



Government Operations Subcommittee

Monday, March 31, 2014

1:30 PM

Webster Hall (212 Knott)

Will Weatherford
Speaker

Frank Artiles
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Monday, March 31, 2014 01:30 pm
End Date and Time: Monday, March 31, 2014 03:30 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 421 Pub. Rec./Taxpayer's E-mail Address by Local & Federal Affairs Committee, Hooper
CS/HB 555 Pub. Rec./Traffic Infraction Detectors by Transportation & Highway Safety Subcommittee, McBurney
CS/HB 865 Pub. Rec./Motor Vehicle Crash Reports by Transportation & Highway Safety Subcommittee, Kerner
CS/HB 1019 Pub. Rec./Location of Safe Houses & Safe Foster Homes by Healthy Families Subcommittee, Spano
CS/HB 1021 Pub. Rec./Human Trafficking Victims by Criminal Justice Subcommittee, Spano
CS/HB 1269 Pub. Rec./Family Trust Companies/OFR by Insurance & Banking Subcommittee, McBurney
CS/HB 1273 Pub. Rec./Proprietary Business Information/OIR by Insurance & Banking Subcommittee, Ingram
HB 7107 Administrative Procedures by Rulemaking Oversight & Repeal Subcommittee, Wood



Consideration of the following proposed committee substitute(s):

PCS for HB 1151 -- Public Records
PCS for HB 1153 -- Citizen Support and Direct-Support Organizations

NOTICE FINALIZED on 03/27/2014 16:25 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 421 Pub. Rec./Taxpayer's E-mail Address
SPONSOR(S): Local & Federal Affairs Committee; Hooper
TIED BILLS: IDEN./SIM. BILLS: SB 538

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

SUMMARY ANALYSIS

Current law permits a tax collector to use electronic means to communicate with an individual in certain circumstances with the individual's consent. However, there is no public records exemption for an individual who provides his or her e-mail to a tax collector.

This bill creates s. 197.3225, F.S., which provides that an e-mail address held by a tax collector for the following purposes is confidential and exempt from public records requirements:

- Sending a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending an additional tax notice or delinquent tax notice to the taxpayer; and
- Sending a tax notice to the designated third party, mortgagee, or vendee.

An e-mail address provided by a taxpayer to the tax collector via the tax collector's website or other correspondence for a purpose other than those listed is not exempt from the state's public record laws.

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 state government. The bill may have an insignificant fiscal impact on local government.

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 taxpayer e-mail addresses; 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.

Tax Collector Use of Taxpayer E-mail

Subject to a recipient's consent to receive certain documents electronically, a tax collector may use e-mail to send, among other communications, a notice of denial of a refund, a notice of tax amounts due, a notice to a taxpayer whose payment has not been timely received, and a tax notice to a taxpayer, mortgagee, or vendee of real property.³

Tax collectors utilize e-mail to send electronic tax notices due to its efficiency and low cost. However, using e-mail correspondence does not come without its risks. For example, the IRS has cited various recent scams related to the use of taxpayers' e-mail addresses. In one case, numerous taxpayers received e-mails claiming to come from the IRS, asking the targeted taxpayer for personal account information.⁴

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

² See s. 119.15, F.S.

³ See ss. 197.182(1)(m), 197.222(3); 197.322(3); 197.343; 197.344(1), F.S.

⁴ Internal Revenue Service, Problem Alerts, available at <http://www.irs.gov/uac/Problem-Alerts>.

E-mail Notice

Under current law, an agency⁵ that operates a website and uses e-mail must post the following statement in a conspicuous location on its website:⁶

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.

Effect of Bill

The bill creates s. 197.3225, F.S., which provides that notwithstanding s. 668.6076, F.S., a taxpayer's e-mail address held by a tax collector for the following purposes is confidential and exempt from public record requirements:⁷

- Sending a quarterly tax notice for prepayment of estimated taxes,⁸
- Obtaining the taxpayer's consent to send the tax notice,⁹
- Sending an additional tax notice or delinquent tax notice to the taxpayer;¹⁰ and
- Sending a tax notice to the designated third party, mortgagee, or vendee.¹¹

The bill provides that an e-mail address provided by a taxpayer to the tax collector via the tax collector's website or other correspondence is not exempt from the state's public record law pursuant to s. 668.6076, F.S.; however, the section does not provide a public record exemption for e-mail addresses.

The bill provides that the exemption will stand repealed 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. 197.3225, F.S., providing for an exemption from public records requirements for e-mail addresses collected by tax collectors for certain tax notice purposes; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act.

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:

⁵ The term "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 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.

⁶ Section 668.6076, F.S.

⁷ The DOR has stated the stated circumstances in which a taxpayer's e-mail address will be exempt may not be an exhaustive list of official documents that are sent from local tax collector via e-mail. Florida Department of Revenue, 2014 Bill Analysis, HB 421. For example, this bill does not exempt an e-mail address kept by a tax collector for the purpose of electronically transmitting a notice of a denial of refund pursuant to s. 197.182(1)(m), F.S.

⁸ Section 197.222(3), F.S.

⁹ Section 197.322(3), F.S.

¹⁰ Section 197.343, F.S.

¹¹ Section 197.344(1), F.S.

1. Revenues:

None.

2. Expenditures:

None.

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 likely could create a minimal fiscal impact on tax collectors, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, tax collectors 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 tax collector's office.

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

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 taxpayer e-mail addresses; 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 for certain taxpayer e-mail addresses; 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 limited to the e-mail address of a taxpayer collected for use under certain circumstances.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: References to Section 668.6076, Florida Statutes

The bill provides that notwithstanding s. 668.6076, F.S., certain taxpayer e-mail addresses are confidential and exempt from public record requirements. Section 668.6076, F.S., merely provides a requirement that agency websites provide notice that e-mail addresses are public records. Because the bill does not protect all taxpayer e-mail addresses, it would appear that the notice provision would still apply.

In addition, lines 29-33 of the bill provide that an e-mail address submitted for purposes not provided in the bill is not exempt from the state's public record law pursuant to s. 668.6076, F.S. As previously mentioned, that section does not address public record exemptions or public record requirements. It merely provides a requirement that agency websites provide notice that e-mail addresses are public records.

Other Comments: Email Submitted for Purposes Listed in this Bill

The bill provides that e-mail addresses submitted only for the specific purposes listed in the bill are confidential and exempt from public records requirements. It is unclear how a tax collector might be able to identify the specific purpose that an e-mail address is provided for, as statutes authorize tax collectors to communicate electronically with taxpayers for a range of purposes.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2014, the Local & Federal Affairs Committee adopted one amendment, which changed the word in line 53 from "identify" to "identity." The analysis is updated to reflect this amendment.

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 197.3225, F.S.; providing an exemption from public
 4 records requirements for e-mail addresses obtained by
 5 the tax collector for the purpose of electronically
 6 sending tax notices or obtaining the consent of the
 7 taxpayer to the electronic transmission of tax
 8 notices; providing for future review and repeal of the
 9 exemption; providing a statement of public necessity;
 10 providing an effective date.

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

13
 14 Section 1. Section 197.3225, Florida Statutes, is created
 15 to read:

16 197.3225 Confidentiality of e-mail addresses.-

17 (1) Notwithstanding s. 668.6076, a taxpayer's e-mail
 18 address held by a tax collector for the following purposes is
 19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 20 of the State Constitution:

21 (a) Sending a quarterly tax notice for prepayment of
 22 estimated taxes under s. 197.222(3) to the taxpayer.

23 (b) Obtaining the taxpayer's consent to send the tax
 24 notice described in s. 197.322(3).

25 (c) Sending an additional tax notice or delinquent tax
 26 notice to the taxpayer under s. 197.343.

27 (d) Sending a tax notice to a designated third party,
 28 mortgagee, or vendee as provided under s. 197.344(1).

29 (2) An e-mail address provided by a taxpayer to the tax
 30 collector via the tax collector's website or other
 31 correspondence for a purpose other than those listed in
 32 subsection (1) is not exempt from the state's public record law
 33 pursuant to s. 668.6076.

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

38 Section 2. The Legislature finds that it is a public
 39 necessity that the e-mail address of a taxpayer which is held by
 40 the tax collector for the purpose of sending a tax notice or
 41 obtaining the consent of the taxpayer to the electronic
 42 transmission of a tax notice be made confidential and exempt
 43 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 44 the State Constitution. E-mail rather than traditional postal
 45 mail is increasingly used as a means for communicating and
 46 conducting business, including official state business such as
 47 the payment of taxes. In order to carry out business
 48 electronically with the tax collector, the taxpayer must report
 49 his or her personal e-mail address. Under current law, e-mail
 50 addresses are public records available to anyone for any
 51 purpose. However, such addresses are unique to the individual
 52 and, when combined with other personal identifying information,

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53 can be used for identity theft, taxpayer scams, and other
54 invasive contacts. The public availability of personal e-mail
55 addresses invites and exacerbates thriving and well-documented
56 criminal activities putting property owners at increased risk of
57 harm. Such harm could be significantly curtailed by allowing the
58 tax collector to remove the availability of taxpayer e-mail
59 addresses.

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 421 (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 Hooper offered the following:

Amendment

Remove line 17 and insert:

(1) A taxpayer's e-mail



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 Hooper offered the following:

Amendment

6 Remove lines 32-33 and insert:
 7 subsection (1) is not confidential and exempt from s. 119.07(1)
 8 and s. 24(a), Art. I of the State Constitution.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 555 Pub. Rec./Automated Traffic Law Enforcement System
SPONSOR(S): Transportation & Highway Safety Subcommittee; McBurney
TIED BILLS: HB 553 **IDEN./SIM. BILLS:** SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee		Williamson	Williamson
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Current law authorizes the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ "traffic infraction detector" (red light camera) programs. Red light camera programs are used by local law enforcement as a method of enforcement of potential red light violations at selected intersections. In Florida, red light camera technology is used by local and state law enforcement.

This bill, which is linked to the passage of House Bill 7005 or similar legislation, creates a public record exemption for recorded images obtained through the use of a red light camera. Confidential and exempt recorded images may be disclosed for the following reasons:

- By or to a "criminal justice agency" in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a "notice of violation" or a "uniform traffic citation" pursuant to s. 316.0083, F.S.
- To a person to whom the license plate is registered, unless such information constitutes "active," "criminal intelligence information," or active, "criminal investigative information."
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

The bill provides for retroactive application of the public record exemption. It 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 will not have a fiscal impact to the state, local governments, or the private sector.

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.

Red Light Cameras in Florida

In 2010, the Florida Legislature expressly preempted³ to the state regulation of the use of cameras for enforcing the provisions of the "Florida Uniform Traffic Control Law."⁴ The law authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ red light camera programs.⁵

Traffic infraction detectors,⁶ otherwise known as red light cameras, must meet requirements established by the Department of Transportation (DOT) and be tested at regular intervals according to procedures prescribed by DOT.⁷ If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations.⁸ Such signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.⁹

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

² See s. 119.15, F.S.

³ chapter 2010-80, Laws of Florida; codified in s. 316.0076, F.S.

⁴ chapter 316, F.S.

⁵ Section 316.0083, F.S.

⁶ Section 316.003(87), F.S., defines "traffic infraction detector" as "[a] vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated."

⁷ Section 316.0776, F.S.

⁸ Section 316.0776(2), F.S.

⁹ Id.

In FY 2012 – 2013, there were 77 jurisdictions operating red light camera programs throughout the state.¹⁰

The Violation Process

When a red light violation occurs there is a process that the violation follows. The process may vary slightly depending on the jurisdiction; however, the process typically begins with a still photograph and sometimes a video clip being captured and sent to the red light camera vendor.¹¹ The vendor then queries the State of Florida database of registered vehicles and obtains the needed data relevant to the vehicle (i.e., make and model of the vehicle, registered owner, and owner's address). Then the vendor reviews the photographic evidence and makes a determination as to whether the evidence supports the issuance of a notice of violation.¹²

Once the vendor has reviewed the evidence, potential violations are forwarded to the law enforcement agency for review and verification. In the review process, the officer verifies whether a violation occurred based on the photographic and video evidence, and if the vehicle and owner information are correct and complete. If the officer ascertains that a violation did not occur, or if vehicle and owner information cannot be obtained or corrected, the notice of violation may not be issued. A large majority of photographs are not referred to law enforcement for further consideration as a potential violation.¹³

Red Light Camera Data

License plate images and data associated with these images are the primary forms of information collected by red light cameras. The images show the driver and the vehicle's license plate. They also show the vehicle just prior to entering the intersection while the light is red and the vehicle within the intersection while the light is red. Data files compiled by red light camera systems may contain the:

- Intersection (and intersection code) where the violation occurred;
- Date and time the violation occurred;
- Age and gender of the violator;
- Car (i.e., vehicle make) driven by the violator;
- Model year of the vehicle driven by the violator;
- Vehicle speed (i.e., measured speed) at the time of the violation; and
- Elapsed time from the onset of red signal until the time of the violation.¹⁴

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.¹⁵ After 30 days, recordings that are

¹⁰ The Department of Revenue makes its most-recent data available online at <http://dor.myflorida.com/dor/taxes/distributions.html> (Last visited on November 25, 2013).

¹¹ American Traffic Solutions, Inc., provides recorded video of multiple red light running incidents on its Media Center website. These videos can be accessed at: <http://www.atsol.com/media-center/videos/>. (Last viewed 3/18/14).

¹² City of Tallahassee, Office of the City Auditor, Red Light Camera Program report to the City Commission and City management, Audit Report #1220. This document is on file with the Transportation and Highway Safety Subcommittee.

¹³ According to the City of Tallahassee Red Light Camera Program Audit Report #1220, out of 251,863 total camera actuations (photographs), 201,367 were not forwarded to the Tallahassee Police Department (TPD) and 50,929 were forwarded to TPD. The reasons for not forwarding include, but are not limited to, there was no red light violation (for example, the traffic light was green or yellow, there was a funeral procession, or an emergency vehicle with lights flashing); the violation could not be attributed to a specific vehicle for reasons that were outside the controls of the vendor (for example, the photo was not sufficient quality because of the glare on the license plate or camera, there was no license plate on the vehicle, or the license plate was damaged and unreadable); for reasons the vendor could potentially have controlled (for example, the photo was not of sufficient quality to read the license plate, or a malfunction of the equipment).

¹⁴ The National Highway Traffic Safety Administration (NHTSA), Analysis of Red Light Violation Data Collected from Intersections Equipped with Red Light Photo Enforcement Cameras, March 2006, at p. 11. This document is on file with the Transportation and Highway Safety Subcommittee.

¹⁵ 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 3/17/14).

not under active criminal investigation can be deleted or written over, or stored for longer periods of time. This includes red light camera recordings.¹⁶

Criminal Intelligence Information and Criminal Investigative Information

Section 119.071(2)(c)1., F.S., provides that criminal intelligence information and criminal investigative information are exempt from public records requirements. To be exempt, the information must be active.¹⁷ Recorded images obtained by the use of a red light camera that are not considered active and constitute either criminal investigative or intelligence information are open to public records disclosure requirements.

Section 119.011(3)(a), F.S., defines criminal intelligence information as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(b), F.S., defines criminal investigative information as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(c), F.S., provides that criminal intelligence and investigative information do not include information such as:

- The time, date, location, and nature of a reported crime;
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.;
- The time, date, and location of the incident and of the arrest;
- The crime charged; and
- Documents given or required by law or agency rule to be given to the person arrested.

Section 119.011(3)(d), F.S., considers criminal intelligence information to be active as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; and criminal investigative information is considered active as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

Proposed Changes

The bill defines the following terms:

- “Active,” “criminal intelligence information,” and “criminal investigative information” have the same meanings as provided in s. 119.011(3), F.S.
- “Agency” has the same meaning as provided in s. 119.011, F.S.¹⁸
- “Criminal justice agency” has the same meaning as provided in s. 119.011, F.S.¹⁹
- “Traffic infraction detectors” has the same meaning as provided in s. 316.003, F.S.²⁰

¹⁶ According to Xerox’ Red Light Camera System (RLCS) Intersection Safety Solutions, the red light camera software can independently program and set up the enforcement system settings to eight lanes and four different signal phases per controller, simultaneously with the single system. High-definition (HD) video is used to record video clips of the violation and for 60-day video storage. This document can be viewed at: http://www.acs-inc.com/transportation/ov_red_light_rlcs.pdf. (Last viewed 3/17/14).

¹⁷ See *Woolling v. Lamar*, 764 so. 2d 765, 768 (Fla. 5th DCa 2000), review denied, 786 so. 2d 1186 (Fla. 2001).

¹⁸ Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of 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.

¹⁹ Section 119.011(4), F.S., defines “criminal justice agency” to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

²⁰ See FN 6.

The bill creates a public record exemption for recorded images obtained through the use of a traffic infraction detector. Specifically, recorded images obtained through the use of a traffic infraction detector and held by an agency are confidential and exempt²¹ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Confidential and exempt recorded images may be disclosed for the following reasons:

- A recorded image may be made available by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a notice of violation or a uniform traffic citation pursuant to s. 316.0083, F.S.
- To the individual whom a license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

The bill provides for retroactive application²² of the public record exemption.

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. 316.0777, F.S., to create a public record exemption for recorded images obtained through the use of traffic infraction detectors.
- Section 2: provides a public necessity statement.
- Section 3: provides an effective date contingent upon the passage of HB 7005 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

²¹ 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).

²² 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. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take 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 recorded images obtained through the use of a traffic infraction detector.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Use of an Image in Certain Proceedings

The bill authorizes the use of a recorded image evidencing a red light camera infraction in a proceeding resulting from the issuance of a notice of violation or a uniform traffic citation; however, this appears to

be a provision related to the use of evidence. Public record exemptions do not prohibit the use of information as evidence in a court proceeding. Such provisions are governed by the Evidence Code. As such, inclusion of this provision appears unnecessary and also appears to be substantive in nature. A bill creating an exemption from public record requirements may only contain provisions related to the exemption.²³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Transportation & Highway Safety Subcommittee adopted a proposed committee substitute and reported the bill favorably as committee substitute.

This analysis is drafted to the committee substitute as passed by the Transportation & Highway Safety Subcommittee.

²³ Art. I, s. 24(c) of the State Constitution.
STORAGE NAME: h0555a.GVOPS.DOCX
DATE: 3/28/2014

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 316.0777, F.S.; providing a public records exemption
 4 for images obtained through the use of a traffic
 5 infraction detector; providing conditions for
 6 disclosure of such images; providing definitions;
 7 providing for retroactive applicability of the
 8 exemption; providing for future legislative review and
 9 repeal of the exemption; providing a statement of
 10 public necessity; providing an effective date.

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

13
 14 Section 1. Section 316.0777, Florida Statutes, is created
 15 to read:

16 316.0777 Traffic infraction detectors; public records
 17 exemption.-

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

19 (a) "Active," "criminal intelligence information," and
 20 "criminal investigative information" have the same meanings as
 21 provided in s. 119.011(3).

22 (b) "Agency" has the same meaning as provided in s.
 23 119.011.

24 (c) "Criminal justice agency" has the same meaning as
 25 provided in s. 119.011.

26 (d) "Traffic infraction detector" has the same meaning as

27 provided in s. 316.003.

28 (2) Recorded images obtained through the use of a traffic
 29 infraction detector and held by an agency are confidential and
 30 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 31 Constitution.

32 (3) Such recorded images may be disclosed as follows:

33 (a) A recorded image may be made available by or to a
 34 criminal justice agency in the performance of the criminal
 35 justice agency's official duties.

36 (b) A recorded image evidencing a red light camera
 37 infraction may be admissible in a proceeding resulting from the
 38 issuance of a notice of violation or a uniform traffic citation
 39 pursuant to s. 316.0083.

40 (c) A recorded image relating to a license plate
 41 registered to an individual may be made available to the
 42 individual, unless such image constitutes active criminal
 43 intelligence information or active criminal investigative
 44 information.

45 (d) A recorded image may be made available to a person
 46 authorized by the department who is engaged in the use of such
 47 records for bona fide research and statistical purposes. Such
 48 individual or entity shall enter into a privacy and security
 49 agreement with the department and shall comply with all laws and
 50 rules governing the use of such records for research and
 51 statistical purposes. Information identifying the subjects of
 52 such recorded images shall be treated as confidential by the

53 researcher and shall not be released in any form.

54 (4) This exemption applies to such recorded images held by
 55 an agency before, on, or after the effective date of this
 56 exemption.

57 (5) This section is subject to the Open Government Sunset
 58 Review Act in accordance with s. 119.15 and shall stand repealed
 59 on October 2, 2019, unless reviewed and saved from repeal
 60 through reenactment by the Legislature.

