act of 2014 (Act). It requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach. A breach of security is an unauthorized access of data in electronic form containing personal information. Personal information includes either a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account, or an individual's first initial or name and last name in combination with any one or more of the following:

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

¹ Art I., s. 24(c), Fla.Const.

² *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

³ *Id.*

⁴ *Id.*

⁵ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; and
- Any other information from or about an individual that could be used to personally identify that person.

The Act also requires the DLA to provide an annual report, by February 1, to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding year, along with recommendations for security improvements.

Effect of Proposed Changes

The bill, which is linked to passage of House Bill 7085, creates s. 501.171(11), F.S., to provide a public records exemption relating to the Act. All information received by the DLA pursuant to a notice of a security breach, or received pursuant to a subsequent investigation by DLA or another law enforcement agency, is confidential and exempt from public record requirements. The exemption applies so long as the investigation is considered active.

During an active investigation, the DLA may disclose confidential and exempt information:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the DLA determines that such release would assist in notifying the public or locating or identifying a person the DLA believes to have been a victim of the breach; or
- To another governmental agency in the furtherance of its official duties and responsibilities.

Upon conclusion of an active investigation, the following information remains confidential and exempt from public record requirements:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's trade secrets or proprietary information.

The bill provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 501.171, F.S., as created by House Bill 7085, to create a public record exemption.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs (DLA). Staff responsible for complying with public record requests could require training related to the creation of the public record exemption, and the DLA may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DLA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; 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 a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Open Government Sunset Review Act

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. The bill creates a public record exemption for information relating to the Florida Information Protection Act of 2014; however, it does not provide for automatic repeal of the exemption on October 2, 2019, pursuant to the Open Government Sunset Review Act.

Other Comments: Proprietary Information

The bill provides that certain information received by the DLA is confidential and exempt during an active investigation. Upon conclusion of an active investigation, certain information remains confidential and exempt including proprietary information. However, the bill does not provide a definition for proprietary information. As such, it is unclear what type of information this would include or how the DLA would recognize information as proprietary.

Other Comments: Public Necessity Statement

On line 52 of the bill, the word "made" is missing from the public necessity statement.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that information received by the department is confidential and exempt from a public record request during an active investigation and that certain sensitive personal and business information remains confidential and exempt after the investigation is complete. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 501.171, F.S.; providing exemptions from public
 4 records requirements for the notice of a data breach
 5 and information held by the Department of Legal
 6 Affairs pursuant to certain investigations;
 7 authorizing disclosure under certain circumstances;
 8 providing for future review and repeal of the
 9 exemption under the Open Government Sunset Review Act;
 10 providing a statement of public necessity; providing a
 11 contingent effective date.

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

14
 15 Section 1. Subsection (11) is added to section 501.171,
 16 Florida Statutes, as created by HB 7085, 2014 Regular Session,
 17 to read:

18 501.171 Security of confidential personal information.—

19 (11) PUBLIC RECORDS EXEMPTION.—

20 (a) All information received by the department pursuant to
 21 notifications required by this section, or received pursuant to
 22 a subsequent investigation by the department or another federal
 23 or state law enforcement agency, is confidential and exempt from
 24 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, so
 25 long as the investigation is considered an active investigation.
 26 This exemption shall be construed in conformity with s.

27 119.071(2)(c). However, during an active investigation, such
 28 information may be disclosed by the department in the
 29 furtherance of its official duties and responsibilities; for
 30 print, publication, or broadcast if the department determines
 31 that such release would assist in notifying the public or
 32 locating or identifying a person that the department believes to
 33 have been a victim of the breach; or to another governmental
 34 agency in the furtherance of its official duties and
 35 responsibilities.

36 (b) Notwithstanding subsection (a), the following
 37 information received by the department shall remain confidential
 38 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 39 Constitution after completion of an investigation:

40 1. All information to which another public records
 41 exemption applies.

42 2. Personal information as such term is defined in this
 43 section.

44 3. A computer forensic report.

45 4. Information that would otherwise reveal weaknesses in a
 46 covered entity's data security.

47 5. Information that would disclose a covered entity's
 48 trade secrets or proprietary information.