61 Section 2. The Legislature finds that it is a public
 62 necessity that recorded images obtained through the use of
 63 traffic infraction detectors be made confidential and exempt
 64 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 65 the State Constitution. The release of such recorded images,
 66 including the personal identifying information contained in the
 67 recorded images, by an agency, including a private traffic
 68 infraction detector vendor, could enable a third party to track
 69 a person's movements, compile a history of where the person has
 70 driven, or to gain access to resources or obtain credit and
 71 other benefits in the person's name. This exemption is necessary
 72 because the public disclosure of such information constitutes an
 73 unwarranted invasion into the personal life and privacy of a
 74 person. The harm from disclosing such information outweighs the
 75 public benefit that can be derived from widespread and
 76 unregulated public access to such information.

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 555 (2014)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION


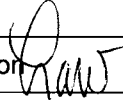
ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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

4
5 **Amendment**
6 Remove lines 36-39
7

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 865 Pub. Rec./Motor Vehicle Crash Reports
SPONSOR(S): Transportation & Highway Safety Subcommittee; Kerner
TIED BILLS: CS/HB 863 **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee		 Stramski	Williamson 
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Currently, crash reports are confidential and exempt from public record requirements for a period of 60 days after the date the reports are filed. However, an exception to the exemption allows access by various entities, including, but not limited to, the parties involved in the crash and their legal and insurance representatives, prosecutors, law enforcement, the Department of Transportation, and certain news media.

The bill amends the current public record exemption for motor vehicle crash reports. It requires radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices, and certain free newspapers that request crash reports before 60 days have elapsed after the report is filed to request such crash reports on an individual basis. The bill also prohibits these entities from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash.

The bill provides that the revised exception to 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 create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill further restricts access to motor vehicle crash reports and thereby expands 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.

Crash Report Public Record Exemption

Section 316.066, (2)(a), F.S., provides that crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in a crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt³ from public records requirements for a period of 60 days after the date the report is filed.

Exceptions to the Crash Report Exemption

Section 316.066(2)(b), F.S., authorizes crash reports held by an agency to be made immediately

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

² See s. 119.15, F.S.

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (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).

available to:

- Parties involved in the crash, their legal representatives, their licensed insurance agents, and their insurers or insurers to which the parties have applied for coverage, including persons under contract with such insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Law enforcement agencies;
- Department of Transportation;
- County traffic operations;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.; and
- Free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Section 316.066(2)(c), F.S., allows any local, state, or federal agency that is authorized to have access to crash reports by any provision of law to be granted such access in the furtherance of the agency's statutory duties.

Crash Report Access Requirements

Section 316.066(2)(d), F.S., requires a person attempting to access a crash report within the 60 days after the date the report was filed to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

However, this provision also allows an agency to provide crash reports by electronic means to third-party vendors under contract with one or more insurers in lieu of requiring a written sworn statement. Such contracts must state that the information will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for such solicitation. This authorization is effective only during the period of time the information remains confidential and exempt. A copy of the contract must be furnished to the agency as proof of the vendor's claimed status.⁴

The primary policy reason for closing access to these crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal personal injury protection (PIP) solicitation.

PIP Fraud

In a recent statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.⁵

⁴ Section 316.066(2)(d), F.S.

⁵ The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at:

<http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument>
(Last viewed March 27, 2014).

According to the Grand Jury report:

Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.

Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.⁶

Proposed Changes

The bill amends the current public record exemption for motor vehicle crash reports. It revises the exception to the exemption for radio and television stations and legitimate newspapers.

Specifically, the bill prohibits radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, from having access to the home, cellular, employment, or other telephone number or the home or employment address of any parties involved in a crash before 60 days have elapsed after the report is filed. In addition, such radio and television stations and newspapers must request access to confidential and exempt crash reports on an individual basis.

The bill provides that this revised exception to the exemption that restricts access to certain information 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: amends s. 316.066, F.S., relating to the public record exemption for written reports of crashes.
- Section 2: provides a public necessity statement.
- Section 3: provides an effective date contingent upon the passage of HB 863 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁶ *Id.*

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:

Prohibiting access to the phone numbers and addresses of crash victims in motor vehicle crash reports may help protect crash victims and their families from illegal PIP solicitations. This may have a negative fiscal impact to the entities soliciting crash victims or engaged in a business that profits from the sale of crash victim information.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes. Staff responsible for complying with public record requests could require training related to the revision of the public record exemption. In addition, such agencies 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 a government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill further restricts access to motor vehicle crash reports and thereby expands 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 exemption. The bill further restricts access to motor vehicle crash reports and thereby expands 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 exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill prohibits radio, newspapers, and television stations from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in a crash.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DRAFTING COMMENTS: Paragraph Created

The bill creates a new paragraph (g) to s. 316.066, F.S. However, s. 316.066, F.S. only has paragraphs (a) through (e). Accordingly, this bill ought to create a new paragraph (f).

OTHER COMMENTS: Protection of Victims of Crimes or Accidents

Section 119.105, F.S., allows every person to examine nonexempt or nonconfidential police reports. This statute prohibits the use of such reports for any commercial solicitation. Violations of this statute are punishable as a first degree misdemeanor, or a third degree felony for willful and knowing violations.⁷

OTHER COMMENTS: Solicitation

Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.⁸

OTHER COMMENTS: Patient Brokering

Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Transportation and Highway Safety Subcommittee adopted one amendment to HB 865 before reporting it favorable as a committee substitute. The amendment was technical and revised the public necessity statement to specifically address the excepted entities and the types of contact information that are addressed in the public record exemption.

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

⁷ Section 119.10, F.S.

⁸ Section 817.234(c), F.S.

⁹ Section 817.505(4), F.S.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 316.066, F.S.; providing an exemption from public
 4 records requirements for certain personal contact
 5 information contained in motor vehicle crash reports;
 6 providing for future legislative review and repeal of
 7 the exemption; providing a statement of public
 8 necessity; providing a contingent effective date.

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

11
 12 Section 1. Paragraph (g) is added to subsection (2) of
 13 section 316.066, Florida Statutes, as amended by HB 863, 2014
 14 Regular Session, to read:

15 316.066 Written reports of crashes.—

16 (2)

17 (g) Radio and television stations licensed by the Federal
 18 Communications Commission, newspapers qualified to publish legal
 19 notices under ss. 50.011 and 50.031, and free newspapers of
 20 general circulation published once a week or more often,
 21 available and of interest to the public generally for the
 22 dissemination of news, which request crash reports before 60
 23 days have elapsed after the report is filed must request such
 24 crash reports on an individual basis and may not have access to
 25 the home, cellular, employment, or other telephone number or the
 26 home or employment address of any of the parties involved in the

27 | crash. This paragraph is subject to the Open Government Sunset
28 | Review Act in accordance with s. 119.15 and shall stand repealed
29 | on October 2, 2019, unless reviewed and saved from repeal
30 | through reenactment by the Legislature.

31 | Section 2. The Legislature finds that a crash report that
32 | reveals the identity, home or employment telephone number, or
33 | home or employment address of, or other personal information
34 | concerning, a party involved in the crash and that is held by an
35 | agency that regularly receives or prepares information from or
36 | concerning the parties to motor vehicle crashes is confidential
37 | and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
38 | Article I of the State Constitution for 60 days after the date
39 | that the report is filed. Public access to such information
40 | during that 60-day period by radio and television stations
41 | licensed by the Federal Communications Commission, newspapers
42 | qualified to publish legal notices under ss. 50.011 and 50.031,
43 | Florida Statutes, and free newspapers of general circulation
44 | published once a week or more often, available and of interest
45 | to the public generally for the dissemination of news, should be
46 | restricted to combat widespread insurance fraud that occurs when
47 | the information is unlawfully used to contact the parties
48 | involved in a crash. The exemption protects the parties involved
49 | in a crash from those who would unlawfully solicit personal
50 | injury protection insurance claims. Accordingly, the Legislature
51 | finds that the harm to parties involved in a crash which could
52 | result from the release of such information outweighs any

CS/HB 865

2014

53 | minimal public benefit that would be derived from disclosure of
54 | that information to the public. Therefore, it is the finding of
55 | the Legislature that such information must be made exempt from
56 | public disclosure.

57 | Section 3. This act shall take effect on the same date
58 | that HB 863 or similar legislation takes effect, if such
59 | legislation is adopted in the same legislative session or an
60 | 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 Kerner offered the following:

Amendment (with directory amendment)

Remove line 17 and insert:

(f) Radio and television stations licensed by the Federal

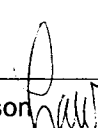
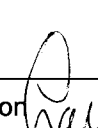
D I R E C T O R Y A M E N D M E N T

Remove line 12 and insert:

Section 1. Paragraph (f) is added to subsection (2) of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1019 Pub. Rec./Location of Safe Houses
SPONSOR(S): Healthy Families Subcommittee; Spano and others
TIED BILLS: HB 1017 **IDEN./SIM. BILLS:** SB 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N, As CS	Entress	Brazzell
2) Government Operations Subcommittee		Williamson 	Williamson 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Safe homes and short-term safe houses provide services and residential care to victims of human trafficking.

This bill, which is linked to the passage of HB 1017, creates a public record exemption for information about the location of safe houses and a safe foster home. Specifically, the bill provides that the information regarding the location of safe houses that is held by an agency is confidential and exempt from public record requirements. However, the bill allows this information to be provided to any agency in order to maintain health and safety standards and to address emergency situations in the safe house and safe foster home.

The bill provides that the public record exemption 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. 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 the 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 records exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.

Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."³ Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁴ Trafficking subjects victims to force, fraud, or coercion.⁵ Children experiencing this type of sexual exploitation often become bonded with their exploiters and do not see themselves as victims. These children experience trauma and are exposed to danger but are often unable to leave their exploiter to seek help.

Safe Houses

The Safe Harbor Act provided for "safe houses". Safe houses are homes for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure⁶ residential facility.⁷ Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must have awake staff members on duty 24 hours a day. Safe houses must also hold a license as a family foster home or residential child-caring agency. Each facility must be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175, F.S., and must have applied for accreditation within 1 year after being licensed.⁸

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

² See s. 119.15, F.S.

³ Section 787.06 (2)(d), F.S.

⁴ Section 787.06(1)(a), F.S.

⁵ Healthy Families Subcommittee Presentation by Professor Terry Coonan, FSU Human Rights Center, 1/14/14, s. 787.06(1)(a), F.S.

⁶ The term "secure" is defined as a facility providing services is supervised 24 hours a day by staff members who are awake while on duty.

⁷ Section 409.1678 (1)(b), F.S.

⁸ According to DCF, there are currently no entities that accredit safe houses and safe houses are not sure what type of accreditation they are required to have. No safe houses have applied for accreditation at this time.

A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide:

- Security;
- Crisis intervention services;
- General counseling and victim-witness counseling;
- A comprehensive assessment;
- Residential care;
- Transportation;
- Access to behavioral health services;
- Recreational activities;
- Food;
- Clothing;
- Supplies;
- Infant care;
- Miscellaneous expenses associated with caring for these children;
- Provide necessary arrangement for or provision of educational services, including life skills services and planning services for the successful transition of residents back to the community; and
- Ensuring necessary and appropriate health care and dental care.⁹

The Department of Children and Families or the local community-based care organization is required to assess sexually exploited dependent children for placement in a safe house if the child is older than six. The assessment is required to incorporate and address the following:

- Current and historical information from any law enforcement reports;
- Psychological testing or evaluation that has occurred;
- Current and historical information from the guardian ad litem, if one has been assigned;
- Current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and
- Any other information concerning the availability and suitability of safe-house placement.

The child may be placed in a safe house if such placement is determined to be appropriate as a result of this assessment and if one is available, but placement is not required.¹⁰

There are currently two safe houses in Florida, with a total of 11 beds statewide. A third safe house is projected to open in 2014 with seven beds.¹¹ If a trafficker learned the location of a safe house and went to the safe house, the safe house staff as well as the individuals residing in the safe house could be in danger of physical or emotional harm.

Effect of Proposed Changes

The bill creates a public record exemption for information about the location of safe houses and other facilities housing victims of human trafficking, as defined in s. 787.06, F.S. Specifically, the bill provides that the information regarding the location of safe houses that is held by an agency, as defined in 119.011, F.S.,¹² is confidential and exempt¹³ from s. 119.07(1), Florida Statutes, and s. 24(a), Article I

⁹ Section 409.1671, F.S.

¹⁰ Section 39.524, F.S.

¹¹ E-mail Correspondence with the Florida Department of Children and Families, 12/20/13, on file with subcommittee staff.

¹² Agency is defined in s. 119.011, F.S., 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 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.

¹³ There is a difference between records the Legislature has determined to be exempt from public records requirements and those that have been determined to be confidential and exempt. If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection. Also, if the information is deemed to be confidential and exempt it may only be released to those person and entities designated in statute. However, the agency is not prohibited from disclosing the records in all

of the State Constitution. However, the bill allows this information to be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the safe house and safe foster home.

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

The bill provides statements of public necessity as required by the State Constitution.¹⁴

The bill provides an effective date contingent upon the passage of HB 1017 or similar legislation.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.
- Section 2:** Creates an unnumbered section of law relating to a public necessity.
- 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

circumstances where the records are only exempt from public records requirements. 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); see Attorney General Opinion 85-62 (August 1, 1985).

¹⁴ Section 24(c), Art. I of the State Constitution.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records 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 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 relating to the identification and location of safe houses. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must 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 3, 2012, the Healthy Families Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Specified that the address of safe houses and safe foster homes, rather than safe houses and short-term safe houses are exempt and confidential from public records to conform the language with the changes made in the PCB;
- Consolidated the public records exemption to one chapter of law; and
- Exempted the address of safe houses and safe foster homes from all state and local agencies, rather than only the department of children and families and local government agencies.

The staff analysis is drafted to the committee substitute as passed by the Healthy Families Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 409.1678, F.S.; providing an exemption from public
 4 records requirements for information about the
 5 location of safe houses and safe foster homes held by
 6 an agency; providing for future legislative review and
 7 repeal of the exemption; providing a statement of
 8 public necessity; providing a contingent effective
 9 date.

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

12
 13 Section 1. Subsection (5) is added to section 409.1678,
 14 Florida Statutes, to read:

15 409.1678 Safe harbor for children who are victims of
 16 sexual exploitation.—

17 (5) (a) Information held by an agency as defined in s.
 18 119.011 about the location of safe houses and safe foster homes
 19 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 20 I of the State Constitution.

21 (b) Information about the location of safe houses and safe
 22 foster homes may be provided to an agency, as defined in s.
 23 119.011, as necessary to maintain health and safety standards
 24 and to address emergency situations in the safe house and safe
 25 foster home.

26 (c) This subsection is subject to the Open Government

27 Sunset Review Act in accordance with s. 119.15 and shall stand
 28 repealed on October 2, 2019, unless reviewed and saved from
 29 repeal through reenactment by the Legislature.

30 Section 2. The Legislature finds that it is a public
 31 necessity that information about the location of safe houses and
 32 safe foster homes held by an agency, as defined in s. 119.011,
 33 Florida Statutes, be made confidential and exempt from s.
 34 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 35 State Constitution. Safe houses and safe foster homes are
 36 intended as refuges for sexually exploited victims from those
 37 who exploited them. If the individuals who victimized these
 38 people were able to learn the location of such safe houses, they
 39 may attempt to contact their victims, exploit their
 40 vulnerabilities, and return them to the situations in which they
 41 were victimized. Even without the return of these victims to
 42 their former situations, additional contact with those who
 43 victimized them would have the effect of continuing their
 44 victimization and inhibiting their recoveries. Additionally,
 45 knowledge about the location of safe houses and safe foster
 46 homes could enable other individuals to locate and attempt to
 47 victimize the residents. Therefore, it is the finding of the
 48 Legislature that such information must be made confidential and
 49 exempt from public disclosure.

50 Section 3. This act shall take effect on the same date
 51 that HB 1017 or similar legislation relating to human
 52 trafficking takes effect, if such legislation is adopted in the

CS/HB 1019

2014

53 | same legislative session or an extension thereof and becomes a
54 | law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1021 Pub. Rec./Human Trafficking Victims
SPONSOR(S): Criminal Justice Subcommittee; Spano and others
TIED BILLS: CS/HB 1017 **IDEN./SIM. BILLS:** SB 1426

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

SUMMARY ANALYSIS

During the current 2014 Legislative Session, CS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed:

- As a part of the human trafficking scheme of which he or she was a victim; or
- At the direction of an operator of a human trafficking scheme.

This bill, which is linked to the passage of CS/HB 1017, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include identifying information of child victims of human trafficking for labor or services, as well as, all victims of human trafficking for commercial sexual purposes.

The bill also amends s. 943.0583, F.S., to make confidential and exempt any criminal intelligence and criminal investigative information related to victims of human trafficking resulting from the arrest or filing of charges for an offense committed or reported to have been committed by the victim as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme, whose criminal history record has been expunged.

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.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, Section 24(a), of the Florida 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.¹ The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the 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; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

¹ Article I, Sec. 24(a), FLA. CONST.

² Article I, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

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

Public Record Exemption for Expunged Criminal History Records

Any criminal history record of a minor or an adult that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that the Florida Department of Law Enforcement (FDLE) must retain criminal history records in all cases.

Current law provides that an expunged criminal history record that is retained by FDLE is confidential and exempt⁸ from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.⁹ In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to certain entities as provided for in current law.¹⁰

Public Record Exemption for Certain Agency Investigation Information

Currently, s. 119.071(2)(h), F.S., provides specified criminal intelligence information¹¹ or criminal investigative information^{12,13} is confidential and exempt from public records requirements, including:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse); and
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.¹⁴

⁸ 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

⁹ Section 943.0585(4), F.S.

¹⁰ Section 943.0585(4)(c), F.S.

¹¹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

¹² Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹³ Section 119.011(3)(c), F.S., provides "criminal intelligence information" and "criminal investigative information" shall not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.071(1), F.S., until released at trial if it is found that the release of such information would:
 - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - Impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.

¹⁴ Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

Such confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;¹⁵ or
- To another governmental agency in the furtherance of its official duties and responsibilities.

This public records exemption is scheduled to repeal on October 2, 2016.

Human Trafficking Victim Expunction

During the 2013 Legislative Session, CS/CS/HB 1325 and CS/HB 1327 passed, which in part, authorized a victim of human trafficking¹⁶ to petition the court¹⁷ for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S.,¹⁸ committed while he or she was a victim of human trafficking. The only offenses that may be expunged are the convictions for offenses committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

A petition for expunction must include:

- A sworn statement¹⁹ attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation²⁰ of the victim's status as a victim of human trafficking, if any exists.²¹

The completed petition must be served on the appropriate state attorney or statewide prosecutor and the arresting agency, who can each respond to the court regarding the petition.²² The court's determination of the petition must be by a preponderance of the evidence.²³ A determination made without official documentation must be made by a showing of clear and convincing evidence.²⁴ If a court grants an expunction, s. 943.0583, F.S., requires:

- The clerk of the court to certify copies of the order to the appropriate state attorney or the statewide prosecutor, the arresting agency, and to any other agency that the records of the court reflect has received the criminal history record from the court;²⁵

¹⁵ Section 119.071(2)(h)2.c., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

¹⁶ Section 943.0583(1)(c), F.S., defines "victim of human trafficking" to mean a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

¹⁷ Section 943.0583(4), F.S., requires a petition under this section to be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of s. 943.0583, F.S.

¹⁸ Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking. Section 775.084(1)(b)1., F.S.

¹⁹ Providing false information on the sworn statement is punishable as a third degree felony.

²⁰ Section 943.0583(1)(b), F.S., defines "official documentation" to mean any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

²¹ Section 943.0583(6), F.S.

²² Section 943.0583(7), F.S. In judicial proceedings on the petition, the petitioner and their attorney may appear telephonically, via video conference, or other electronic means.

²³ Section 943.0583(3), F.S.

²⁴ Section 943.0583(5), F.S.

²⁵ Section 943.0583(7)(c), F.S.

- The arresting agency to forward the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains,²⁶
- FDLE to forward the order to expunge to the Federal Bureau of Investigation;²⁷ and
- Criminal justice agencies with custody of the expunged record, except FDLE, to physically destroy the record.²⁸

Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.²⁹ However, persons are required to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.³⁰ Expunged convictions are deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.³¹

Additionally, the 2013 legislation created a public records exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and shall only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The exemption repeals on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

Committee Substitute for House Bill 1017

During the current 2014 Legislative Session, CS/HB 1017, in part, proposes to expand the provisions relating to the expunction of certain criminal records for victims of human trafficking to include the expunction of any criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 1017 or similar legislation, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

- Any information which reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services proscribed in s. 787.06(3)(a), F.S.;
- Any information which may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), (g), or (h), F.S.

The bill also amends s. 943.0583, F.S., providing that the above-described criminal intelligence and criminal investigative information related to victims of human trafficking that is made confidential and exempt from public records requirements in s. 119.071(2)(h), F.S., is also made confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 943.0583(8), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 943.0583(3), F.S.

The bill provides for repeal of the exemptions on October 2, 2019, unless both exemptions are reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.³²

B. SECTION DIRECTORY:

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

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date to be the same as that of CS/HB 1017 or similar legislation, if such legislation is passed during the same session and becomes 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 government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government 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:

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 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 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 expunged criminal records of victims of human trafficking. 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 rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute added revisions to s. 119.071, F.S., to exempt from public records requirements identifying information of child victims of human trafficking for labor or services, as well as, all victims of human trafficking for commercial sexual purposes.

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

27 a. Any information ~~that, including the photograph, name,~~
 28 ~~address, or other fact, which~~ reveals the identity of the victim
 29 of the crime of child abuse as defined by chapter 827 or that
 30 reveals the identity of a person under the age of 18 who is the
 31 victim of the crime of human trafficking proscribed in s.
 32 787.06(3)(a).

33 b. Any information that ~~which~~ may reveal the identity of a
 34 person who is a victim of any sexual offense, including a sexual
 35 offense proscribed in s. 787.06(3)(b), (d), (f), (g), or (h),
 36 chapter 794, chapter 796, chapter 800, chapter 827, or chapter
 37 847.

38 c. A photograph, videotape, or image of any part of the
 39 body of the victim of a sexual offense prohibited under s.
 40 787.06(3)(b), (d), (f), (g), or (h), chapter 794, chapter 796,
 41 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless
 42 of whether the photograph, videotape, or image identifies the
 43 victim.

44 2. Criminal investigative information and criminal
 45 intelligence information made confidential and exempt under this
 46 paragraph may be disclosed by a law enforcement agency:

47 a. In the furtherance of its official duties and
 48 responsibilities.

49 b. For print, publication, or broadcast if the law
 50 enforcement agency determines that such release would assist in
 51 locating or identifying a person that such agency believes to be
 52 missing or endangered. The information provided should be

53 | limited to that needed to identify or locate the victim and not
 54 | include the sexual nature of the offense committed against the
 55 | person.

56 | c. To another governmental agency in the furtherance of
 57 | its official duties and responsibilities.

58 | 3. This exemption applies to such confidential and exempt
 59 | criminal intelligence information or criminal investigative
 60 | information held by a law enforcement agency before, on, or
 61 | after the effective date of the exemption.

62 | 4. This paragraph is subject to the Open Government Sunset
 63 | Review Act in accordance with s. 119.15, and shall stand
 64 | repealed on October 2, ~~2019~~ ~~2016~~, unless reviewed and saved from
 65 | repeal through reenactment by the Legislature.

66 | Section 2. Subsection (11) is added to section 943.0583,
 67 | Florida Statutes, to read:

68 | 943.0583 Human trafficking victim expunction.—

69 | (11)(a) The following criminal intelligence information or
 70 | criminal investigative information is confidential and exempt
 71 | from s. 119.07(1) and s. 24(a), Art. I of the State
 72 | Constitution:

73 | 1. Any information that reveals the identity of a person
 74 | who is a victim of human trafficking whose criminal history
 75 | record has been expunged under this section.

76 | 2. Any information that may reveal the identity of a
 77 | person who is a victim of human trafficking whose criminal
 78 | history record has been ordered expunged under this section.

79 (b) Criminal investigative information and criminal
 80 intelligence information made confidential and exempt under this
 81 subsection may be disclosed by a law enforcement agency:

82 1. In the furtherance of its official duties and
 83 responsibilities.

84 2. For print, publication, or broadcast if the law
 85 enforcement agency determines that such release would assist in
 86 locating or identifying a person that the agency believes to be
 87 missing or endangered. The information provided should be
 88 limited to that needed to identify or locate the victim.

89 3. To another governmental agency in the furtherance of
 90 its official duties and responsibilities.

91 (c) This exemption applies to such confidential and exempt
 92 criminal intelligence information or criminal investigative
 93 information held by a law enforcement agency before, on, or
 94 after the effective date of the exemption.

95 (d) This subsection is subject to the Open Government
 96 Sunset Review Act in accordance with s. 119.15 and shall stand
 97 repealed on October 2, 2019, unless reviewed and saved from
 98 repeal through reenactment by the Legislature.

99 Section 3. The Legislature finds that it is a public
 100 necessity to make confidential and exempt from public records
 101 requirements certain criminal intelligence information or
 102 criminal investigative information that reveals the identity of
 103 a victim of the crime of human trafficking of a minor for labor
 104 or any victim of human trafficking for commercial sexual

105 activity. The Legislature finds that it is important to
 106 strengthen the protections afforded victims of human trafficking
 107 for labor who are minors and victims of human trafficking for
 108 commercial sexual activity, regardless of age, in order to
 109 ensure their privacy and to prevent their revictimization by
 110 making such information confidential and exempt. The identity of
 111 these victims is information of a sensitive personal nature. As
 112 such, this exemption serves to minimize the trauma to victims
 113 because the release of such information would compound the
 114 tragedy already visited upon their lives and would be defamatory
 115 to or cause unwarranted damage to the good name or reputation of
 116 the victims. Protecting the release of identifying information
 117 of such victims protects them from further embarrassment,
 118 harassment, or injury. The Legislature also finds that it is a
 119 public necessity that information in the investigative or
 120 intelligence records related to a criminal history record
 121 ordered expunged under s. 943.0583, Florida Statutes, which
 122 would or could reasonably be expected to reveal the identity of
 123 a person who is a victim of human trafficking whose criminal
 124 history record has been ordered expunged under s. 943.0583,
 125 Florida Statutes, be made confidential and exempt from s.
 126 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 127 State Constitution. Persons who are victims of human trafficking
 128 and who have been charged with crimes allegedly committed at the
 129 behest of their traffickers are themselves victims of crimes.
 130 Such victims face barriers to employment and other life

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131 opportunities as long as these criminal charges remain on record
132 and accessible to potential employers and others. It is
133 necessary that these records be made confidential and exempt in
134 order for human trafficking victims to have the chance to
135 rebuild their lives and reenter society.

136 Section 4. This act shall take effect on the same date
137 that HB 1017 or similar legislation relating to human
138 trafficking takes effect, if such legislation is adopted in the
139 same legislative session or an extension thereof and becomes a
140 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1269 Pub. Rec./Family Trust Companies/OFR
SPONSOR(S): Insurance & Banking Subcommittee; McBurney
TIED BILLS: CS/HB 1267 **IDEN./SIM. BILLS:** SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill creates a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies, which is the subject of a pending bill, CS/HB 1267. CS/HB 1267 authorizes families to form and operate any of these three family trust companies, subject to varying regulatory requirements. In general, a FTC is an entity which provides trust services similar to those that can be provided by an individual or financial institution. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A Florida FTC must be owned exclusively by family members and may not provide fiduciary services to the public.

The bill treats the following as confidential and exempt from public disclosure: records relating to a registration, an application, annual certification, or examination of any FTC type; reports of examinations, operations, or conditions (including working papers), which the bill defines; names of shareholders or members of any FTC type; and information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government. The bill authorizes release of confidential and exempt information to specified persons, and provides a criminal penalty for willful disclosure of such 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, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides an effective date that is contingent upon the passage of HB 1267 or similar legislation.

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:

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

CS/HB 1267 (2014) – Family Trust Companies

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes (chs. 655-667, F.S., “the Codes”), which includes the regulation of trust companies. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. Section 655.057, F.S., exempts certain records relating to the OFR’s investigations and examinations of trust companies (and other financial institutions) from public records disclosure.

A small number of states allow families to form and operate *private or family trust companies (FTCs)*, which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed trust companies, and foreign-licensed trust companies.

CS/HB 1267 creates ch. 662, F.S., to authorize families to form and operate any of these three family trust companies in this state, subject to varying regulatory requirements, including a license or registration with the OFR, maintenance of minimum owners’ equity for FTCs with a principal place of business in Florida, and certain reporting requirements. The bill prohibits all three FTC types from advertising and conducting trust business with the public. CS/HB 1267 authorizes the OFR to investigate applications for licensure or registration, require annual certifications and other regulatory filings from licensees and registrants, and to conduct periodic examinations of all three family trust company types.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 1267, creates s. 662.148, F.S., a public records exemption for:

- Records relating to a registration, an application, or annual certification of any FTC types;
- Records relating to an examination of any FTC type;
- Reports of examinations, operations, or conditions of any FTC type, including working papers (which the bill defines);
- Any portion of a list of names on the shareholders or members of any FTC type;
- Information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government; and
- An emergency cease and desist order issued under s. 662.143, F.S., until the emergency order is made permanent, unless the OFR finds that such confidentiality will result in substantial risk of financial loss to the public.

The bill authorizes release of confidential and exempt information to specified persons, including the publication of reports required by federal law and the publication of the names and addresses of any FTC and its registered agent. Further, the bill provides that it is a third-degree felony for willful disclosure of such information.

Section 2 of the bill amends s. 662.147, F.S. (which is created by CS/HB 1267 to provide books and records requirements for FTCs), to permit the OFR to release information otherwise made confidential by this bill to other state, federal, or foreign regulators of family trust companies or to report any suspected criminal activity to appropriate law enforcement and prosecutorial agencies. Additionally, the bill provides for the treatment of confidential information used in judicial or administrative proceedings, as well as confidential information that is compelled by legislative subpoena.

Section 3 of the bill amends s. 662.146, F.S. (which is created by CS/HB 1267 to provide for the confidentiality of certain FTC books and records), to specify that such books and records may be made available as compelled by legislative subpoena as provided by law, in which s. 662.47 applies.

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. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 662.148, F.S., to provide an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; to provide for the authorized release of certain information by the office; to permit the publication of certain information; to provide a penalty; to provide for future legislative review and repeal of the exemption.

Sections 2 amends s. 662.147, F.S., to provide for additional authorized release of certain information by the office; to provide for production of confidential records pursuant to legislative subpoenas; to provide an exemption from public records requirements for an emergency order; to provide an exception; to conform provisions to changes made by the act.

Section 3 amends ss. 662.146, F.S., to provide for production of certain confidential records pursuant to legislative subpoenas.

Section 4 provides a statement of public necessity as required by the State Constitution.

Section 5 provides that the act shall take effect on the same date that HB 1267 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide protection for high net worth families' assets, as well as the methodologies and practices of their family-owned businesses, which could otherwise be subject to security risks and criminal activity.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on OFR, because OFR staff would be responsible for complying with public records requests and may require training related to the creation of the public records exemption. In addition, 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 OFR.

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, s. 24(c), Art. I 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.

Laws Must Contain Only Exemptions

Section 24(c), Art. I of the State Constitution provides that laws creating an exemption from public record or public meeting requirements must contain only exemptions from such requirements and may include provisions governing enforcement of the exemptions.

Section 4 of the bill amends s. 662.146, F.S., which provides for confidentiality of books and records of a family trust company, licensed family trust company, and foreign licensed family trust company. It does not create a public record exemption for an agency, but merely requires certain private entities to maintain their records as confidential.

The bill provides that confidential records of a family trust company, licensed family trust company, and foreign licensed family trust company must be made available for inspection and examination only “[a]s compelled by legislative subpoena as provided by law, in which case s. 662.147 applies...” This provision appears to be substantive in nature and unrelated to the public record exemption created in section 1 of the bill.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Exceptions to the Exemption

Section 1 of the bill creates a public record exemption for certain information held by OFR regarding family trust companies. It also authorizes OFR to release the confidential and exempt information in

certain instances. Section 2 of the bill further authorizes OFR to release the confidential and exempt information. It appears the provisions found in section 2 could be relocated to section 1 of the bill in order to co-locate all of the release provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 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 retained the provisions of the bill and made the following changes:

- Corrected a cross-reference;
- Moved the exceptions to confidentiality to section 1 of the bill, which creates the public records exemption;
- Corrected drafting errors regarding confidentiality between this bill and the substantive bill (HB 1267); and
- Provided definitions of “reports of examinations, operations, or conditions” and “working papers.”

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

27 family trust companies, licensed family trust companies, and
 28 foreign licensed family trust companies.—

29 (1) PUBLIC RECORDS EXEMPTION.—The following information
 30 held by the office is confidential and exempt from s. 119.07(1)
 31 and s. 24(a), Art. I of the State Constitution:

32 (a) Records relating to a registration, an application, or
 33 an annual certification of a family trust company, licensed
 34 family trust company, or foreign licensed family trust company.

35 (b) Records relating to an examination of a family trust
 36 company, licensed family trust company, or foreign licensed
 37 family trust company.

38 (c) Reports of examinations, operations, or conditions of
 39 a family trust company, licensed family trust company, or
 40 foreign licensed family trust company, including working papers.

41 (d) Any portion of a list of names of the shareholders or
 42 members of a family trust company, licensed family trust
 43 company, or foreign licensed family trust company.

44 (e) Information received by the office from a person from
 45 another state or nation or the Federal Government which is
 46 otherwise confidential or exempt pursuant to the laws of that
 47 state or nation or pursuant to federal law.

48 (f) An emergency cease and desist order under s. 662.143
 49 until the emergency order is made permanent unless the office
 50 finds that such confidentiality will result in substantial risk
 51 of financial loss to the public.

52 (2) DEFINITIONS.—As used in this section, the term:

53 (a) "Reports of examinations, operations, or conditions"
 54 means records submitted to or prepared by the office as part of
 55 the office's duties performed pursuant to s. 655.012 or s.
 56 655.045(1).

57 (b) "Working papers" means the records of the procedure
 58 followed, the tests performed, the information obtained, and the
 59 conclusions reached in an examination under s. 655.032 or s.
 60 655.045. The term also includes books and records.

61 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
 62 INFORMATION.—Information made confidential and exempt under
 63 subsection (1) may be disclosed by the office to:

64 (a) The authorized representative or representatives of
 65 the family trust company, licensed family trust company, or
 66 foreign licensed family trust company under examination. The
 67 authorized representative or representatives shall be identified
 68 in a resolution or by written consent of the board of directors,
 69 if the trust company is a corporation, or of the managers, if
 70 the trust company is a limited liability company.

71 (b) A fidelity insurance company, upon written consent of
 72 the trust company's board of directors, if a corporation, or its
 73 managers, if a limited liability company.

74 (c) An independent auditor, upon written consent of the
 75 trust company's board of directors, if a corporation, or its
 76 managers, if a limited liability company.

77 (d) A liquidator, receiver, or conservator for a family
 78 trust company, licensed family trust company, or foreign

79 licensed family trust company in the event of the appointment of
 80 the liquidator, receiver, or conservator. However, any portion
 81 of the information which discloses the identity of a bondholder,
 82 customer, family member, member, or stockholder must be redacted
 83 by the office before the release of such portion to the
 84 liquidator, receiver, or conservator.

85 (e) Any other state, federal, or foreign agency
 86 responsible for the regulation or supervision of family trust
 87 companies, licensed family trust companies, or foreign licensed
 88 family trust companies.

89 (f) A law enforcement agency in the furtherance of the
 90 agency's official duties and responsibilities.

91 (4) PUBLICATION OF INFORMATION.—This section does not
 92 prevent or restrict the publication of:

93 (a) A report required by federal law.

94 (b) The name of the family trust company, licensed family
 95 trust company, or foreign licensed family trust company and the
 96 name and address of the registered agent of that company.

97 (5) PENALTY.—A person who willfully discloses information
 98 made confidential and exempt by this section commits a felony of
 99 the third degree, punishable as provided in s. 775.082, s.
 100 775.083, or s. 775.084.

101 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 102 to the Open Government Sunset Review Act in accordance with s.
 103 119.15 and shall stand repealed on October 2, 2019, unless
 104 reviewed and saved from repeal through reenactment by the

105 Legislature.

106 Section 2. Subsections (1) through (4) of section 662.147,
 107 Florida Statutes, as created by HB 1267, 2014 Regular Session,
 108 are renumbered as subsections (3) through (6), respectively, and
 109 new subsections (1) and (2) are added to that section to read:

110 662.147 Records relating to the office examination;
 111 limited restrictions on public access.—

112 (1) The public records exemptions contained in s. 662.148
 113 do not prevent or restrict the office from:

114 (a) Furnishing records or information to any other state,
 115 federal, or foreign agency responsible for the regulation or
 116 supervision of family trust companies, licensed family trust
 117 companies, or foreign licensed family trust companies.

118 (b) Reporting any suspected criminal activity, with
 119 supporting documents and information, to appropriate law
 120 enforcement and prosecutorial agencies.

121 (2) Confidential records and information furnished
 122 pursuant to a legislative subpoena shall be kept confidential by
 123 the legislative body or committee that received the records or
 124 information, except in a case involving the investigation of
 125 charges against a public official subject to impeachment or
 126 removal, in which case disclosure of the information shall be
 127 only to the extent necessary as determined by the legislative
 128 body or committee.

129 Section 3. Paragraphs (d), (e), and (f) of subsection (1)
 130 of section 662.146, Florida Statutes, as created by HB 1267,

131 2014 Regular Session, are redesignated as paragraphs (e), (f),
 132 and (g), respectively, and a new paragraph (d) is added to that
 133 subsection to read:

134 662.146 Confidentiality of books and records.—

135 (1) The books and records of a family trust company,
 136 licensed family trust company, and foreign licensed family trust
 137 company are confidential and shall be made available for
 138 inspection and examination only:

139 (d) As compelled by legislative subpoena as provided by
 140 law, in which case s. 662.147 applies;

141 Section 4. The Legislature finds that it is a public
 142 necessity that records held by the Office of Financial
 143 Regulation which pertain to a family trust company, licensed
 144 family trust company, or foreign licensed family trust company
 145 relating to registration or certification; an examination;
 146 reports of examinations, operations, or conditions, including
 147 working papers; any portion of a list of the names of
 148 shareholders or members; information received by the Office of
 149 Financial Regulation from a person from another state or nation
 150 or the Federal Government which is otherwise confidential or
 151 exempt pursuant to the laws of that jurisdiction; or an
 152 emergency cease and desist order be made confidential and exempt
 153 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 154 the State Constitution. This exemption is necessary because:

155 (1) No public interest is served by granting public access
 156 to family trust company records, and no protection is afforded

157 to the public or the state by allowing public access to private
 158 financial records. Additionally, a family trust company is
 159 prohibited from serving or marketing its services to the general
 160 public in any way; therefore, no public interests are involved.

161 (2) Families with a high net worth are frequently the
 162 targets of criminal predators seeking access to their assets. It
 163 is important that the exposure of such families to threats of
 164 extortion, kidnapping, and other crimes not be increased.
 165 Placing family business records and methodologies in the public
 166 domain would increase the security risk that a family could
 167 become the target of criminal activity.

168 (3) Family trust companies often provide a consolidated
 169 structure for the ownership of an operating business owned by
 170 multiple family members. Placing those private business
 171 operations and methods in the public domain could jeopardize
 172 their business assets, methodologies, and practices.

173 Section 5. This act shall take effect on the same date
 174 that HB 1267 or similar legislation takes effect, if such
 175 legislation is adopted in the same legislative session or an
 176 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 McBurney offered the following:
4

Amendment (with title amendment)

Remove lines 23-140 and insert:

7 Section 1. Section 662.148, Florida Statutes, is created
8 and assigned to part IV of chapter 662, Florida Statutes, as
9 created by HB 1267, 2014 Regular Session, to read:

10 662.148 Public records exemption; records relating to
11 family trust companies, licensed family trust companies, and
12 foreign licensed family trust companies.-

13 (1) DEFINITIONS.-As used in this section, the term:

14 (a) "Reports of examinations, operations, or conditions"
15 means records submitted to or prepared by the office as part of
16 the office's duties performed pursuant to s. 655.012 or s.
17 655.045(1).



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18 (b) "Working papers" means the records of the procedure
19 followed, the tests performed, the information obtained, and the
20 conclusions reached in an examination under s. 655.032 or s.
21 655.045. The term also includes books and records.

22 (2) PUBLIC RECORDS EXEMPTION.—The following information
23 held by the office is confidential and exempt from s. 119.07(1)
24 and s. 24(a), Art. I of the State Constitution:

25 (a) Records relating to a registration, an application, or
26 an annual certification of a family trust company, licensed
27 family trust company, or foreign licensed family trust company.

28 (b) Records relating to an examination of a family trust
29 company, licensed family trust company, or foreign licensed
30 family trust company.

31 (c) Reports of examinations, operations, or conditions of
32 a family trust company, licensed family trust company, or
33 foreign licensed family trust company, including working papers.

34 (d) Any portion of a list of names of the shareholders or
35 members of a family trust company, licensed family trust
36 company, or foreign licensed family trust company.

37 (e) Information received by the office from a person from
38 another state or nation or the Federal Government which is
39 otherwise confidential or exempt pursuant to the laws of that
40 state or nation or pursuant to federal law.

41 (f) An emergency cease and desist order under s. 662.143
42 until the emergency order is made permanent unless the office



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43 finds that such confidentiality will result in substantial risk
44 of financial loss to the public.

45 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
46 INFORMATION.—Information made confidential and exempt under
47 subsection (1) may be disclosed by the office:

48 (a) To the authorized representative or representatives of
49 the family trust company, licensed family trust company, or
50 foreign licensed family trust company under examination. The
51 authorized representative or representatives shall be identified
52 in a resolution or by written consent of the board of directors,
53 if the trust company is a corporation, or of the managers, if
54 the trust company is a limited liability company.