49 Section 2. The Legislature finds that it is a public
 50 necessity that information held by the Department of Legal
 51 Affairs pursuant to an investigation of a violation of s.
 52 501.171, Florida Statutes, relating to information security, be

53 confidential and exempt from public records requirements for the
 54 following reasons:

55 (1) A data breach is likely the result of criminal
 56 activity that will likely lead to further criminal activity.
 57 Notices provided to the department and materials obtained during
 58 investigations of a violation of s. 501.171, Florida Statutes,
 59 are likely to contain proprietary information about the security
 60 of the breached system. The release of the proprietary
 61 information could result in the identification of
 62 vulnerabilities and further breaches of that system. This
 63 exemption protects the security of the breached systems, thus
 64 protecting the personal information of Floridians stored within
 65 the systems.

66 (2) Notices provided to the Department of Legal Affairs
 67 and materials obtained during investigations of a violation of
 68 s. 501.171, Florida Statutes, may contain personal information
 69 that could be used for the purpose of identity theft or some
 70 other financial harm. The release of this information by the
 71 department in response to a public records request could be just
 72 as problematic as the breach or improper disposal of customer
 73 records. This exemption protects the security of the personal
 74 information by excluding it from public records requirements.

75 Section 3. This act shall take effect on the same date
 76 that HB 7085 or similar legislation takes effect, if such
 77 legislation is adopted in the same legislative session or an
 78 extension thereof and becomes 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	___	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representative Metz offered the following:
4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Subsection (11) is added to section 501.171, Florida
8 Statutes, as created by HB 7085, 2014 Regular Session, to read:

9 501.171 Security of confidential personal information.-

10 (11) PUBLIC RECORDS EXEMPTION.-

11 (a) All information received by the department pursuant to
12 a notification required by this section, or received by the
13 department pursuant to an investigation by the department or a
14 law enforcement agency, is confidential and exempt from s.
15 119.07(1) and s. 24(a), Art. I of the State Constitution, until
16 such time as the investigation is completed or ceases to be



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17 active. This exemption shall be construed in conformity with s.
18 119.071(2)(c).

19 (b) During an active investigation, information made
20 confidential and exempt pursuant to paragraph (a) may be
21 disclosed by the department:

22 1. In the furtherance of its official duties and
23 responsibilities;

24 2. For print, publication, or broadcast if the department
25 determines that such release would assist in notifying the
26 public or locating or identifying a person that the department
27 believes to be a victim of a data breach or improper disposal of
28 customer records; or

29 3. To another governmental entity in the furtherance of
30 its official duties and responsibilities.

31 (c) Upon completion of an investigation or once an
32 investigation ceases to be active, the following information
33 received by the department shall remain confidential and exempt
34 from s. 119.07(1) and s. 24(a), Art. I of the State
35 Constitution:

36 1. All information to which another public records
37 exemption applies.

38 2. Personal information.

39 3. A computer forensic report.

40 4. Information that would otherwise reveal weaknesses in a
41 covered entity's data security.



Amendment No.

42 5. Information that would disclose a covered entity's
43 proprietary business information.

44 (d) For purposes of this subsection, the term "proprietary
45 business information" means information that:

46 1. Is owned or controlled by the covered entity.

47 2. Is intended to be private and is treated by the covered
48 entity as private because disclosure would harm the covered
49 entity or its business operations.

50 3. Has not been disclosed except as required by law or a
51 private agreement that provides that the information will not be
52 released to the public.

53 4. Is not publicly available or otherwise readily
54 ascertainable through proper means from another source in the
55 same configuration as received by the department.

56 5. Includes:

57 a. Trade secrets as defined in s. 688.002.

58 b. Competitive interests, the disclosure of which would
59 impair the competitive business of the covered entity who is the
60 subject of the information.

61 (e) This subsection is subject to the Open Government
62 Sunset Review Act in accordance with s. 119.15 and shall stand
63 repealed on October 2, 2019, unless reviewed and saved from
64 repeal through reenactment by the Legislature.

65 Section 2. The Legislature finds that it is a public
66 necessity that all information received by the Department of
67 Legal Affairs pursuant to a notification of a violation of s.



Amendment No.

68 501.171, Florida Statutes, or received by the department
69 pursuant to an investigation by the department or a law
70 enforcement agency, be made confidential and exempt from s.
71 119.07(1), Florida Statutes, and s. 24(a), Article I of the
72 State Constitution for the following reasons:

73 (1) A notification of a violation of s. 501.171, Florida
74 Statutes, is likely to result in an investigation of such
75 violation because a data breach is likely the result of criminal
76 activity that may lead to further criminal activity. The
77 premature release of such information could frustrate or thwart
78 the investigation and impair the ability of the Department of
79 Legal Affairs to effectively and efficiently administer s.
80 501.171, Florida Statutes. In addition, release of such
81 information before completion of an active investigation could
82 jeopardize the ongoing investigation.