55 (b) To a fidelity insurance company, upon written consent
56 of the trust company's board of directors, if a corporation, or
57 its managers, if a limited liability company.

58 (c) To an independent auditor, upon written consent of the
59 trust company's board of directors, if a corporation, or its
60 managers, if a limited liability company.

61 (d) To a liquidator, receiver, or conservator for a family
62 trust company, licensed family trust company, or foreign
63 licensed family trust company in the event of the appointment of
64 the liquidator, receiver, or conservator. However, any portion
65 of the information which discloses the identity of a bondholder,
66 customer, family member, member, or stockholder must be redacted
67 by the office before the release of such portion to the
68 liquidator, receiver, or conservator.



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69 (e) To any other state, federal, or foreign agency
70 responsible for the regulation or supervision of family trust
71 companies, licensed family trust companies, or foreign licensed
72 family trust companies.

73 (f) To a law enforcement agency in the furtherance of the
74 agency's official duties and responsibilities.

75 (g) To the appropriate law enforcement or prosecutorial
76 agency for the purpose of reporting any suspected criminal
77 activity.

78 (h) Pursuant to a legislative subpoena. The legislative
79 body or committee that receives the records or information must
80 maintain the confidential status of such records or information,
81 except in a case involving the investigation of charges against
82 a public official subject to impeachment or removal, in which
83 case disclosure of the records or information shall be only to
84 the extent necessary as determined by the legislative body or
85 committee.

86 (4) PUBLICATION OF INFORMATION.—This section does not
87 prevent or restrict the publication of:

88 (a) A report required by federal law.

89 (b) The name of the family trust company, licensed family
90 trust company, or foreign licensed family trust company and the
91 name and address of the registered agent of that company.

92 (5) PENALTY.—A person who willfully discloses information
93 made confidential and exempt by this section commits a felony of



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94 the third degree, punishable as provided in s. 775.082, s.
95 775.083, or s. 775.084.

96 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
97 to the Open Government Sunset Review Act in accordance with s.
98 119.15 and shall stand repealed on October 2, 2019, unless
99 reviewed and saved from repeal through reenactment by the
100 Legislature.

101
102
103
104 -----

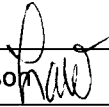

105 **T I T L E A M E N D M E N T**

106 Remove lines 12-18 and insert:

107 Repeal of the exemption; providing a statement of public
108 necessity

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1273 Pub. Rec./Proprietary Business Information/OIR
SPONSOR(S): Insurance & Banking Subcommittee; Ingram and other
TIED BILLS: CS/HB 1271 **IDEN./SIM. BILLS:** CS/SB 1300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Subcommittee		Williamson 	Williamson 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

CS/HB 1273, which is linked to CS/HB 1271, creates section 624.4212, F.S., to incorporate the necessary confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards.

The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information in certain circumstances. The bill also defines "proprietary business information" for purposes of the public record exemption, and includes information contained in certain reports, such as an actuarial opinion summary, enterprise risk reports, and principle-based reserving valuation reports.

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. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on October 1, 2014, if the main bill (HB 821) or similar 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 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:

Background

Public Records Law

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).

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including:

- Trade secret documents;¹⁸
- Risk-based capital information;¹⁹
- Information related to orders of supervision;²⁰ and
- Personal consumer and personal financial information.²¹

Section 624.319, F.S., makes OIR's examination and investigation reports and workpapers confidential during the pendency of an examination or investigation. This provision allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no generic exemption for information claimed to be proprietary business information in the Florida Statutes, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. This term is generally defined by the statute creating the exemption, and frequently includes trade secrets.

Currently, the Insurance Code has a specific exemption relating to "proprietary business information" held by the OIR, but relates only to such information provided by a title insurance agency or insurer.²²

CS/HB 1271: Insurer Solvency

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. Once accredited, a member state is subject to a full accreditation review every five years.

The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation.

Among other NAIC model act components, CS/HB 1271 implements the following NAIC confidentiality requirements:

NAIC Property and Casualty Actuarial Opinion Model Law

Current law requires insurers to provide to OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public.²³

The NAIC model law provides that states must require insurers to provide *actuarial opinion summaries* and that the regulators must keep these summaries confidential. CS/HB 1271 adopts this requirement

¹⁸ Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

¹⁹ Section 624.40851, F.S.

²⁰ Section 624.82, F.S.

²¹ Section 624.23, F.S.

²² Section 626.94195, F.S.

²³ Section 624.424, F.S.

and states that “proprietary business information” contained in these summaries are confidential and exempt from public records disclosure, and provides protection from waiver of confidentiality to both property and casualty insurers and life and health insurers.

Model Holding Company Act & Regulations

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators’ ability to obtain and evaluate financial information from affiliates, especially regarding “enterprise risk.”²⁴

In adopting the NAIC model act, CS/HB 1271 will require persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report to OIR. The bill requires insurers agree to have the ultimate controlling person and all its affiliates to provide information regarding enterprise risk to the OIR, and provides that the filings and related documents filed pursuant to s. 628.801, F.S. (related to registration and regulation of insurance holding companies), are confidential and exempt from public disclosure.

CS/HB 1271 also provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR. CS/HB 1271 provides that this notice is confidential and exempt until the divestiture transaction is completed, unless the OIR, in its discretion, determines that confidential treatment interferes with enforcement of this section.

The NAIC also made establishment and participation in supervisory colleges an accreditation standard. Supervisory colleges are essentially interstate meetings for insurance regulators to focus on large insurers that write significant amounts of insurance in multiple jurisdictions. CS/HB 1271 provides for the OIR’s participation in a supervisory college with other insurance regulators. This bill creates a public records exemption for proprietary business information as it may be found in information obtained by OIR pursuant to its participation in a supervisory college.

Principle-Based Reserving

CS/HB 1271 prescribes the adoption of the NAIC Valuation Manual as the authoritative source for determining reserves and implementing principle-based reserves for specified insurance products. Life insurance contracts, accident and health contracts, and deposit-type policies are subject to the valuation manual. Initially, principle based reserves would apply to term life insurance and universal life products with a secondary guarantee (also known as no-lapse guarantee). The bill requires the implementation of the Valuation Manual for policies issued on or after the operative date of the valuation manual. The Valuation Manual requires insurers to submit to the OIR various documents and reports, including experience reporting, actuarial opinions, memorandums, and principle-based reports.

Effect of the Bill

CS/HB 1273, which is linked to CS/HB 1271, incorporates the necessary confidentiality elements for OIR to meet NAIC accreditation standards. The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to OIR for preserving the confidentiality of the information;

²⁴ Enterprise risk is “any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedies promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition.” Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805, F.S., if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill defines “proprietary business information” to mean information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes, but is not limited to:
 - Trade secrets as defined in s. 688.002, F.S.,²⁵ and that complies with s. 624.4213, F.S.²⁶
 - Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.
 - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
 - Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
 - Internal auditing controls and reports of internal auditors.

The bill also provides that proprietary business information contained in the following items held by the OIR is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- The actuarial opinion summary required under ss. 624.424(1)(b) and 625.121(3), F.S., and the information related thereto.
- A notice filed with OIR by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461, F.S.
- The filings required by s. 628.801, F.S., and information related thereto.
- The enterprise risk report required by ss. 628.461(3) and 628.801, F.S., and information related thereto.
- Information provided to or obtained by OIR pursuant to participation in a supervisory college established under s. 628.805, F.S.
- Beginning on the operative date of the valuation manual, the following items are confidential and exempt:
 - An actuarial examination conducted pursuant to s. 625.1212(5)(c), F.S., and related information.

²⁵ Section 688.002(4), F.S., defines the term “trade secret” to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

²⁶ Section 624.4213, F.S., creates a process for submitting trade secret documents to certain agencies, including marking each document as a trade secret.

- The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2, F.S., and related information.
- The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3, F.S., and related information.
- Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), F.S., which includes potentially company-identifiable or personally identifiable information.

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

As indicated in the bill's statement of public necessity, public disclosure of proprietary business information would disadvantage insurers' competitive interests, particularly in proposed acquisitions, and in turn could lead to some insurers providing inaccurate or biased information to the OIR and an overall loss of confidence in the marketplace. Without this public records exemption, release of this information could impair the economic value of such information and result in financial loss to the proprietor.

B. SECTION DIRECTORY:

Section 1 creates s. 624.4212, F.S., to define the term "proprietary business information;" creates an exemption from public records requirements for proprietary business information and information that is confidential when held by another entity in this state, the Federal Government, or another state or nation, and which is held by the Office of Insurance Regulation; provides exceptions; provides for future legislative review and repeal.

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

Section 3 provides that the act shall take effective October 1, 2014, if HB 1271 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This public records exemption bill will have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on OIR, because staff responsible for complying with public record requests could require training related to creation of the new public records exemption. In addition, OIR 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 OIR.

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.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 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 retained the provisions of the bill and made the following changes:

- Made structural changes to distinguish the definition of "proprietary business information" from the documents subject to the public records exemption, and
- Expanded the public records exemption to incorporate proprietary business information contained in reports and documents relating to the Standard Valuation Law provisions of the linked bill, CS/HB 1271.

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

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 624.4212, F.S.; providing an exemption from public
 4 records requirements for proprietary business
 5 information and information that is confidential when
 6 held by another entity in this state, the Federal
 7 Government, or another state or nation and which is
 8 held by the Office of Insurance Regulation; providing
 9 exceptions; defining the term "proprietary business
 10 information"; providing for future legislative review
 11 and repeal; providing a statement of public necessity;
 12 providing a contingent effective date.

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

15
 16 Section 1. Section 624.4212, Florida Statutes, is created
 17 to read:

18 624.4212 Confidentiality of proprietary business and other
 19 information.-

20 (1) As used in this section, the term "proprietary
 21 business information" means information, regardless of form or
 22 characteristics, which is owned or controlled by an insurer, or
 23 a person or an affiliated person who seeks acquisition of
 24 controlling stock in a domestic stock insurer or controlling
 25 company, and which:

26 (a) Is intended to be and is treated by the insurer or the

27 person as private in that the disclosure of the information
 28 would cause harm to the insurer, the person, or the company's
 29 business operations and in that the information has not been
 30 disclosed unless disclosed pursuant to a statutory requirement,
 31 an order of a court or administrative body, or a private
 32 agreement that provides that the information will not be
 33 released to the public;

34 (b) Is not otherwise readily ascertainable or publicly
 35 available by proper means by other persons from another source
 36 in the same configuration as requested by the office; and

37 (c) Includes, but is not limited to:

38 1. Trade secrets as defined in s. 688.002 which comply
 39 with s. 624.4213.

40 2. Information relating to competitive interests the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.

43 3. The source, nature, and amount of the consideration
 44 used or to be used in carrying out a merger or other acquisition
 45 of control in the ordinary course of business, including the
 46 identity of the lender, if the person filing a statement
 47 regarding consideration so requests.

48 4. Information relating to bids or other contractual data
 49 the disclosure of which would impair the efforts of the insurer
 50 or its affiliates to contract for goods or services on favorable
 51 terms.

52 5. Internal auditing controls and reports of internal

53 auditors.

54 (2) Proprietary business information contained in the
 55 following items held by the office is confidential and exempt
 56 from s. 119.07(1) and s. 24(a), Art. I of the State
 57 Constitution:

58 (a) The actuarial opinion summary required under ss.
 59 624.424(1)(b) and 625.121(3) and information related thereto.

60 (b) A notice filed with the office by the person or
 61 affiliated person who seeks to divest controlling stock in an
 62 insurer pursuant to s. 628.461.

63 (c) The filings required under s. 628.801 and information
 64 related thereto.

65 (d) The enterprise risk report required under ss.
 66 628.461(3) and 628.801 and the information related thereto.

67 (e) Information provided to or obtained by the office
 68 pursuant to participation in a supervisory college established
 69 under s. 628.805.

70 (f) Beginning on the operative date of the valuation
 71 manual as defined in s. 625.1212(2):

72 1. An actuarial examination conducted pursuant to s.
 73 625.1212(5)(c) and information related thereto.

74 2. The annual certification submitted by the insurer
 75 pursuant to s. 625.1212(6)(b)2. and information related thereto.

76 3. The principle-based valuation report filed pursuant to
 77 s. 625.1212(6)(b)3. and information related thereto.

78 4. Mortality, morbidity, policyholder behavior, or expense

79 experience and other data submitted pursuant to s. 625.1212(7)
 80 which includes potentially company-identifiable or personally
 81 identifiable information.

82 (3) Information received from the NAIC or a governmental
 83 entity in this or another state, the Federal Government, or
 84 another nation which is confidential or exempt if held by that
 85 entity and which is held by the office for use in the office's
 86 performance of its duties relating to insurer valuation and
 87 solvency is confidential and exempt from s. 119.07(1) and s.
 88 24(a), Art. I of the State Constitution.

89 (4) The office may disclose information made confidential
 90 and exempt under this section:

91 (a) If the insurer to which it pertains gives prior
 92 written consent;

93 (b) Pursuant to a court order;

94 (c) To the American Academy of Actuaries upon a request
 95 stating that the information is for the purpose of professional
 96 disciplinary proceedings and specifying procedures satisfactory
 97 to the office for preserving the confidentiality of the
 98 information;

99 (d) To other states, federal and international agencies,
 100 the NAIC and its affiliates and subsidiaries, and state,
 101 federal, and international law enforcement authorities,
 102 including members of a supervisory college described in s.
 103 628.805, if the recipient agrees in writing to maintain the
 104 confidential and exempt status of the document, material, or

105 other information and has certified in writing its legal
 106 authority to maintain such confidentiality; or

107 (e) For the purpose of aggregating information on an
 108 industrywide basis and disclosing the information to the public
 109 only if the specific identities of the insurers, or persons or
 110 affiliated persons, are not revealed.

111 (5) This section is subject to the Open Government Sunset
 112 Review Act in accordance with s. 119.15 and shall stand repealed
 113 on October 2, 2019, unless reviewed and saved from repeal
 114 through reenactment by the Legislature.

115 Section 2. (1) The Legislature finds that it is a public
 116 necessity that proprietary business information that is provided
 117 to the Office of Insurance Regulation by an insurer or by an
 118 acquiring party pursuant to the Florida Insurance Code or the
 119 Holding Company System Regulatory Act of the National
 120 Association of Insurance Commissioners in order for the office
 121 to conduct its regulatory duties with respect to insurer
 122 valuation and solvency be made confidential and exempt from s.
 123 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 124 State Constitution. The disclosure of such information could
 125 injure an insurer in the marketplace by providing its
 126 competitors with detailed insight into the reserve assumptions
 127 and strategies, modeling methodologies, business plans, pricing
 128 and marketing strategies, management systems and operational
 129 protocols, and financial status of the insurer, thereby
 130 diminishing the advantage that the insurer maintains over

131 competitors that do not possess such information. Without this
 132 exemption, an insurer or an acquiring party might refrain from
 133 providing accurate and unbiased data, thus impairing the
 134 office's ability to accurately evaluate the propriety of
 135 proposed acquisitions in the state and the financial condition
 136 of insurers and their affiliates. Proprietary business
 137 information derives actual or potential independent economic
 138 value from not being generally known to, and not being readily
 139 ascertainable by proper means by, other persons who can derive
 140 economic value from its disclosure or use. The office, in
 141 performing its duties and responsibilities, may need to obtain
 142 proprietary business information from insurers and regulated
 143 entities. Without an exemption from public records requirements
 144 for proprietary business information provided to the office,
 145 such information becomes a public record when received and must
 146 be divulged upon request. Divulgence of proprietary business
 147 information under the public records law would destroy the value
 148 of that property to the proprietor, causing a financial loss not
 149 only to the proprietor but also to the residents of this state
 150 due to the loss of reliable financial data necessary for the
 151 accurate evaluation of proposed acquisitions. Release of
 152 proprietary business information would give business competitors
 153 an unfair advantage and weaken the position in the marketplace
 154 of the proprietor who owns or controls the business information.

155 (2) The Legislature also finds that it is a public
 156 necessity that information received by the office from the

157 National Association of Insurance Commissioners, or from an
 158 agency in this or another state or nation or the Federal
 159 Government, which is otherwise exempt or confidential pursuant
 160 to the laws of this or another state or nation or pursuant to
 161 federal law or which is confidential or exempt if held by that
 162 entity, for use by the office in the performance of duties
 163 related to insurer valuation and solvency under the Florida
 164 Insurance Code, be made confidential and exempt from s.
 165 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 166 State Constitution. Divulgence of such information could impede
 167 the exchange of information and communication among regulators
 168 across multiple agencies and jurisdictions and jeopardize the
 169 ability of regulators to effectively supervise insurers and
 170 groups operating in multiple jurisdictions and engaged in
 171 significant cross-border activities.

172 Section 3. This act shall take effect October 1, 2014, if
 173 HB 1271 or similar legislation is adopted in the same
 174 legislative session or an extension thereof and becomes law.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1273 (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 Ingram offered the following:


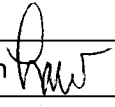
Amendment

Remove line 37 and insert:

(c) Includes:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7107 PCB RORS 14-02 Administrative Procedures
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee, Wood
TIED BILLS: **IDEN./SIM. BILLS:** SB 1706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N	Miller	Rubottom
1) Government Operations Subcommittee		 Stramski	Williamson 
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill amends the rulemaking procedures of the Administrative Procedure Act related to public notices and the preparation of statements of estimated regulatory costs (SERC) beginning in the period of rule development. The bill also revises the requirements for preparing a SERC.

The bill amends the statutory rulemaking process by:

- Conforming the information required in notices of rule development with certain information required for notices of proposed rules.
- Requiring published notices of proposed rules to state whether the agency conducted a rule development workshop.
- Requires agencies to make certain documents available by hyperlink from published notices to the agency website.
- Amending the requirements for rule development to include in workshops and other public hearings the development of information beneficial to the preparation of a SERC.
- Requiring agencies to ensure the availability of personnel responsible for preparing a SERC at rule development workshops, hearings, and public hearings on proposed rules.
- Creates 6 new factors agencies must consider when evaluating the impact of proposed rules on small businesses, presuming each of these factors to be adverse to small business.
- Clarifies present statutes on hearings, agency responses to submitted lower cost regulatory alternatives, and conforms other provisions to these changes.

The statutory requirements for preparing a SERC are revised by:

- Authorizing agencies to respond to a lower cost regulatory alternative by modifying a proposed rule to substantially reduce estimated regulatory costs, and, if so, requiring the agency to revise its SERC and include a summary of the revised SERC in subsequent rulemaking notices.
- Requiring agencies to provide the rules ombudsman with any revised SERC.
- Making publication of the SERC a mandatory element of the preparation of a SERC.
- Creating s. 120.541(5), F.S., which revises the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

The bill may result in a fiscal impact to the state. See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Agency Rulemaking

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.¹ The Administrative Procedure Act (APA)² provides specific requirements agencies must follow in order to adopt rules.³ One important aspect of the APA is the emphasis on public notice and opportunity for participation in agency rulemaking.

With some exceptions,⁴ rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).⁵ If the agency conducts public rule development workshops,⁶ the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.⁷

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.⁸ The publication of this notice triggers certain deadlines for the rulemaking process.⁹ Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC) and the opportunity for anyone to provide the agency with information pertaining to the SERC or to propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.¹⁰

At a public rulemaking hearing agency staff must be available to explain the proposed rule and respond to public questions or comments. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.¹¹ If a person substantially affected by the proposed rule shows the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter

¹ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

² Chapter 120, F.S.

³ Section 120.54, F.S.

⁴ Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.

⁵ Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1990).

⁶ An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.

⁷ Section 120.54(2)(c), F.S.

⁸ Section 120.54(3)(a)1., F.S.

⁹ Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.54(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

¹⁰ Section 120.54(3)(a)1., F.S.

¹¹ Section 120.54(3)(c)1., F.S.

to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes the rulemaking proceeding resumes.¹²

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.¹³ If the change increases the regulatory costs of the rule the agency must revise its SERC.¹⁴

Statement of Estimated Regulatory Costs (SERC)

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.¹⁵ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,¹⁶ and are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;¹⁷
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than \$200,000 in the first year after the rule is implemented;¹⁸ or
- If a substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.¹⁹

Each SERC at a minimum must contain the following elements:

- An economic analysis of the proposed rule's potential direct or indirect impacts,²⁰ including whether any of the following exceed an aggregate of \$1,000,000 in the first 5 years after implementing the rule:
 - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;²¹
 - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;²² or
 - Any likely increase in regulatory costs (including transactional costs).²³
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.²⁴
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.²⁵
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur in order to comply with the rule.²⁶
- An analysis of the impact of the rule on small businesses, including the agency's explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.²⁷

¹² Section 120.54(3)(c)2., F.S.

¹³ Section 120.54(3)(d)1., F.S.

¹⁴ Section 120.541(1)(c), F.S.

¹⁵ Section 120.541(2), F.S. Beginning in 1975, the APA required agencies to estimate the economic impact of proposed rules or explain why such an estimate could not be prepared. Ch. 75-191, s. 3, LOF, codified at 120.54(1), Fla. Stat. (1975).

¹⁶ Section 120.54(3)(b)1., F.S.

¹⁷ Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.

¹⁸ Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.

¹⁹ Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.

²⁰ Section 120.541(2)(a), F.S.

²¹ Section 120.541(2)(a)1., F.S.

²² Section 120.541(2)(a)2., F.S.

²³ Section 120.541(2)(a)3., F.S.

²⁴ Section 120.541(2)(b), F.S.

²⁵ Section 120.541(2)(c), F.S.

²⁶ Section 120.541(2)(d), F.S. The definition of "transactional costs" is discussed later in this analysis.

- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.²⁸

Additional information may be included if the agency determines that it would be useful.²⁹ The agency's failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative³⁰ is a material failure to follow the APA rulemaking requirements.³¹ Consequently, if challenged the rule could be found to be an invalid exercise of delegated legislative authority.³² Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.³³

The specific requirements of s. 120.541, F.S., were adopted in 1996 as part of a comprehensive revision of the APA.³⁴ The revisions resulted from the Final Report of the Commission appointed by the Governor to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.³⁵ The Commission found the purpose for economic impact statements was to assist both the government and the public to understand the potential financial impacts of a rule before adoption but "(t)he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective."³⁶

Effect of the Bill

The bill amends the rulemaking procedures of the APA relating to public notices and the preparation of SERCs, beginning with the period of rule development. Agencies are provided specific factors to consider when evaluating the overall impact on small businesses of a proposed rule, amendment, or repeal. The requirement for an agency conducting a public workshop or hearing to make available

²⁷ Section 120.541(2)(e), F.S. This statute incorporates the definitions of "small city" and "small county" in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of "small business" in s. 288.703, F.S. *Compare*, s. 120.54(3)(b)2., F.S., which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies 5 methods agencies must consider to reduce the rule's impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide the Joint Administrative Procedures Committee a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

²⁸ Section 120.541(2)(g), F.S.

²⁹ Section 120.541(2)(f), F.S.

³⁰ The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at <http://www.doah.state.fl.us/ALJ/searchDOAH/> (accessed 1/28/2014).

³¹ Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

³² Section 120.52(8)(a), F.S.

³³ Section 120.52(8)(f), F.S. This type of challenge must be to the agency's rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

³⁴ Ch.96-159, s. 11, LOF.

³⁵ *Final Report of the Governor's Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at <http://japc.state.fl.us/research.cfm> (accessed March 27, 2014).

³⁶ *Final Report of the Governor's APA Review Commission*, supra at 31.

certain personnel is expanded to include those responsible for preparing the SERC and responding to lower cost regulatory alternatives. The statute controlling the actual preparation of SERCs is revised to clarify agency responsibilities for public notice and responding to lower cost regulatory alternatives. A new subsection provides agencies flexibility for obtaining necessary data and increases legislative guidance for evaluating cost impacts by identifying specific cost and economic factors all agencies must consider when preparing a SERC.

Section 120.54(2): Rule Development

The bill conforms the requirement for information in a notice of rule development³⁷ with that required for a notice of proposed rule.³⁸ In notices of rule development, agencies will be required to provide citations to the grant of rulemaking authority and the specific law(s) being implemented under which the proposed rule will be developed³⁹ and:

- Information on how the public may comment on the proposed rule development and provide the agency with information on regulatory costs which may result from a proposed rule; or
- How the public may access online a draft of the rule being developed (when available).

Agencies conducting public rule development workshops⁴⁰ will be required to ensure the attendance at such workshops not only of the people responsible for preparing the proposed rule but also those responsible for preparing the SERC to receive public input, explain the agency's proposal, and respond to public questions or comments. The bill deletes a sentence stating an agency's failure to provide the agency head's written explanation as to why a requested workshop was not necessary "may be a material error" in the rulemaking procedure because the statement is redundant of s. 120.56(1)(c), F.S.

Section 120.54(3): Rule Adoption

The bill makes several changes to the requirement for notices of proposed rules:⁴¹

- Additional information must be included in the published notice of proposed rule:⁴²
 - The notice must state whether the agency held a public workshop for rule development, and, if not, whether the agency received a written request to conduct a workshop.
 - If the agency received a written request but did not conduct a workshop, whether the agency head provided a written explanation as to why the workshop was unnecessary.
 - The required summary of the SERC (if one is prepared) must include a hyperlink to a copy of the SERC on the agency's website.
- An agency will have the option of providing additional copies of a published notice of proposed rule by mail or electronic delivery to those who requested advance notice of the agency's proceedings.⁴³
- In lieu of filing physical copies of a required statement or copy of additional material incorporated by reference in the proposed rule,⁴⁴ the agency may provide the Joint Administrative Procedures Committee (JAPC)⁴⁵ access to a copy of these materials by hyperlink to a webpage on the agency's website.

³⁷ Section 120.54(2)(a), F.S.

³⁸ Section 120.54(3)(a)1., F.S.

³⁹ Staff of JAPC has suggested conforming the notice of rule development to the present requirements for notices of proposed rule. Adding statutory citations at the initiation of rulemaking will helpfully define the scope of rule development. It therefore can guide and assist public participation.

⁴⁰ Section 120.54(2)(c), F.S.

⁴¹ Section 120.54(3)(a), F.S.

⁴² Section 120.54(3)(a)1., F.S.

⁴³ Section 120.54(3)(a)3., F.S.

⁴⁴ Section 120.54(1)(i)1., 2., 3., F.S.

⁴⁵ Section 120.54(3)(a)4., F.S.

The bill provides that a rule will be presumed to have an adverse impact, and a SERC will be required, if for any small business:

- The owner or other specified person must complete any education, training or testing, is likely to expend 10 or more hours, or must hire a professional, in order to understand and comply with the rule in the first year.
- Taxes or fees assessed on transactions are likely to increase by at least \$500 in the aggregate in one year due to the rule.
- Prices charged for goods and services are restricted or likely to increase due to the rule.
- Compliance with the rule will require specially trained, licensed, or tested employees.
- Operating costs are expected to increase by \$100,000 annually because of the rule.
- Compliance requires capital expenditures of at least \$1,000.

Consistent with the revised requirements for rule development workshops, agencies will be required to ensure the availability at hearings on proposed rules both of those responsible for preparing the proposed rule and those responsible for preparing the SERC. Those made available must be able to explain the proposed rule and the SERC and respond to public questions or comments about the proposed rule, SERC, and the agency's decision whether to adopt offered lower cost regulatory alternatives.

An agency deciding to commence a requested separate, more formal proceeding⁴⁶ will be required to publish notice of that proceeding in the F.A.R. The bill expressly tolls all timelines under the standard rulemaking procedures during the suspension of the rulemaking proceeding until the date following the conclusion of the separate proceeding.

An agency's notice of change to a proposed rule will be required to include:

- A summary of the SERC prepared as a consequence of the change to the proposed rule;
- A summary of the revision to the SERC required by s. 120.541(1)(c), F.S.; or
- A statement the proposed rule as changed does not require preparation of a SERC.

In addition to technical changes conforming other statutory provisions to these changes, the bill requires agencies to make a SERC available to the public at a readily accessible page on the agency's website.⁴⁷

Section 120.541: Statements of Estimated Regulatory Costs

The bill expressly provides for the submission of lower cost regulatory alternatives in response to any non-technical noticed change to the proposed rule. Submissions of lower cost regulatory alternatives responding to notices of change will only be in good faith if the person submitting the alternative notes the reason for believing the change creates increased regulatory costs or an adverse effect on small businesses that was not created by the original proposed rule.

An agency receiving a proposed lower cost regulatory alternative will now have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the proposal or stating its reasons for rejecting the alternative in favor of the proposed rule. If the rule is modified, the agency also must revise the SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a lower cost regulatory alternative, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman⁴⁸, in addition to the party submitting the lower cost regulatory alternative and JAPC, and must be published in the same manner as the original SERC.

⁴⁶ Section 120.54(3)(c)2., F.S.

⁴⁷ Section 120.54(3)(e)2., F.S.

⁴⁸ The rule ombudsman is appointed by the Governor and located in the Executive Office of the Governor. Section 288.7015, F.S.

The bill revises the guidance on which agencies must rely when preparing SERCs. The definition and use of "transactional" costs is replaced with more specific terms.

The required economic analysis must analyze the proposed rule's impact on regulatory costs, which includes all costs and impacts estimated in the SERC. The agency must estimate the number of small businesses and other entities required to comply with the proposed rule, in addition to individuals. The SERC must estimate the costs of compliance by individuals and entities.

The bill creates s. 120.541(5)(a), F.S., requiring agencies to estimate all impacts and costs for the first 5 years after full implementation of all provisions of the rule, not simply from the effective date of the proposed rule.

The bill also creates s. 120.541(5)(b), F.S., requiring estimates of economic, market and small business impacts likely to result from compliance with the proposed rule to consider elements such as:

- Increased or decreased consumer prices or value of goods and services;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Other impacts suggested by the rules ombudsman, the agency head's appointing authority, or interested persons.

The bill creates s. 120.541(5)(c), F.S., providing agencies with specific guidance and flexibility for obtaining information and data necessary to prepare economic analyses. Newly created s. 120.541(5)(d), F.S., directs agencies to consider all direct and indirect costs of rule compliance and provides 18 specific types of costs as examples, including:

- Filing fees;
- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, information, and management systems;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising rulemaking notice, workshop, and hearing requirements, updating publication requirements to include internet access to certain documents, creating specific guidance for agency evaluation of prospective adverse impacts on small businesses by new rules, clarifying requirements for responding to lower cost regulatory alternatives, makes necessary conforming changes.

Section 2: Amends s. 120.541, F.S., revising and expanding agency responsibilities in preparing SERCs and responding to submitted lower cost regulatory alternatives, requiring provision of revised SERCs to the rules ombudsman, creating s. 120.541(5), F.S., extensively revising the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

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:

The bill may have an indeterminate fiscal impact on state government. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to provide a better estimation of economic impacts of agency rules, a better opportunity for local government and private entities to participate in rulemaking and in estimating regulatory costs with the clear intent to better facilitate the selection of lower cost alternatives. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to their becoming effective.

D. FISCAL COMMENTS:

State agencies currently are required to comply with notice, publication, and hearing requirements for rulemaking and with the requirements for preparing SERCs. The bill adds to these requirements. Compliance with these additional requirements may require agencies to devote more resources to rulemaking. The bill also specifically provides for electronic and internet provision of many documents that must currently be delivered in paper form. This might result in cost savings to some 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 does not create any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Notice of Rule Development

Lines 52-56 of the bill provide that a notice of rule development in part must provide the preliminary text of the proposed rules, if available, or a statement of how a person may submit comments, provide the agency with information regarding the potential regulatory costs, or obtain without cost a copy of a preliminary draft of the rule when available. As drafted, the bill does not require an agency to provide

information on how to submit comments on the proposal or information regarding potential regulatory costs if there is a preliminary text of proposed rules.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its meeting of February 5, 2014, the Rulemaking Oversight & Repeal Subcommittee adopted two amendments to the draft PCB and approved PCB RORS 14-02 as amended.

- Amendment 1 made a technical change clarifying the purpose of a rule development workshop, if conducted by an agency, includes obtaining information for the preparation of a statement of estimated regulatory costs. The amendment further clarified the current statutory provision: an agency must conduct a rule development workshop only if so requested in writing, unless the agency head explains in writing why a workshop is not necessary.
- Amendment 2 made a technical change clarifying the authority for agencies to provide JAPC an electronic hyperlink to readily accessible copies of all statements and materials required to be filed with the committee before a proposed rule may be filed for adoption, in lieu of filing physical copies of such documents.

This analysis is drawn to the PCB as engrossed.

27 publication of a revised statement of estimated
 28 regulatory costs in response to such lower cost
 29 regulatory alternatives; deleting definition of
 30 "transactional costs"; providing additional
 31 requirements for the calculation of estimated
 32 regulatory costs; providing an effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Subsections (2) and (3) of section 120.54,
 37 Florida Statutes, are amended to read:

38 120.54 Rulemaking.—

39 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

40 (a) Except when the intended action is the repeal of a
 41 rule, agencies shall provide notice of the development of
 42 proposed rules by publication of a notice of rule development in
 43 the Florida Administrative Register before providing notice of a
 44 proposed rule as required by paragraph (3)(a). The notice of
 45 rule development shall indicate the subject area to be addressed
 46 by rule development, provide a short, plain explanation of the
 47 purpose and effect of the proposed rule, cite the grant of
 48 rulemaking authority pursuant to which the rule is proposed and
 49 the section or subsection of the Florida Statutes or the Laws of
 50 Florida being implemented or interpreted by the proposed rule
 51 ~~specific legal authority for the proposed rule~~, and include the
 52 preliminary text of the proposed rules, if available, or a

53 | statement of how a person may submit comments on the proposal,
 54 | provide the agency with information regarding the potential
 55 | regulatory costs, or promptly obtain, without cost, or access
 56 | online, a copy of any preliminary draft, when ~~if~~ available.

57 | (b) All rules should be drafted in readable language. The
 58 | language is readable if:

59 | 1. It avoids the use of obscure words and unnecessarily
 60 | long or complicated constructions; and

61 | 2. It avoids the use of unnecessary technical or
 62 | specialized language that is understood only by members of
 63 | particular trades or professions.

64 | (c) An agency may hold public workshops for purposes of
 65 | rule development and information gathering for the preparation
 66 | of the statement of estimated regulatory costs. If requested in
 67 | writing by an affected person, an agency must hold public
 68 | workshops, including workshops in various regions of the state
 69 | or the agency's service area, for purposes of rule development
 70 | and information gathering for the preparation of the statement
 71 | of estimated regulatory cost ~~if requested in writing by any~~
 72 | ~~affected person,~~ unless the agency head explains in writing why
 73 | a workshop is unnecessary. The explanation is not final agency
 74 | action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~
 75 | ~~failure to provide the explanation when required may be a~~
 76 | ~~material error in procedure pursuant to s. 120.56(1)(c).~~ When a
 77 | workshop or public hearing is held, the agency must ensure that
 78 | the persons responsible for preparing the proposed rule and the

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79 statement of estimated regulatory costs are available to receive
 80 public input, to explain the agency's proposal, and to respond
 81 to questions or comments regarding the rule being developed and
 82 the statement of estimated regulatory costs. The workshop may be
 83 facilitated or mediated by a neutral third person, or the agency
 84 may employ other types of dispute resolution alternatives for
 85 the workshop that are appropriate for rule development,
 86 including the preparation of any statement of estimated
 87 regulatory costs. Notice of a rule development workshop shall be
 88 by publication in the Florida Administrative Register not less
 89 than 14 days before ~~prior to~~ the date on which the workshop is
 90 scheduled to be held and shall indicate the subject area which
 91 will be addressed; the agency contact person; and the place,
 92 date, and time of the workshop.

93 (d)1. An agency may use negotiated rulemaking in
 94 developing and adopting rules. The agency should consider the
 95 use of negotiated rulemaking when complex rules are being
 96 drafted or strong opposition to the rules is anticipated. The
 97 agency should consider, but is not limited to considering,
 98 whether a balanced committee of interested persons who will
 99 negotiate in good faith can be assembled, whether the agency is
 100 willing to support the work of the negotiating committee, and
 101 whether the agency can use the group consensus as the basis for
 102 its proposed rule. Negotiated rulemaking uses a committee of
 103 designated representatives to draft a mutually acceptable
 104 proposed rule and to develop information necessary to prepare a

105 statement of estimated regulatory costs, when applicable.

106 2. An agency that chooses to use the negotiated rulemaking
 107 process described in this paragraph shall publish in the Florida
 108 Administrative Register a notice of negotiated rulemaking that
 109 includes a listing of the representative groups that will be
 110 invited to participate in the negotiated rulemaking process. Any
 111 person who believes that his or her interest is not adequately
 112 represented may apply to participate within 30 days after
 113 publication of the notice. All meetings of the negotiating
 114 committee shall be noticed and open to the public pursuant to
 115 the provisions of this chapter. The negotiating committee shall
 116 be chaired by a neutral facilitator or mediator.

117 3. The agency's decision to use negotiated rulemaking, its
 118 selection of the representative groups, and approval or denial
 119 of an application to participate in the negotiated rulemaking
 120 process are not agency action. Nothing in this subparagraph is
 121 intended to affect the rights of a substantially ~~an~~ affected
 122 person to challenge a proposed rule developed under this
 123 paragraph in accordance with s. 120.56(2).

124 (3) ADOPTION PROCEDURES.—

125 (a) Notices.—

126 1. Before ~~Prior to~~ the adoption, amendment, or repeal of
 127 any rule other than an emergency rule, an agency, upon approval
 128 of the agency head, shall give notice of its intended action,
 129 setting forth a short, plain explanation of the purpose and
 130 effect of the proposed action; the full text of the proposed

131 rule or amendment and a summary thereof; a reference to the
 132 grant of rulemaking authority pursuant to which the rule is
 133 adopted; and a reference to the section or subsection of the
 134 Florida Statutes or the Laws of Florida being implemented or
 135 interpreted. The notice must include a statement as to whether
 136 the agency held a public workshop for the purpose of development
 137 of the proposed rule, and if not, whether a workshop was
 138 requested in writing. If a rule development workshop was not
 139 held, the notice must include a copy of the written explanation
 140 from the agency head as to why a workshop was unnecessary. The
 141 notice must include a summary of the agency's statement of the
 142 estimated regulatory costs, including an electronic hyperlink to
 143 a copy of the statement of estimated regulatory costs on the
 144 agency's website, if a statement ~~one~~ has been prepared, based on
 145 the factors set forth in s. 120.541(2); a statement that any
 146 person who wishes to provide the agency with information
 147 regarding the statement of estimated regulatory costs, or to
 148 provide a proposal for a lower cost regulatory alternative as
 149 provided by s. 120.541(1), must do so in writing within 21 days
 150 after publication of the notice; and a statement as to whether,
 151 based on the statement of the estimated regulatory costs or
 152 other information expressly relied upon and described by the
 153 agency if no statement of regulatory costs is required, the
 154 proposed rule is expected to require legislative ratification
 155 pursuant to s. 120.541(3). The notice must state the procedure
 156 for requesting a public hearing on the proposed rule. Except

157 when the intended action is the repeal of a rule, the notice
 158 must include a reference both to the date on which and to the
 159 place where the notice of rule development that is required by
 160 subsection (2) appeared.

161 2. The notice shall be published in the Florida
 162 Administrative Register at least ~~not less than~~ 28 days before
 163 ~~prior to~~ the intended action. The proposed rule shall be
 164 available for inspection and copying by the public at the time
 165 of the publication of notice.

166 3. The notice shall be mailed to all persons named in the
 167 proposed rule and mailed or delivered electronically to all
 168 persons who, at least 14 days before ~~prior to~~ such mailing, have
 169 made requests of the agency for advance notice of its
 170 proceedings. The agency shall also give such notice as is
 171 prescribed by rule to those particular classes of persons to
 172 whom the intended action is directed.

173 4. The adopting agency shall file with the committee, at
 174 least 21 days before ~~prior to~~ the proposed adoption date, a copy
 175 of each rule it proposes to adopt; a copy of any material
 176 incorporated by reference in the rule; a detailed written
 177 statement of the facts and circumstances justifying the proposed
 178 rule; a copy of any statement of estimated regulatory costs that
 179 has been prepared pursuant to s. 120.541; a statement of the
 180 extent to which the proposed rule relates to federal standards
 181 or rules on the same subject; and the notice required by
 182 subparagraph 1. In lieu of filing a required statement or copy

183 with the committee for each such rule, the agency may file with
 184 the committee information providing an electronic hyperlink to a
 185 readily accessible copy of the required statement or copy.

186 (b) Special matters to be considered in rule adoption.—

187 1. Statement of estimated regulatory costs.—Before the
 188 adoption, amendment, or repeal of any rule other than an
 189 emergency rule, an agency is encouraged to prepare a statement
 190 of estimated regulatory costs of the proposed rule, as provided
 191 by s. 120.541. However, an agency must prepare a statement of
 192 estimated regulatory costs of the proposed rule, as provided by
 193 s. 120.541, if:

194 a. The proposed rule will have an adverse impact on small
 195 business; or

196 b. The proposed rule is likely to directly or indirectly
 197 increase regulatory costs in excess of \$200,000 in the aggregate
 198 in this state within 1 year after the implementation of the
 199 rule.