83 (2) The Legislature finds that it is a public necessity to
84 continue to protect from public disclosure all information to
85 which another public record exemption applies once an
86 investigation is completed or ceases to be active. Release of
87 such information by the Department of Legal Affairs would undo
88 the specific statutory exemption protecting that information.

89 (3) An investigation of a data breach or improper disposal
90 of customer records is likely to result in the gathering of
91 sensitive personal information, including social security
92 numbers, identification numbers, and personal financial and
93 health information. Such information could be used for the

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94 purpose of identity theft. In addition, release of such
95 information could subject possible victims of the data breach or
96 improper disposal of customer records to further financial harm.
97 Furthermore, matters of personal health are traditionally
98 private and confidential concerns between the patient and the
99 health care provider. The private and confidential nature of
100 personal health matters pervades both the public and private
101 health care sectors.

102 (4) Release of a computer forensic report or other
103 information that would otherwise reveal weaknesses in a covered
104 entity's data security could compromise the future security of
105 that entity, or other entities, if such information were
106 available upon conclusion of an investigation or once an
107 investigation ceased to be active. The release of such report or
108 information could compromise the security of current entities
109 and make those entities susceptible to future data breaches.
110 Release of such report or information could result in the
111 identification of vulnerabilities and further breaches of that
112 system.

113 (5) Notices received by the Department of Legal Affairs
114 and information received during an investigation of a data
115 breach are likely to contain proprietary business information,
116 including trade secrets, about the security of the breached
117 system. The release of the proprietary information could result
118 in the identification of vulnerabilities and further breaches of
119 that system. In addition, a trade secret derives independent,



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120 economic value, actual or potential, from being generally
121 unknown to, and not readily ascertainable by, other persons who
122 might obtain economic value from its disclosure or use. Allowing
123 public access to proprietary business information, including a
124 trade secret, through a public records request could destroy the
125 value of the proprietary business information and cause a
126 financial loss to the covered entity submitting the information.
127 Release of such information could give business competitors an
128 unfair advantage and weaken the position of the entity supplying
129 the proprietary business information in the marketplace.

130 Section 3. This act shall take effect on the same date
131 that HB 7085 or similar legislation takes effect, if such
132 legislation is adopted in the same legislative session or an
133 extension thereof and becomes a law.

134

135

136

137

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

138 Remove everything before the enacting clause and insert:
139 An act relating to public records; amending s. 501.171, F.S.;
140 providing exemptions from public records requirements for
141 information received by the Department of Legal Affairs pursuant
142 to a notice of a data breach or pursuant to certain
143 investigations; authorizing disclosure under certain
144 circumstances; defining terms; providing for future review and
145 repeal of the exemption under the Open Government Sunset Review



COMMITTEE/SUBCOMMITTEE AMENDMENT


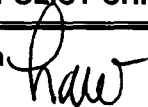
Bill No. HB 7087 (2014)

Amendment No.

146 | Act; providing a statement of public necessity; providing a
147 | contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 973 Transportation Services Procurement
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1290

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

SUMMARY ANALYSIS

Current law requires agencies to utilize a competitive solicitation process for contracts for commodities or services in excess of \$35,000. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which may include a request for proposal or invitation to negotiate. The agency must consider certain criteria when evaluating the proposal or reply before selecting a vendor.

The bill requires state agencies to consider whether the vendor uses alternative fuels, including natural gas, and the fuel efficiency of the vehicles used when evaluating a proposal or reply received pursuant to a request for proposal or an invitation to negotiate for services related to cargo, freight, or package delivery. Currently, agencies may consider such factors, but agencies are not required to do so.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Management Services

The Department of Management Services (department) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.¹ The department provides a wide variety of services including approving the acquisition and disposal of motor vehicles and watercraft.

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency² procurement of personal property and services. The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁴

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

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process;⁵ however, certain contractual services and commodities are exempt from this requirement.⁶ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

Evaluation Criteria

Prior to contracting, an agency must determine the integrity, reliability, and qualifications it will require in a vendor with regard to the capability of the vendor to fully perform the contract requirements.⁷ Depending on the type of competitive solicitation utilized, an agency must consider certain criteria; however, agencies are not limited in what they may consider prior to contract.

¹ See ss. 287.032 and 287.042, F.S.

² Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

³ *Id.*

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁶ See s. 287.057(3), F.S.

⁷ Chapter 60A-1.006, F.A.C.