200 2. Small businesses, small counties, and small cities.—

201 a. For purposes of this subsection and s. 120.541(2), an
 202 adverse impact on small business is presumed if, for any small
 203 business:

204 (I) An owner, officer, operator, or manager must complete
 205 any education, training, or testing to comply, or is likely to
 206 either expend 10 hours or purchase professional advice to
 207 understand and comply with the rule in the first year;

208 (II) Taxes or fees assessed on transactions are likely to

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209 increase by \$500 or more in the aggregate in 1 year;
 210 (III) Prices charged for goods and services are restricted
 211 or are likely to increase because of the rule;
 212 (IV) Specially trained, licensed, or tested employees will
 213 be required;
 214 (V) Operating costs are expected to increase by at least
 215 \$1,000 annually; or
 216 (VI) Capital expenditures in excess of \$1,000 are
 217 necessary to comply with the rule.
 218 b. Each agency, before the adoption, amendment, or repeal
 219 of a rule, shall consider the impact of the rule on small
 220 businesses as defined by s. 288.703 and the impact of the rule
 221 on small counties or small cities as defined by s. 120.52.
 222 Whenever practicable, an agency shall tier its rules to reduce
 223 disproportionate impacts on small businesses, small counties, or
 224 small cities to avoid regulating small businesses, small
 225 counties, or small cities that do not contribute significantly
 226 to the problem the rule is designed to address. An agency may
 227 define "small business" to include businesses employing more
 228 than 200 persons, may define "small county" to include those
 229 with populations of more than 75,000, and may define "small
 230 city" to include those with populations of more than 10,000, if
 231 it finds that such a definition is necessary to adapt a rule to
 232 the needs and problems of small businesses, small counties, or
 233 small cities. The agency shall consider each of the following
 234 methods for reducing the impact of the proposed rule on small

235 businesses, small counties, and small cities, or any combination
 236 of these entities:

237 (I) Establishing less stringent compliance or reporting
 238 requirements in the rule.

239 (II) Establishing less stringent schedules or deadlines in
 240 the rule for compliance or reporting requirements.

241 (III) Consolidating or simplifying the rule's compliance
 242 or reporting requirements.

243 (IV) Establishing performance standards or best management
 244 practices to replace design or operational standards in the
 245 rule.

246 (V) Exempting small businesses, small counties, or small
 247 cities from any or all requirements of the rule.

248 c.b.(I) If the agency determines that the proposed action
 249 will affect small businesses as defined by the agency as
 250 provided in sub-subparagraph b. a., the agency shall send
 251 written notice of the rule to the rules ombudsman in the
 252 Executive Office of the Governor at least 28 days before the
 253 intended action.

254 (II) Each agency shall adopt those regulatory alternatives
 255 offered by the rules ombudsman in the Executive Office of the
 256 Governor and provided to the agency no later than 21 days after
 257 the rules ombudsman's receipt of the written notice of the rule
 258 which it finds are feasible and consistent with the stated
 259 objectives of the proposed rule and which would reduce the
 260 impact on small businesses. When regulatory alternatives are

261 offered by the rules ombudsman in the Executive Office of the
 262 Governor, the 90-day period for filing the rule in subparagraph
 263 (e)2. is extended for a period of 21 days.

264 (III) If an agency does not adopt all alternatives offered
 265 pursuant to this sub-subparagraph, it shall, before rule
 266 adoption or amendment and pursuant to subparagraph (d)1., file a
 267 detailed written statement with the committee explaining the
 268 reasons for failure to adopt such alternatives. Within 3 working
 269 days after the filing of such notice, the agency shall send a
 270 copy of such notice to the rules ombudsman in the Executive
 271 Office of the Governor.

272 (c) Hearings.-

273 1. If the intended action concerns any rule other than one
 274 relating exclusively to procedure or practice, the agency shall,
 275 on the request of any affected person received within 21 days
 276 after the date of publication of the notice of intended agency
 277 action, give affected persons an opportunity to present evidence
 278 and argument on all issues under consideration. The agency may
 279 schedule a public hearing on the proposed rule and, if requested
 280 by any affected person, shall schedule a public hearing on the
 281 proposed rule. When a public hearing is held, the agency must
 282 ensure that the persons responsible for preparing the proposed
 283 rule and the statement of estimated regulatory costs ~~staff~~ are
 284 available to explain the agency's proposal and to respond to
 285 questions or comments regarding the proposed rule, the statement
 286 of estimated regulatory costs, and the agency's decision whether

287 | to adopt a lower cost regulatory alternative submitted pursuant
 288 | to s. 120.541(1)(a). If the agency head is a board or other
 289 | collegial body created under s. 20.165(4) or s. 20.43(3)(g), and
 290 | one or more requested public hearings is scheduled, the board or
 291 | other collegial body shall conduct at least one of the public
 292 | hearings itself and may not delegate this responsibility without
 293 | the consent of those persons requesting the public hearing. Any
 294 | material pertinent to the issues under consideration submitted
 295 | to the agency within 21 days after the date of publication of
 296 | the notice or submitted to the agency between the date of
 297 | publication of the notice and the end of the final public
 298 | hearing shall be considered by the agency and made a part of the
 299 | record of the rulemaking proceeding.

300 | 2. Rulemaking proceedings shall be governed solely by the
 301 | provisions of this section unless a person timely asserts that
 302 | the person's substantial interests will be affected in the
 303 | proceeding and affirmatively demonstrates to the agency that the
 304 | proceeding does not provide adequate opportunity to protect
 305 | those interests. If the agency determines that the rulemaking
 306 | proceeding is not adequate to protect the person's interests, it
 307 | shall suspend the rulemaking proceeding and convene a separate
 308 | proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The
 309 | agency shall publish notice of convening a separate proceeding
 310 | in the Florida Administrative Register. Similarly situated
 311 | persons may be requested to join and participate in the separate
 312 | proceeding. Upon conclusion of the separate proceeding, the

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313 rulemaking proceeding shall be resumed. All timelines in this
 314 section are tolled during any suspension of the rulemaking
 315 proceeding under this subparagraph, beginning on the date that
 316 the notice of convening a separate proceeding is published and
 317 resuming on the day immediately after conclusion of the separate
 318 proceeding.

319 (d) Modification or withdrawal of proposed rules.—
 320 1. After the final public hearing on the proposed rule, or
 321 after the time for requesting a hearing has expired, if the
 322 proposed rule has not been changed from the proposed rule as
 323 previously filed with the committee, or contains only technical
 324 changes that do not affect the substance of the rule, the
 325 adopting agency shall file a notice to that effect with the
 326 committee at least 7 days before ~~prior to~~ filing the proposed
 327 rule for adoption. Any change, other than a technical change
 328 ~~that does not affect the substance of the rule,~~ must be
 329 supported by the record of public hearings held on the proposed
 330 rule, must be in response to written material submitted to the
 331 agency within 21 days after the date of publication of the
 332 notice of intended agency action or submitted to the agency
 333 between the date of publication of the notice and the end of the
 334 final public hearing, or must be in response to a proposed
 335 objection by the committee. In addition, when any change is made
 336 in a proposed rule, other than a technical change, the adopting
 337 agency shall provide a copy of a notice of change by certified
 338 mail or actual delivery to any person who requests it in writing

339 no later than 21 days after the notice required in paragraph
 340 (a). The agency shall file the notice of change with the
 341 committee, along with the reasons for the change, and provide
 342 the notice of change to persons requesting it, at least 21 days
 343 before ~~prior to~~ filing the proposed rule for adoption. The
 344 notice of change shall be published in the Florida
 345 Administrative Register at least 21 days before ~~prior to~~ filing
 346 the rule for adoption. The notice of change must include either
 347 a summary of any statement of estimated regulatory costs
 348 prepared as a consequence of the change, a summary of any
 349 revision of the statement of estimated regulatory costs required
 350 by s. 120.541(1)(c), or a statement that the proposed rule as
 351 changed does not require preparation of a statement of estimated
 352 regulatory costs under paragraph (b) and s. 120.541(1)(b). This
 353 subparagraph does not apply to emergency rules adopted pursuant
 354 to subsection (4).

355 2. After the notice required by paragraph (a) and before
 356 ~~prior to~~ adoption, the agency may withdraw the proposed rule in
 357 whole or in part.

358 3. After adoption and before the rule becomes effective, a
 359 rule may be modified or withdrawn only in the following
 360 circumstances:

- 361 a. When the committee objects to the rule;
- 362 b. When a final order, which is not subject to further
- 363 appeal, is entered in a rule challenge brought pursuant to s.
- 364 120.56 after the date of adoption but before the rule becomes

365 effective pursuant to subparagraph (e)6.;

366 c. If the rule requires ratification, when more than 90
 367 days have passed since the rule was filed for adoption without
 368 the Legislature ratifying the rule, in which case the rule may
 369 be withdrawn but may not be modified; or

370 d. When the committee notifies the agency that an
 371 objection to the rule is being considered, in which case the
 372 rule may be modified to extend the effective date by not more
 373 than 60 days.

374 4. The agency shall give notice of its decision to
 375 withdraw or modify a rule in the first available issue of the
 376 publication in which the original notice of rulemaking was
 377 published, shall notify those persons described in subparagraph
 378 (a)3. in accordance with the requirements of that subparagraph,
 379 and shall notify the Department of State if the rule is required
 380 to be filed with the Department of State.

381 5. After a rule has become effective, it may be repealed
 382 or amended only through the rulemaking procedures specified in
 383 this chapter.

384 (e) Filing for final adoption; effective date.—

385 1. If the adopting agency is required to publish its rules
 386 in the Florida Administrative Code, the agency, upon approval of
 387 the agency head, shall file with the Department of State three
 388 certified copies of the rule it proposes to adopt; one copy of
 389 any material incorporated by reference in the rule, certified by
 390 the agency; a summary of the rule; a summary of any hearings

391 held on the rule; and a detailed written statement of the facts
 392 and circumstances justifying the rule. Agencies not required to
 393 publish their rules in the Florida Administrative Code shall
 394 file one certified copy of the proposed rule, and the other
 395 material required by this subparagraph, in the office of the
 396 agency head, and such rules shall be open to the public.

397 2. A rule may not be filed for adoption less than 28 days
 398 or more than 90 days after the notice required by paragraph (a),
 399 until 21 days after the notice of change required by paragraph
 400 (d), until 14 days after the final public hearing, until 21 days
 401 after a statement of estimated regulatory costs required under
 402 s. 120.541 has been provided to all persons who submitted a
 403 lower cost regulatory alternative and made available to the
 404 public at a readily accessible page on the agency's website, or
 405 until the administrative law judge has rendered a decision under
 406 s. 120.56(2), whichever applies. When a required notice of
 407 change is published before ~~prior to~~ the expiration of the time
 408 to file the rule for adoption, the period during which a rule
 409 must be filed for adoption is extended to 45 days after the date
 410 of publication. If notice of a public hearing is published
 411 before ~~prior to~~ the expiration of the time to file the rule for
 412 adoption, the period during which a rule must be filed for
 413 adoption is extended to 45 days after adjournment of the final
 414 hearing on the rule, 21 days after receipt of all material
 415 authorized to be submitted at the hearing, or 21 days after
 416 receipt of the transcript, if one is made, whichever is latest.

417 The term "public hearing" includes any public meeting held by
 418 any agency at which the rule is considered. If a petition for an
 419 administrative determination under s. 120.56(2) is filed, the
 420 period during which a rule must be filed for adoption is
 421 extended to 60 days after the administrative law judge files the
 422 final order with the clerk or until 60 days after subsequent
 423 judicial review is complete.

424 3. At the time a rule is filed, the agency shall certify
 425 that the time limitations prescribed by this paragraph have been
 426 complied with, that all statutory rulemaking requirements have
 427 been met, and that there is no administrative determination
 428 pending on the rule.

429 4. At the time a rule is filed, the committee shall
 430 certify whether the agency has responded in writing to all
 431 material and timely written comments or written inquiries made
 432 on behalf of the committee. The Department of State shall reject
 433 any rule that is not filed within the prescribed time limits;
 434 that does not comply with all statutory rulemaking requirements
 435 and rules of the Department of State; upon which an agency has
 436 not responded in writing to all material and timely written
 437 inquiries or written comments; upon which an administrative
 438 determination is pending; or which does not include a statement
 439 of estimated regulatory costs, if required.

440 5. If a rule has not been adopted within the time limits
 441 imposed by this paragraph or has not been adopted in compliance
 442 with all statutory rulemaking requirements, the agency proposing

443 the rule shall withdraw the proposed rule and give notice of its
 444 action in the next available issue of the Florida Administrative
 445 Register.

446 6. The proposed rule shall be adopted on being filed with
 447 the Department of State and become effective 20 days after being
 448 filed, on a later date specified in the notice required by
 449 subparagraph (a)1., on a date required by statute, or upon
 450 ratification by the Legislature pursuant to s. 120.541(3). Rules
 451 not required to be filed with the Department of State shall
 452 become effective when adopted by the agency head, on a later
 453 date specified by rule or statute, or upon ratification by the
 454 Legislature pursuant to s. 120.541(3). If the committee notifies
 455 an agency that an objection to a rule is being considered, the
 456 agency may postpone the adoption of the rule to accommodate
 457 review of the rule by the committee. When an agency postpones
 458 adoption of a rule to accommodate review by the committee, the
 459 90-day period for filing the rule is tolled until the committee
 460 notifies the agency that it has completed its review of the
 461 rule.

462
 463 For the purposes of this paragraph, the term "administrative
 464 determination" does not include subsequent judicial review.

465 Section 2. Section 120.541, Florida Statutes, is amended
 466 to read:

467 120.541 Statement of estimated regulatory costs.—

468 (1)(a) Within 21 days after publication of the notice of

469 proposed rule required under s. 120.54(3)(a), or of a notice of
 470 change under s. 120.54(3)(d)1., a substantially affected person
 471 may submit to an agency a good faith written proposal for a
 472 lower cost regulatory alternative to a proposed rule which
 473 substantially accomplishes the objectives of the law being
 474 implemented. The proposal may include the alternative of not
 475 adopting any rule if the proposal explains how the lower costs
 476 and objectives of the law will be achieved by not adopting any
 477 rule. If submitted after a notice of change, a proposal is
 478 deemed to be made in good faith only if the person reasonably
 479 believes and the proposal states the person's reasons for
 480 believing that the proposed rule as changed by the notice of
 481 change increases the regulatory costs or creates an adverse
 482 impact on small business that was not created by the previous
 483 proposal. If such a proposal is submitted, the 90-day period for
 484 filing the rule is extended 21 days. Upon the submission of the
 485 lower cost regulatory alternative, the agency shall prepare a
 486 statement of estimated regulatory costs as provided in
 487 subsection (2), or shall revise its prior statement of estimated
 488 regulatory costs, and either adopt the alternative, modify the
 489 proposed rule to substantially reduce the regulatory costs, or
 490 provide a statement of the reasons for rejecting the alternative
 491 in favor of the proposed rule.

492 (b) If a proposed rule will have an adverse impact on
 493 small business as set forth in s. 120.54(3)(b) or if the
 494 proposed rule is likely to directly or indirectly increase

495 regulatory costs in excess of \$200,000 in the aggregate within 1
 496 year after the implementation of the rule, the agency shall
 497 prepare a statement of estimated regulatory costs as required by
 498 s. 120.54(3)(b).

499 (c) The agency shall revise a statement of estimated
 500 regulatory costs if any change to the rule made under s.
 501 120.54(3)(d) increases the regulatory costs of the rule or if
 502 the rule is modified in response to the submission of a lower
 503 cost regulatory alternative. A summary of the revised statement
 504 must be included with any subsequent notice published under s.
 505 120.54(3).

506 (d) At least 21 days before filing the proposed rule for
 507 adoption, an agency that is required to revise a statement of
 508 estimated regulatory costs shall provide the statement to the
 509 person who submitted the lower cost regulatory alternative, to
 510 the rules ombudsman in the Executive Office of the Governor, and
 511 to the committee. The revised statement shall be published and
 512 made available in the same manner as the original statement of
 513 estimated regulatory costs and shall provide notice on the
 514 ~~agency's website that it is available to the public.~~

515 (e) Notwithstanding s. 120.56(1)(c), the failure of the
 516 agency to prepare and publish a statement of estimated
 517 regulatory costs or to respond to a written lower cost
 518 regulatory alternative as provided in this subsection is a
 519 material failure to follow the applicable rulemaking procedures
 520 or requirements set forth in this chapter.

521 (f) An agency's failure to prepare and publish a statement
 522 of estimated regulatory costs or to respond to a written lower
 523 cost regulatory alternative may not be raised in a proceeding
 524 challenging the validity of a rule pursuant to s. 120.52(8)(a)
 525 unless:

526 1. Raised in a petition filed no later than 1 year after
 527 the effective date of the rule; and

528 2. Raised by a person whose substantial interests are
 529 affected by the rule's regulatory costs.

530 (g) A rule that is challenged pursuant to s. 120.52(8)(f)
 531 may not be declared invalid unless:

532 1. The issue is raised in an administrative proceeding
 533 within 1 year after the effective date of the rule;

534 2. The challenge is to the agency's rejection of a lower
 535 cost regulatory alternative offered under paragraph (a) or s.
 536 120.54(3)(b)2.~~bc~~.; and

537 3. The substantial interests of the person challenging the
 538 rule are materially affected by the rejection.

539 (2) A statement of estimated regulatory costs shall
 540 include:

541 (a) An economic analysis showing whether the rule directly
 542 or indirectly:

543 1. Is likely to have an adverse impact on economic growth,
 544 private sector job creation or employment, or private sector
 545 investment in excess of \$1 million in the aggregate within 5
 546 years after the implementation of the rule;

547 2. Is likely to have an adverse impact on business
 548 competitiveness, including the ability of persons doing business
 549 in the state to compete with persons doing business in other
 550 states or domestic markets, productivity, or innovation in
 551 excess of \$1 million in the aggregate within 5 years after the
 552 implementation of the rule; or

553 3. Is likely to increase regulatory costs, including all
 554 ~~any transactional costs and impacts estimated in the statement,~~
 555 in excess of \$1 million in the aggregate within 5 years after
 556 the implementation of the rule.

557 (b) A good faith estimate of the number of individuals,
 558 small businesses, and other entities likely to be required to
 559 comply with the rule, together with a general description of the
 560 types of individuals likely to be affected by the rule.

561 (c) A good faith estimate of the cost to the agency, and
 562 to any other state and local government entities, of
 563 implementing and enforcing the proposed rule, and any
 564 anticipated effect on state or local revenues.

565 (d) A good faith estimate of the compliance ~~transactional~~
 566 costs likely to be incurred by individuals and entities,
 567 including local government entities, required to comply with the
 568 requirements of the rule. ~~As used in this section,~~
 569 ~~"transactional costs" are direct costs that are readily~~
 570 ~~ascertainable based upon standard business practices, and~~
 571 ~~include filing fees, the cost of obtaining a license, the cost~~
 572 ~~of equipment required to be installed or used or procedures~~

573 ~~required to be employed in complying with the rule, additional~~
 574 ~~operating costs incurred, the cost of monitoring and reporting,~~
 575 ~~and any other costs necessary to comply with the rule.~~

576 (e) An analysis of the impact on small businesses as
 577 defined by s. 288.703, and an analysis of the impact on small
 578 counties and small cities as defined in s. 120.52. The impact
 579 analysis for small businesses must include the basis for the
 580 agency's decision not to implement alternatives that would
 581 reduce adverse impacts on small businesses.

582 (f) Any additional information that the agency determines
 583 may be useful.

584 (g) ~~In the statement or revised statement, whichever~~
 585 ~~applies,~~ A description of any regulatory alternatives submitted
 586 under paragraph (1)(a) and a statement adopting the alternative
 587 or a statement of the reasons for rejecting the alternative in
 588 favor of the proposed rule.

589 (3) If the adverse impact or regulatory costs of the rule
 590 exceed any of the criteria established in paragraph (2)(a), the
 591 rule shall be submitted to the President of the Senate and
 592 Speaker of the House of Representatives no later than 30 days
 593 before ~~prior to~~ the next regular legislative session, and the
 594 rule may not take effect until it is ratified by the
 595 Legislature.

596 (4) Subsection (3) does not apply to the adoption of:

- 597 (a) Federal standards pursuant to s. 120.54(6).
- 598 (b) Triennial updates of and amendments to the Florida

599 Building Code which are expressly authorized by s. 553.73.

600 (c) Triennial updates of and amendments to the Florida
 601 Fire Prevention Code which are expressly authorized by s.
 602 633.202.

603 (5)(a) For purposes of subsections (2) and (3), impacts
 604 and costs incurred within 5 years after implementation of the
 605 rule shall include the applicable costs and impacts estimated to
 606 be incurred within the first 5 years after the effective date of
 607 the rule. However, if any provisions of the rule are not fully
 608 implemented and enforceable upon the effective date of the rule,
 609 the impacts and costs must be adjusted to include any additional
 610 costs and impacts estimated to be incurred within 5 years after
 611 the implementation and enforcement of the provisions of the rule
 612 that were not fully implemented upon the effective date of the
 613 rule.

614 (b) In evaluating the impacts described in paragraphs
 615 (2)(a) and (2)(e), an agency shall include good faith estimates
 616 of market impacts likely to result from compliance with the
 617 rule, including:

618 1. Increased customer charges for goods and services.

619 2. Decreased market value of goods and services produced,
 620 provided, or sold.