If an agency utilizes a request for proposal, the agency must award the contract to the responsible and responsive vendor whose proposal is determined to be the most advantageous to the state after evaluating:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.⁸

For purposes of an invitation to negotiate, the criteria used to determine the acceptability of the reply, and for purposes of guiding the selection of the vendors with which the agency will negotiate, must be specified in the invitation to negotiate. The agency must evaluate the replies received against the evaluation criteria established in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to negotiate. After negotiations, the agency must award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

Alternative Fuel

The Department of Environmental Protection (DEP) is responsible for developing and implementing strategies to reduce air pollution from mobile sources, such as trucks, buses, passenger vehicles, and planes. The Florida Clean Fuel Act⁹ establishes an advisory board within DEP for the purpose of studying the implementation of alternative fuel vehicles and to formulate recommendations on expanding the use of alternative fuel vehicles in this state. Alternative fuels are defined as "electricity, biodiesel, natural gas, propane, and any other fuel that may be deemed appropriate by DEP with guidance from the advisory board."¹⁰

In addition to DEP, the Department of Agriculture and Consumer Services (DACS) also regulates in the area of alternative fuels. Natural gas fuel means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle. The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.¹¹

Consideration of Fuel Efficiency

The Department of Management Services must encourage other state government entities to analyze transportation fuel usage, including the different types and percentages of fuels consumed, and report such information to the department.¹² However, current law does not require an agency to consider the fuel efficiency or use of alternative fuels when evaluating replies or proposals, although they may choose to do so.

Effect of Proposed Changes

The bill requires agencies to consider whether the vendor uses alternative fuels, including natural gas, and the fuel efficiency of the vehicles used when evaluating a proposal or reply received pursuant to a request for proposal or an invitation to negotiate for services related to cargo, freight, or package delivery. Currently, agencies may consider such factors, but agencies are not required to do so.

⁸ Section 287.057(1)(b)3., F.S.

⁹ Chapter 99-248, L.O.F.; codified as s. 403.42, F.S.

¹⁰ Section 403.42(2)(a), F.S.

¹¹ Section 377.810(2)(f), F.S. For purposes of the section, natural gas fuel does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

¹² Section 287.16(11), F.S.

B. SECTION DIRECTORY:

Section 1. creates s. 287.0836, F.S., relating to transportation services procurement; requiring agencies to consider certain criteria when issuing a request for proposal or invitation to negotiate for specified transportation services.

Section 2. provides an effective date of July 1, 2014.

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:

The bill could have a positive impact on those vendors offering certain transportation services using fuel efficiency vehicles or alternative fuels.

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

Not applicable.

1 A bill to be entitled
 2 An act relating to transportation services
 3 procurement; creating s. 287.0836, F.S.; requiring
 4 agencies to consider certain criteria when issuing a
 5 request for proposal or invitation to negotiate for
 6 specified transportation services; providing an
 7 effective date.

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

10
 11 Section 1. Section 287.0836, Florida Statutes, is created
 12 to read:

13 287.0836 Sustainable transportation services
 14 procurements.— An agency must consider the following criteria
 15 when evaluating a proposal or reply received pursuant to a
 16 request for proposal or an invitation to negotiate for services
 17 related to cargo, freight, or package delivery:

18 (1) Whether the vendor uses alternative fuels, including
 19 natural gas fuel as defined in s. 377.810(2).

20 (2) The fuel efficiency of the vehicles used by the
 21 vendor.

22 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7011 Pub. Rec./Emergency Planning or Notification by Agency
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1140

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Government Operations Subcommittee, [Signature], Stramski, Williamson [Signature]

SUMMARY ANALYSIS

The Division of Emergency Management (division) is established in the Executive Office of the Governor. It is the state's emergency management agency. The division is required to institute a multifaceted public educational campaign on emergency preparedness. The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.

In 2006, the division launched the "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. It is an online tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.

Current law provides a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Current law also provides a public record exemption for any security system plan held by an agency for any privately owned or leased property. For purposes of the exemption, a security system plan includes, in part, threat response plans, emergency evacuation plans, and sheltering arrangements.

The bill creates a public record exemption for any information furnished by a person or business to the division for the purpose of being provided assistance with emergency planning. It provides for retroactive application of the public record exemption.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution..