621 3. Increased costs resulting from the purchase of
 622 substitute or alternative products or services.

623 4. The reasonable value of time to be expended by owners,
 624 officers, operators, and managers to understand and comply,

625 including, but not limited to, time expended to complete
 626 required education, training, or testing.

627 5. Capital costs.

628 6. Any other impacts suggested by the rules ombudsman, the
 629 agency head's appointing authority, or interested persons.

630 (c) In estimating the information required in paragraphs
 631 (2)(b)-(e), the agency may use reasonably applicable surveys of
 632 individuals, businesses, business organizations and
 633 representatives, cities, and counties to collect data helpful to
 634 estimate the costs and impacts. The agency shall also solicit
 635 helpful information in each notice related to the proposed rule.
 636 The rules ombudsman and the committee may recommend survey
 637 instruments and methods to assist agencies in administering this
 638 section. Such recommendations and agency decisions regarding
 639 surveys and methods do not constitute rules or agency actions
 640 under this chapter.

641 (d) In estimating compliance costs under paragraph (2)(d),
 642 the agency shall consider, among other matters, all direct and
 643 indirect costs necessary to comply with the rule that are
 644 readily ascertainable based upon standard business practices,
 645 including, but not limited to, costs related to:

646 1. Filing fees.

647 2. Obtaining a license.

648 3. Necessary equipment.

649 4. Installation, utilities, and maintenance of necessary
 650 equipment.

- 651 5. Necessary operations and procedures.
- 652 6. Accounting, financial, information and management
- 653 systems, and other administrative processes.
- 654 7. Other processes.
- 655 8. Labor based on relevant rates of wages, salaries and
- 656 benefits.
- 657 9. Materials and supplies.
- 658 10. Capital expenditures including financing costs.
- 659 11. Professional and technical services, including
- 660 contracted services necessary to implement and maintain
- 661 compliance.
- 662 12. Monitoring and reporting.
- 663 13. Qualifying and recurring education, training, and
- 664 testing.
- 665 14. Travel.
- 666 15. Insurance and surety requirements.
- 667 16. A fair and reasonable allocation of administrative
- 668 costs and other overhead.
- 669 17. Reduced sales or other revenues.
- 670 18. Other items suggested by the rules ombudsman, the
- 671 committee, or any interested person, business organization, or
- 672 business representative.
- 673 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 Representatives Richardson and Wood offered the following:

Amendment

6 Remove lines 53-56 and insert:
7 statement of how a person may promptly obtain, without cost, or
8 access online, a copy of any preliminary draft, when if
9 available. The notice shall also include a statement of how a
10 person may submit comments on the proposal and provide
11 information regarding the potential regulatory costs.



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 Representatives Richardson and Wood offered the following:

Amendment

Between lines 538 and 539, insert:

7 (h) Until the rule to which it relates is withdrawn or
8 repealed or until the rule is amended with preparation of a new
9 statement of estimated regulatory costs prepared under this
10 section, the following must be made publicly available on the
11 agency website or on another state website established for
12 publication of administrative law records:

13 1. A statement of estimated regulatory costs prepared with
14 respect to a rule proposed or filed for adoption after November
15 16, 2010;



Amendment No.

16 2. A revision of a statement of estimated regulatory costs
17 prepared with respect to a rule proposed or filed for adoption
18 after November 16, 2010;

19 3. A compliance economic review published pursuant to s.
20 120.745(5); or

21 4. A report on an economic estimate of regulatory cost and
22 economic impact published pursuant to s. 120.745(9)(b).

23



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 Representatives Richardson and Wood offered the following:
4

Amendment (with title amendment)

6 Remove line 673 and insert:

7 Section 3. Paragraph (a) of subsection (1) of section
8 190.005, Florida Statutes, is amended to read:

9 190.005 Establishment of district.—

10 (1) The exclusive and uniform method for the establishment
11 of a community development district with a size of 1,000 acres
12 or more shall be pursuant to a rule, adopted under chapter 120
13 by the Florida Land and Water Adjudicatory Commission, granting
14 a petition for the establishment of a community development
15 district.

16 (a) A petition for the establishment of a community
17 development district shall be filed by the petitioner with the



Amendment No.

18 Florida Land and Water Adjudicatory Commission. The petition
19 shall contain:

20 1. A metes and bounds description of the external
21 boundaries of the district. Any real property within the
22 external boundaries of the district which is to be excluded from
23 the district shall be specifically described, and the last known
24 address of all owners of such real property shall be listed. The
25 petition shall also address the impact of the proposed district
26 on any real property within the external boundaries of the
27 district which is to be excluded from the district.

28 2. The written consent to the establishment of the
29 district by all landowners whose real property is to be included
30 in the district or documentation demonstrating that the
31 petitioner has control by deed, trust agreement, contract, or
32 option of 100 percent of the real property to be included in the
33 district, and when real property to be included in the district
34 is owned by a governmental entity and subject to a ground lease
35 as described in s. 190.003(14), the written consent by such
36 governmental entity.

37 3. A designation of five persons to be the initial members
38 of the board of supervisors, who shall serve in that office
39 until replaced by elected members as provided in s. 190.006.

40 4. The proposed name of the district.

41 5. A map of the proposed district showing current major
42 trunk water mains and sewer interceptors and outfalls if in
43 existence.



Amendment No.

44 6. Based upon available data, the proposed timetable for
45 construction of the district services and the estimated cost of
46 constructing the proposed services. These estimates shall be
47 submitted in good faith but are not binding and may be subject
48 to change.

49 7. A designation of the future general distribution,
50 location, and extent of public and private uses of land proposed
51 for the area within the district by the future land use plan
52 element of the effective local government comprehensive plan of
53 which all mandatory elements have been adopted by the applicable
54 general-purpose local government in compliance with the
55 Community Planning Act.

56 8. A statement explaining the prospective economic impact
57 of the establishment of the proposed district ~~of estimated~~
58 ~~regulatory costs in accordance with the requirements of s.~~
59 ~~120.541.~~

60 Section 4. This act shall take effect July 1, 2014.
61
62
63

64 -----
65 **T I T L E A M E N D M E N T**

66 Remove line 32 and insert:
67 regulatory costs; amending s. 190.005, F.S.; relating to the
68 establishment of community development districts; requiring a
69 petition to include a statement explaining the prospective



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7107 (2014)


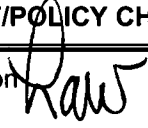
Amendment No.

70 | economic impact of the establishment of a proposed district;
71 | providing an effective date.

72 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1151 Public Records
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		 Stramski	Williamson 

SUMMARY ANALYSIS

The State Constitution and Florida Statutes govern access to records and meetings of state and local agencies. With respect to public records, current law in part defines terms, provides for assessment of certain fees associated with responding to public record requests, requires certain contracts with public agencies to contain provisions regarding public records, and provides for assessment of attorney fees for an agency found in violation of the public records law. With respect to public meetings, current law requires a board or commission to give reasonable notice of its meetings and to provide that such meetings must be open to the public at all times. A person may bring a civil action to enforce public meetings requirements, and is entitled to reasonable attorney fees if the person prevails.

The bill makes changes to public records and public meetings laws.

The bill defines the terms “confidential and exempt” and “exempt.”

The bill clarifies that a public records request need not be made in writing unless required by law. If a written request is required, the record custodian must provide the statutory citation of that requirement.

The bill limits the cost of clerical or supervisory assistance charges that may be assessed by an agency responding to a public records request.

The bill provides that contracts between agencies and contractors must require the contractor to notify the public agency’s custodian of public records before denying a request for records held by the contractor, and to notify the public agency if the contractor is served with a civil action to enforce public records requirements.

The bill requires each agency to provide appropriate training on public records requirements to each employee.

The bill provides that the award of reasonable costs of enforcement available to a party who prevails against an agency to enforce public records requirements includes attorney fees incurred in litigating entitlement to and quantification of attorney fees for the underlying civil action. It also provides that a party filing an action related to public records or public meetings violations against the state is not required to file a copy of the pleading seeking attorney fees on the Department of Financial Services. The agency against whom the action is brought is required to provide such notice.

The bill appears to a fiscal impact on state and local governments. See FISCAL COMMENTS.

The 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.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,² under reasonable conditions, and under supervision by the records custodian.³ Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.⁴

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request.⁵ The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.⁶ Such a service charge may be assessed and payment required by an agency prior to providing a response to the request.⁷

¹ 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.

² There is no specific limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Company v. Cannella*, 458 So.2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential and/or exempt information contained within such a request.

³ *Woodward v. State*, 8850 So.2d 444 (Fla. 4th DCA 2004).

⁴ *See Dade Aviation Consultants v. Knight Ridder, Inc.* 800 So.2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

⁵ Section 119.07(4)(d), F.S.

⁶ *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (Fla. 2d DCA 2008).

⁷ *See also Wootton v. Cook*, 590 So.2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit [an agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record).

Contract Requirements for Service Contracts

Section 119.0701, F.S., requires each public agency contract for services to include certain provisions that require the contractor to comply with public records laws. A contractor for a service must require the contractor to:

- Keep public records that would be required by the agency to perform the service;
- Provide the public access to public records on the same terms as the agency would;
- Ensure that public records that are exempt or confidential and exempt are not improperly disclosed; and
- Meet certain public records retention and transfer requirements.

Civil Action and Attorney Fees

A person or other entity may file a civil action against an agency to enforce the provisions of ch. 119, F.S. Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.⁸ If a court determines that an agency unlawfully refused to permit a public record to be inspected or copied, the court must assess and award reasonable costs of enforcement, including reasonable attorneys' fees, against the agency responsible.⁹ However, attorney fees for efforts expended to obtain attorney fees are not currently permitted.¹⁰

To be entitled to attorney fees in an action filed under ch. 119, F.S., against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.¹¹

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires 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.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.¹² Minutes of a public meeting must be promptly recorded and be open to public inspection.¹³

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.¹⁴ Acts taken by a board or commission in violation of this requirement are considered void,¹⁵ though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.¹⁶

If a party files an action against a board or commission for failure to follow public meeting requirements and the party prevails, that party is entitled to reasonable attorney fees. Such fees may be assessed against the individual members of the board or commission, unless the board or commission sought

⁸ Section 119.11, F.S.

⁹ Section 119.12, F.S.

¹⁰ *Downs v. Austin*, 559 So.2d 246, 248 (Fla. 1st DCA 1990).

¹¹ Section 284.30, F.S.

¹² Section 286.011(1), F.S.

¹³ Section 286.011(2), F.S.

¹⁴ Section 286.011(1), F.S.

¹⁵ *Grapski v. City of Alachua*, 31 So.3d 193 (Fla. 1st DCA 2010).

¹⁶ *Finch v. Seminole County School Board*, 995 So.2d 1068 (Fla. 5th DCA 2008).

and followed the advice of its attorney with respect to the conduct of the meeting.¹⁷ To be entitled to attorney fees in such an action filed against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on DFS. DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.¹⁸

Section 286.011(4), F.S., also allows a court to assess a reasonable attorney fee against the individual filing such an action if the court determines it was filed in bad faith or was frivolous.

Public Record and Public Meeting Exemptions

Art. I, s. 24(c) of the State Constitution authorizes the Legislature to provide by general law for the exemption of records or meetings from the requirements of Art. I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Exempt versus Confidential and Exempt

When the Legislature creates a public record exemption, it either determines that the record is exempt or confidential and exempt from public record requirements. There is a difference between records the Legislature has determined to be exempt from public records requirements and those that have been determined to be confidential and exempt.¹⁹

If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection and may be released only to those persons or entities designated in the statute.²⁰ If the Legislature determines that the information is exempt only, then the agency is not prohibited from disclosing the records in all circumstances.²¹ In determining whether such information should be disclosed, an agency should determine whether there is a statutory or substantial policy need for disclosure. In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption.²²

The terms "confidential and exempt" and "exempt" are not defined in Florida Statutes.

Effect of Bill

The bill makes changes to public records and public meetings laws.

The bill defines the following terms:

- "Confidential and exempt" means that a record or information is not subject to inspection or copying except as authorized by statute.
- "Exempt" means that a record or information is not subject to inspection or copying unless the custodian of public records determines, in his or her discretion, that inspection or copying is appropriate.

The bill clarifies that a public records request need not be made in writing unless required by law. If a written request is required by law, the custodian of public records must provide the statutory citation of the requirement to a requestor.

¹⁷ Section 286.011(4), F.S.

¹⁸ Section 284.30, F.S.

¹⁹ *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).

²⁰ *Id.*; see also, Attorney General Opinions 2008-24, 2004-09, and 86-97.

²¹ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

²² Attorney General Opinion 2007-21.

The bill revises the fee provisions for cost of duplication or inspection of public records. It specifies that the cost of clerical or supervisory assistance that may be recovered by an agency responding to a public records request must be reasonable and based on the actual cost incurred or attributable to the agency. The cost may not exceed the rate of the lowest paid personnel who the agency reasonably determines is capable of providing such clerical or supervisory assistance. Such costs may not include employer-paid health insurance premiums or other employer-paid benefits.

The bill amends s. 119.0701, F.S., related to contract terms for contracts between a public agency and a contractor for services. It provides that such terms now apply to all contracts, not just for contracts for services. In addition, such contracts must include the following additional contract provisions requiring the contractor to:

- Notify the public agency's custodian of public records before denying a request to inspect or copy a record held by the contractor; and
- Notify the public agency if the contractor is served with a civil action to enforce the provisions of ch. 119, F.S.

Such a notification does not impose any additional duty on the public agency.

The bill requires each agency to provide appropriate training on the requirements of ch. 119, F.S., to each employee. The training must be commensurate with the employee's duties.

The bill provides that the reasonable costs of enforcement awarded to a prevailing party that brings an action to enforce the provisions of ch. 119, F.S., include reasonable attorney fees, including reasonable attorney fees incurred in litigating entitlement to, and the determination or quantification of, attorney fees for the underlying civil action. At a minimum, the court must award the reasonable costs of enforcement for those counts upon which the plaintiff prevailed.

The bill provides that a party filing an action under ch. 119, F.S., or under s. 286.011, F.S., against the state or any of its agencies covered by the State Risk Management Trust Fund, is not required to file a copy of the pleadings seeking attorney fees on DFS. The agency against whom the action is brought is required to provide notice to DFS of the pleading claiming attorney fees upon receipt. DFS may participate in the defense of such a suit and any appeal thereof with respect to the attorney fees.

Finally, the bill makes editorial and conforming changes.

B. SECTION DIRECTORY:

Section 1 amends s. 119.011, F.S., defining the terms "confidential and exempt" and "exempt."

Section 2 amends s. 119.07, F.S., providing that public records requests need not be made in writing unless required by law; requiring a records custodian to cite such statute if a written request is required; restricting the special service charge assessed by an agency in producing records.

Section 3 amends s. 119.0701, F.S., revising contract requirements between a public agency and a contractor.

Section 4 creates s. 119.0702, F.S., requiring agencies to provide public records training.

Section 5 amends s. 119.12, F.S., specifying a reasonable cost of enforcement; providing that a party filing an action against certain agencies is not required to serve a copy of a pleading claiming attorney fees on DFS; requiring an agency to provide notice of such pleading to DFS; authorizing DFS to join the agency in defense of such suit.

Section 6 amends s. 286.011, F.S., providing that a party filing an enforcement action against a board or commission of a state agency is not required to serve a copy of a pleading claiming attorney fees on

DFS; requiring the board or commission to provide notice of such pleading to DFS; authorizing DFS to join the board or commission in defense of such suit.

Section 7 amends s. 257.35, F.S., conforming cross-references.

Section 8 amends s. 383.402, F.S., conforming cross-references.

Section 9 amends s. 497.140, F.S., conforming cross-references.

Section 10 amends s. 627.311, F.S., conforming cross-references.

Section 11 amends s. 627.351, F.S., conforming cross-references.

Section 12 amends s. 943.031, F.S., conforming cross-references.

Section 13 amends s. 943.0313, F.S., conforming cross-references.

Section 14 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:

Businesses acting on behalf of a government agency may experience increases in costs similar to those that an agency may encounter if this bill is enacted.

D. FISCAL COMMENTS:

State and local governments may experience a negative fiscal impact from the requirement that every agency provide adequate training to every employee relating to the requirements of ch. 119, F.S. This provision will require state and local governments to devote resources to preparing and disseminating training materials to employees.

If state and local governments currently include the cost of employee benefits as part of its special service charge, then the ability to defray the cost of providing public records may be adversely impacted.

State and local governments may experience a negative fiscal impact following unsuccessful civil actions brought to enforce the requirements of ch. 119, F.S., as agencies will now be liable not only for attorney fees incurred in trying the civil action, but also for any attorney fees incurred in the determination of entitlement to, and quantification of, attorney fees for the underlying civil action.

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 this bill requires counties and municipalities to provide training for employees relating to the requirements of ch. 119, F.S. 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:

Not applicable.

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 public records and meetings;
 3 amending s. 119.011, F.S.; defining the terms
 4 "confidential and exempt" and "exempt"; amending s.
 5 119.07, F.S.; providing that public records requests
 6 need not be in writing unless otherwise required by
 7 law; requiring the custodian of public records to
 8 provide a statutory citation to the requester if a
 9 written request is required; restricting the special
 10 service charge assessed by an agency in producing
 11 records; amending s. 119.0701, F.S.; revising contract
 12 requirements between a public agency and a contractor;
 13 creating s. 119.0702, F.S.; requiring each agency to
 14 provide training on the requirements of ch. 119, F.S.;
 15 amending s. 119.12, F.S.; specifying a reasonable cost
 16 of enforcement; providing that a party filing an
 17 action against certain agencies is not required to
 18 serve a copy of a pleading claiming attorney fees on
 19 the Department of Financial Services; requiring an
 20 agency to provide notice of such pleading to the
 21 department; authorizing the department to join the
 22 agency in defense of such suit; amending s. 286.011,
 23 F.S.; providing that a party filing an enforcement
 24 action against a board or commission of a state agency
 25 is not required to serve a copy of a pleading claiming
 26 attorney fees on the Department of Financial Services;

27 requiring the board or commission to provide notice of
 28 such pleading to the department; authorizing the
 29 department to join the board or commission in defense
 30 of such suit; amending ss. 257.35, 383.402, 497.140,
 31 627.311, 627.351, 943.031, and 943.0313; conforming
 32 cross-references to changes made by the act; providing
 33 an effective date.

34

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

36

37 Section 1. Section 119.011, Florida Statutes, is amended
 38 to read:

39 119.011 Definitions.—As used in this chapter, the term:

40 (1) "Actual cost of duplication" means the cost of the
 41 material and supplies used to duplicate the public record, but
 42 does not include labor cost or overhead cost associated with
 43 such duplication.

44 (2) "Agency" means any state, county, district, authority,
 45 or municipal officer, department, division, board, bureau,
 46 commission, or other separate unit of government created or
 47 established by law including, for the purposes of this chapter,
 48 the Commission on Ethics, the Public Service Commission, ~~and~~ the
 49 Office of Public Counsel, and any other public or private
 50 agency, person, partnership, corporation, or business entity
 51 acting on behalf of any public agency.

52 (3) "Confidential and exempt" means that a record or

53 information is not subject to inspection or copying except as
 54 authorized by statute.

55 (4) (a) (3) (a) "Criminal intelligence information" means
 56 information with respect to an identifiable person or group of
 57 persons collected by a criminal justice agency in an effort to
 58 anticipate, prevent, or monitor possible criminal activity.

59 (b) "Criminal investigative information" means information
 60 with respect to an identifiable person or group of persons
 61 compiled by a criminal justice agency in the course of
 62 conducting a criminal investigation of a specific act or
 63 omission, including, but not limited to, information derived
 64 from laboratory tests, reports of investigators or informants,
 65 or any type of surveillance.

66 (c) "Criminal intelligence information" and "criminal
 67 investigative information" do ~~shall~~ not include:

68 1. The time, date, location, and nature of a reported
 69 crime.

70 2. The name, sex, age, and address of a person arrested or
 71 of the victim of a crime except as provided in s. 119.071(2)(h).

72 3. The time, date, and location of the incident and of the
 73 arrest.

74 4. The crime charged.

75 5. Documents given or required by law or agency rule to be
 76 given to the person arrested, except as provided in s.

77 119.071(2)(h), and, except that the court in a criminal case may
 78 order that certain information required by law or agency rule to

79 be given to the person arrested be maintained in a confidential
 80 manner and exempt from the provisions of s. 119.07(1) until
 81 released at trial if it is found that the release of such
 82 information would:

83 a. Be defamatory to the good name of a victim or witness
 84 or would jeopardize the safety of such victim or witness; and

85 b. Impair the ability of a state attorney to locate or
 86 prosecute a codefendant.

87 6. Informations and indictments except as provided in s.
 88 905.26.