The bill does not appear to have a fiscal impact on local government. The bill may create a minimal fiscal impact on the division. See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of 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 Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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

Division of Emergency Management

The Division of Emergency Management (division) is established in the Executive Office of the Governor.³ It is the state's emergency management agency. The State Emergency Management Act⁴ directs the division to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The division is required to institute a multifaceted public educational campaign on emergency preparedness. The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.⁵ In 2006, the division launched the "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. It is an online tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.

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

² See s. 119.15, F.S.

³ Section 14.2016, F.S.

⁴ See ss. 252.31-252.60, F.S.

⁵ Section 252.35(2)(i), F.S.

Current Public Records Exemptions

Currently, any information provided by a person to an agency for the purpose of being notified of an emergency by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt⁶ from public records requirements.⁷ The exemption applies to such information held by an agency⁸ before, on, or after the effective date of the exemption.⁹

Current law also provides a public record exemption for any security system plan, or portion thereof, held by an agency.¹⁰ The exemption, in part, protects from public disclosure security system plans for any privately owned or leased property. For purposes of the public record exemption, a security system plan includes all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

Effect of Proposed Changes

The bill creates a public record exemption for any information furnished by a person or business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning. It provides for retroactive application of the public record exemption.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 252.905, F.S., creating an exemption from public records requirements for certain information furnished to the Division of Emergency Management.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2014.

⁶ 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).

⁷ Section 119.071(5)(j), F.S.

⁸ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁹ 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 as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹⁰ Section 119.071(3)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on the Division of Emergency Management as staff could require training related to the creation of the public record exemption. In addition, the Division of Emergency Management could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the division.

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:

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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information provided by a person or business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning or emergency notification by the agency.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Division of Emergency Management

The Division of Emergency Management anticipates that exempting information submitted for emergency planning purposes will encourage participation in the emergency preparedness public awareness program.¹¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹¹ Bill Analysis for HB 7011 by the Division of Emergency Management dated February 7, 2014 (on file with the Government Operations Subcommittee).

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 252.905, F.S.; creating an exemption from public
 4 records requirements for information furnished to the
 5 Division of Emergency Management by a person or
 6 business for the purpose of obtaining assistance with
 7 emergency planning; providing for retroactive
 8 application of the exemption; providing for future
 9 repeal and legislative review of the exemption;
 10 providing a statement of public necessity; providing
 11 an effective date.

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

14
 15 Section 1. Section 252.905, Florida Statutes, is created
 16 to read:

17 252.905 Emergency planning information; public records
 18 exemption.-

19 (1) Any information furnished by a person or a business to
 20 the division for the purpose of being provided assistance with
 21 emergency planning is exempt from s. 119.07(1) and s. 24(a),
 22 Art. I of the State Constitution. This exemption applies to
 23 information held by the division before, on, or after the
 24 effective date of this exemption.

25 (2) This section is subject to the Open Government Sunset
 26 Review Act in accordance with s. 119.15, and shall stand

27 repealed on October 2, 2019, unless reviewed and saved from
 28 repeal through reenactment by the Legislature.

29 Section 2. The Legislature finds that it is a public
 30 necessity that information furnished by a person or a business
 31 to the Division of Emergency Management for the purpose of being
 32 provided assistance with emergency planning be made exempt from
 33 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 34 State Constitution. The Division of Emergency Management manages
 35 a statewide public awareness program to educate the public to be
 36 self-sufficient for up to 72 hours following a natural or
 37 manmade disaster. The public awareness program encourages
 38 individuals, families, and businesses to develop disaster plans
 39 in preparation of and in response to such natural or manmade
 40 disasters. Emergency plans may include sensitive information
 41 such as alternate locations for families to meet or business
 42 relocation in the event of building damage; business contacts,
 43 including utility providers, suppliers, and employees; backup
 44 suppliers for key materials and services depended upon by the
 45 business; important records and documents that the business
 46 needs to operate; and emergency community contacts and disaster
 47 resources. Without this exemption, the effective and efficient
 48 administration of the Division of Emergency Management's
 49 statewide public awareness program is significantly impaired.
 50 The potential disclosure of sensitive information has served as
 51 a disincentive for creating a disaster plan, particularly among
 52 businesses that fear that the disclosure of sensitive

PCS for HB 7011

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53 information may place their businesses at a competitive
54 disadvantage. Therefore, the Legislature finds that the harm
55 that may result from the release of personal or business
56 information obtained by the Division of Emergency Management for
57 the purpose of providing assistance with emergency planning for
58 the preparation of and response to a natural or manmade disaster
59 outweighs any public benefit that may be derived from disclosure
60 of the information.

61 Section 3. This act shall take effect July 1, 2014.