89 (d) With the exception of information in cases that are
 90 barred from prosecution under s. 775.15 or another statute of
 91 limitation, the term word "active" has shall have the following
 92 meaning:

93 1. Criminal intelligence information is shall be
 94 considered "active" if as long as it is related to intelligence
 95 gathering conducted with a reasonable, good faith belief that it
 96 will lead to detection of ongoing or reasonably anticipated
 97 criminal activities.

98 2. Criminal investigative information is shall be
 99 considered "active" if as long as it is related to an ongoing
 100 investigation that is being conducted which is continuing with a
 101 reasonable, good faith anticipation of securing an arrest or
 102 prosecution in the foreseeable future.

103 3. In addition, Criminal intelligence information and
 104 criminal investigative information are shall be considered

105 "active" if ~~while~~ such information is directly related to
 106 pending prosecutions or appeals. ~~The word "active" shall not~~
 107 ~~apply to information in cases which are barred from prosecution~~
 108 ~~under the provisions of s. 775.15 or other statute of~~
 109 ~~limitation.~~

110 (5)~~(4)~~ "Criminal justice agency" means:

111 (a) A ~~Any~~ law enforcement agency, court, or prosecutor;

112 (b) Another ~~Any other~~ agency charged by law with criminal
 113 law enforcement duties;

114 (c) An ~~Any~~ agency having custody of criminal intelligence
 115 information or criminal investigative information for the
 116 purpose of assisting such law enforcement agencies in the
 117 conduct of active criminal investigation or prosecution or for
 118 the purpose of litigating civil actions under the Racketeer
 119 Influenced and Corrupt Organization Act, during the time that
 120 such agencies are in possession of criminal intelligence
 121 information or criminal investigative information pursuant to
 122 their criminal law enforcement duties; or

123 (d) The Department of Corrections.

124 (6)~~(5)~~ "Custodian of public records" means the elected or
 125 appointed state, county, or municipal officer charged with the
 126 responsibility of maintaining the office having public records,
 127 or his or her designee.

128 (7)~~(6)~~ "Data processing software" means the programs and
 129 routines used to employ and control the capabilities of data
 130 processing hardware, including, but not limited to, operating

131 systems, compilers, assemblers, utilities, library routines,
 132 maintenance routines, applications, and computer networking
 133 programs.

134 (8)~~(7)~~ "Duplicated copies" means new copies produced by
 135 duplicating, as defined in s. 283.30.

136 (9) "Exempt" means that a record or information is not
 137 subject to inspection or copying unless the custodian of public
 138 records determines, in his or her discretion, that inspection or
 139 copying is appropriate.

140 (10)~~(8)~~ "Exemption" means a provision of general law which
 141 provides that a specified record or meeting, or portion thereof,
 142 is not subject to the access requirements of s. 119.07(1), s.
 143 286.011, or s. 24, Art. I of the State Constitution.

144 (11)~~(9)~~ "Information technology resources" means data
 145 processing hardware and software and services, communications,
 146 supplies, personnel, facility resources, maintenance, and
 147 training.

148 (12)~~(10)~~ "Paratransit" has the same meaning as provided in
 149 s. 427.011.

150 (13)~~(11)~~ "Proprietary software" means data processing
 151 software that is protected by copyright or trade secret laws.

152 (14)~~(12)~~ "Public records" means all documents, papers,
 153 letters, maps, books, tapes, photographs, films, sound
 154 recordings, data processing software, or other material,
 155 regardless of the physical form, characteristics, or means of
 156 transmission, made or received pursuant to law or ordinance or

157 in connection with the transaction of official business by any
 158 agency.

159 (15)~~(13)~~ "Redact" means to conceal from a copy of an
 160 original public record, or to conceal from an electronic image
 161 that is available for public viewing, that portion of the record
 162 containing exempt or confidential information.

163 (16)~~(14)~~ "Sensitive," as it relates to ~~for purposes of~~
 164 ~~defining~~ agency-produced software ~~that is sensitive~~, means only
 165 those portions of the ~~data processing~~ software, including the
 166 specifications and documentation, which are used to:

167 (a) Collect, process, store, and retrieve information that
 168 is exempt from s. 119.07(1);

169 (b) Collect, process, store, and retrieve financial
 170 management information of the agency, such as payroll and
 171 accounting records; or

172 (c) Control and direct access authorizations and security
 173 measures for automated systems.

174 Section 2. Present paragraphs (c) through (i) of
 175 subsection (1) of section 119.07, Florida Statutes, are
 176 redesignated as paragraphs (d) through (j), respectively,
 177 present paragraph (i) of that subsection is amended, a new
 178 paragraph (c) is added to that subsection, and paragraph (d) of
 179 subsection (4) of that section is amended, to read:

180 119.07 Inspection and copying of records; photographing
 181 public records; fees; exemptions.—

182 (1)

183 (c) A public records request need not be made in writing
 184 unless otherwise required by law. If a written request is
 185 required by law, the custodian of public records must provide
 186 the statutory citation to the requester.

187 (j)~~(i)~~ The absence of a civil action instituted for the
 188 purpose stated in paragraph (h) ~~(g)~~ does not relieve the
 189 custodian of public records of the duty to maintain the record
 190 as a public record if the record is in fact a public record
 191 subject to public inspection and copying under this subsection
 192 and does not otherwise excuse or exonerate the custodian of
 193 public records from any unauthorized or unlawful disposition of
 194 such record.

195 (4) The custodian of public records shall furnish a copy
 196 or a certified copy of the record upon payment of the fee
 197 prescribed by law. If a fee is not prescribed by law, the
 198 following fees are authorized:

199 (d) If the nature or volume of public records requested to
 200 be inspected or copied pursuant to this subsection is such as to
 201 require extensive use of information technology resources or
 202 extensive clerical or supervisory assistance by personnel of the
 203 agency involved, or both, the agency may charge, in addition to
 204 the actual cost of duplication, a reasonable special service
 205 charge, ~~which shall be reasonable and shall be based on the~~
 206 actual cost incurred or attributable to the agency for such
 207 extensive use of information technology resources or the labor
 208 cost of the personnel providing the service that is actually

209 incurred by the agency or attributable to the agency for the
 210 clerical and supervisory assistance required, or both. The cost
 211 of clerical or supervisory assistance may not exceed the rate of
 212 the lowest paid personnel who the agency reasonably determines
 213 is capable of providing such clerical or supervisory assistance,
 214 and excludes employer-paid health insurance premiums and other
 215 employer-paid benefits.

216 Section 3. Subsection (2) of section 119.0701, Florida
 217 Statutes, is amended to read:

218 119.0701 Contracts; public records.-

219 (2) In addition to other contract requirements provided by
 220 law, each ~~public agency~~ contract between a public agency and a
 221 contractor for services must include a provision that requires
 222 the contractor to comply with public records laws, specifically
 223 to:

224 (a) Keep and maintain public records that ordinarily and
 225 necessarily would be required by the public agency in order to
 226 perform the service.

227 (b) Provide the public with access to public records on
 228 the same terms and conditions that the public agency would
 229 provide the records and at a cost that does not exceed the cost
 230 provided in this chapter or as otherwise provided by law.

231 (c) Ensure that public records that are exempt or
 232 confidential and exempt from public records disclosure
 233 requirements are not disclosed except as authorized by law.

234 (d) Meet all requirements for retaining public records and

235 transfer, at no cost, to the public agency all public records in
 236 possession of the contractor upon termination of the contract
 237 and destroy any duplicate public records that are exempt or
 238 confidential and exempt from public records disclosure
 239 requirements. All records stored electronically must be provided
 240 to the public agency in a format that is compatible with the
 241 information technology systems of the public agency.

242 (e) Notify the public agency's custodian of public records
 243 before denying a request to inspect or copy a record held by the
 244 contractor. This requirement does not impose any additional duty
 245 on the public agency.

246 (f) Notify the public agency if the contractor is served
 247 with a civil action to enforce the provisions of this chapter.
 248 This requirement does not impose any additional duty on the
 249 public agency.

250 Section 4. Section 119.0702, Florida Statutes, is created
 251 to read:

252 119.0702 Training of agency staff.—Each agency must
 253 provide training on the requirements of this chapter to each of
 254 its employees. The training provided shall be commensurate with
 255 an employee's duties.

256 Section 5. Section 119.12, Florida Statutes, is amended to
 257 read:

258 119.12 Attorney ~~Attorney's~~ fees.—

259 (1) If a civil action is filed against an agency to
 260 enforce the provisions of this chapter and if the court

261 determines that such agency unlawfully refused to permit a
 262 public record to be inspected or copied, the court shall assess
 263 and award~~7~~ against the ~~agency~~ responsible agency~~7~~ the reasonable
 264 costs of enforcement ~~including reasonable attorneys' fees~~.

265 (2) The reasonable costs of enforcement include, but are
 266 not limited to, reasonable attorney fees, including those fees
 267 incurred in litigating entitlement to, and the determination or
 268 quantification of, attorney fees for the underlying civil
 269 action. At a minimum, the court shall award the reasonable costs
 270 of enforcement for those counts upon which the plaintiff
 271 prevailed.

272 (3) Notwithstanding s. 284.30, a party filing an action
 273 against the state or any of its agencies covered by the State
 274 Risk Management Trust Fund to enforce the provisions of this
 275 chapter is not required to serve a copy of the pleading claiming
 276 attorney fees on the Department of Financial Services. In order
 277 to have attorney fees paid by the State Risk Management Trust
 278 Fund, the agency against whom the action is brought shall
 279 provide notice to the department of the pleading claiming
 280 attorney fees upon receipt. The department may participate with
 281 the agency in the defense of the suit and any appeal thereof
 282 with respect to the attorney fees.

283 Section 6. Subsection (4) of section 286.011, Florida
 284 Statutes, is amended to read:

285 286.011 Public meetings and records; public inspection;
 286 criminal and civil penalties.—

287 (4) (a) Whenever an action has been filed against a any
 288 board or commission of a any state agency or authority or an any
 289 agency or authority of a any county, municipal corporation, or
 290 political subdivision to enforce the provisions of this section
 291 or to invalidate the actions of any such board, commission,
 292 agency, or authority, which action was taken in violation of
 293 this section, and the court determines that the defendant or
 294 defendants to such action acted in violation of this section,
 295 the court shall assess a reasonable attorney ~~attorney's~~ fee
 296 against such agency, and may assess a reasonable attorney
 297 ~~attorney's~~ fee against the individual filing such an action if
 298 the court finds it was filed in bad faith or was frivolous. Any
 299 fees so assessed may be assessed against the individual member
 300 or members of such board or commission; provided, that in any
 301 case where the board or commission seeks the advice of its
 302 attorney and such advice is followed, ~~no~~ such fees may not shall
 303 be assessed against the individual member or members of the
 304 board or commission. However, this subsection does shall not
 305 apply to a state attorney or his or her duly authorized
 306 assistants or any officer charged with enforcing the provisions
 307 of this section.

308 (b) Notwithstanding s. 284.30, a party filing an action to
 309 enforce the provisions of this section against a board or
 310 commission of a state agency is not required to serve a copy of
 311 the pleading claiming attorney fees on the Department of
 312 Financial Services. In order to have attorney fees paid by the

313 State Risk Management Trust Fund, the board or commission
 314 against whom the action is brought shall provide notice to the
 315 department of the pleading claiming attorney fees upon receipt.
 316 The department may participate with the board or commission in
 317 the defense of the suit and any appeal thereof with respect to
 318 the attorney fees.

319 Section 7. Subsection (1) of section 257.35, Florida
 320 Statutes, is amended to read:

321 257.35 Florida State Archives.-

322 (1) There is created within the Division of Library and
 323 Information Services of the Department of State the Florida
 324 State Archives for the preservation of those public records, as
 325 defined in s. 119.011 ~~s. 119.011(12)~~, manuscripts, and other
 326 archival material that have been determined by the division to
 327 have sufficient historical or other value to warrant their
 328 continued preservation and have been accepted by the division
 329 for deposit in its custody. It is the duty and responsibility of
 330 the division to:

331 (a) Organize and administer the Florida State Archives.

332 (b) Preserve and administer any such records ~~as shall be~~
 333 transferred to its custody; accept, arrange, and preserve them,
 334 according to approved archival practices; and allow ~~permit~~ them,
 335 at reasonable times and under the supervision of the division,
 336 to be inspected and copied.

337 (c) Assist the records and information management program
 338 in the determination of retention values for records.

339 (d) Cooperate with and assist, insofar as practicable,
 340 state institutions, departments, agencies, counties,
 341 municipalities, and individuals engaged in activities in the
 342 field of state archives, manuscripts, and history and accept
 343 from any person any paper, book, record, or similar material
 344 that ~~which~~ in the judgment of the division warrants preservation
 345 in the state archives.

346 (e) Provide a public research room where, under rules
 347 established by the division, the materials in the state archives
 348 may be studied.

349 (f) Conduct, promote, and encourage research in Florida
 350 history, government, and culture and maintain a program of
 351 information, assistance, coordination, and guidance for public
 352 officials, educational institutions, libraries, the scholarly
 353 community, and the general public engaged in such research.

354 (g) Cooperate with and, ~~insofar~~ as practicable, assist
 355 agencies, libraries, institutions, and individuals in projects
 356 designed to preserve original source materials relating to
 357 Florida history, government, and culture and prepare and publish
 358 handbooks, guides, indexes, and other literature directed toward
 359 encouraging the preservation and use of the state's documentary
 360 resources.

361 (h) Encourage and initiate efforts to preserve, collect,
 362 process, transcribe, index, and research the oral history of
 363 Florida government.

364 (i) Assist and cooperate with the records and information

365 management program in the training and information program
 366 described in s. 257.36(1)(g).

367 Section 8. Subsection (9) of section 383.402, Florida
 368 Statutes, is amended to read:

369 383.402 Child abuse death review; State Child Abuse Death
 370 Review Committee; local child abuse death review committees.—

371 (9) The State Child Abuse Death Review Committee or a
 372 local committee shall have access to all information of a law
 373 enforcement agency which is not the subject of an active
 374 investigation and which pertains to the review of the death of a
 375 child. A committee may not disclose ~~any~~ information that is not
 376 subject to public disclosure by the law enforcement agency, and
 377 active criminal intelligence information or criminal
 378 investigative information, as defined in s. 119.011 ~~s.~~
 379 ~~119.011(3)~~, may not be made available for review or access under
 380 this section.

381 Section 9. Subsection (5) of section 497.140, Florida
 382 Statutes, is amended to read:

383 497.140 Fees.—

384 (5) The department shall charge a fee not to exceed \$25
 385 for the certification of a public record. The fee shall be
 386 determined by rule of the department. The department shall
 387 assess a fee for duplication of a public record as provided in
 388 s. 119.07(4) ~~s. 119.07(1)(a) and (c)~~.

389 Section 10. Paragraph (b) of subsection (4) of section
 390 627.311, Florida Statutes, is amended to read:

391 627.311 Joint underwriters and joint reinsurers; public
 392 records and public meetings exemptions.-

393 (4) The Florida Automobile Joint Underwriting Association:

394 (b) Shall keep portions of association meetings during
 395 which confidential and exempt underwriting files or confidential
 396 and exempt claims files are discussed exempt from the provisions
 397 of s. 286.011 and s. 24(b), Art. I of the State Constitution.
 398 All closed portions of association meetings shall be recorded by
 399 a court reporter. The court reporter shall record the times of
 400 commencement and termination of the meeting, all discussion and
 401 proceedings, the names of all persons present at any time, and
 402 the names of all persons speaking. No portion of any closed
 403 meeting shall be off the record. Subject to the provisions of
 404 this paragraph and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f)~~, the
 405 court reporter's notes of any closed meeting shall be retained
 406 by the association for a minimum of 5 years. A copy of the
 407 transcript, less any confidential and exempt information, of any
 408 closed meeting during which confidential and exempt claims files
 409 are discussed shall become public as to individual claims files
 410 after settlement of that claim.

411 Section 11. Paragraph (x) of subsection (6) of section
 412 627.351, Florida Statutes, is amended to read:

413 627.351 Insurance risk apportionment plans.-

414 (6) CITIZENS PROPERTY INSURANCE CORPORATION.-

415 (x)1. The following records of the corporation are
 416 confidential and exempt from ~~the provisions of s. 119.07(1) and~~

417 s. 24(a), Art. I of the State Constitution:

418 a. Underwriting files, except that a policyholder or an
 419 applicant shall have access to his or her own underwriting
 420 files. Confidential and exempt underwriting file records may
 421 also be released to other governmental agencies upon written
 422 request and demonstration of need; such records held by the
 423 receiving agency remain confidential and exempt as provided
 424 herein.

425 b. Claims files, until termination of all litigation and
 426 settlement of all claims arising out of the same incident,
 427 although portions of the claims files may remain exempt, as
 428 otherwise provided by law. Confidential and exempt claims file
 429 records may be released to other governmental agencies upon
 430 written request and demonstration of need; such records held by
 431 the receiving agency remain confidential and exempt as provided
 432 herein.

433 c. Records obtained or generated by an internal auditor
 434 pursuant to a routine audit, until the audit is completed, or if
 435 the audit is conducted as part of an investigation, until the
 436 investigation is closed or ceases to be active. An investigation
 437 is considered "active" while the investigation is being
 438 conducted with a reasonable, good faith belief that it could
 439 lead to the filing of administrative, civil, or criminal
 440 proceedings.

441 d. Matters reasonably encompassed in privileged attorney-
 442 client communications.

443 e. Proprietary information licensed to the corporation
 444 under contract and the contract provides for the confidentiality
 445 of such proprietary information.

446 f. All information relating to the medical condition or
 447 medical status of a corporation employee which is not relevant
 448 to the employee's capacity to perform his or her duties, except
 449 as otherwise provided in this paragraph. Information that is
 450 exempt shall include, but is not limited to, information
 451 relating to workers' compensation, insurance benefits, and
 452 retirement or disability benefits.

453 g. Upon an employee's entrance into the employee
 454 assistance program, a program to assist any employee who has a
 455 behavioral or medical disorder, substance abuse problem, or
 456 emotional difficulty which affects the employee's job
 457 performance, all records relative to that participation shall be
 458 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
 459 s. 24(a), Art. I of the State Constitution, except as otherwise
 460 provided in s. 112.0455(11).

461 h. Information relating to negotiations for financing,
 462 reinsurance, depopulation, or contractual services, until the
 463 conclusion of the negotiations.

464 i. Minutes of closed meetings regarding underwriting
 465 files, and minutes of closed meetings regarding an open claims
 466 file until termination of all litigation and settlement of all
 467 claims with regard to that claim, except that information
 468 otherwise confidential or exempt by law shall be redacted.

469 2. If an authorized insurer is considering underwriting a
 470 risk insured by the corporation, relevant underwriting files and
 471 confidential claims files may be released to the insurer
 472 provided the insurer agrees in writing, notarized and under
 473 oath, to maintain the confidentiality of such files. If a file
 474 is transferred to an insurer, that file is no longer a public
 475 record because it is not held by an agency subject to the
 476 provisions of the public records law. Underwriting files and
 477 confidential claims files may also be released to staff and the
 478 board of governors of the market assistance plan established
 479 pursuant to s. 627.3515, who must retain the confidentiality of
 480 such files, except such files may be released to authorized
 481 insurers that are considering assuming the risks to which the
 482 files apply, provided the insurer agrees in writing, notarized
 483 and under oath, to maintain the confidentiality of such files.
 484 Finally, the corporation or the board or staff of the market
 485 assistance plan may make the following information obtained from
 486 underwriting files and confidential claims files available to
 487 licensed general lines insurance agents: name, address, and
 488 telephone number of the residential property owner or insured;
 489 location of the risk; rating information; loss history; and
 490 policy type. The receiving licensed general lines insurance
 491 agent must retain the confidentiality of the information
 492 received.

493 3. A policyholder who has filed suit against the
 494 corporation has the right to discover the contents of his or her

495 own claims file to the same extent that discovery of such
 496 contents would be available from a private insurer in litigation
 497 as provided by the Florida Rules of Civil Procedure, the Florida
 498 Evidence Code, and other applicable law. Pursuant to subpoena, a
 499 third party has the right to discover the contents of an
 500 insured's or applicant's underwriting or claims file to the same
 501 extent that discovery of such contents would be available from a
 502 private insurer by subpoena as provided by the Florida Rules of
 503 Civil Procedure, the Florida Evidence Code, and other applicable
 504 law, and subject to any confidentiality protections requested by
 505 the corporation and agreed to by the seeking party or ordered by
 506 the court. The corporation may release confidential underwriting
 507 and claims file contents and information as it deems necessary
 508 and appropriate to underwrite or service insurance policies and
 509 claims, subject to any confidentiality protections deemed
 510 necessary and appropriate by the corporation.

511 4. Portions of meetings of the corporation are exempt from
 512 ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State
 513 Constitution wherein confidential underwriting files or
 514 confidential open claims files are discussed. All portions of
 515 corporation meetings which are closed to the public shall be
 516 recorded by a court reporter. The court reporter shall record
 517 the times of commencement and termination of the meeting, all
 518 discussion and proceedings, the names of all persons present at
 519 any time, and the names of all persons speaking. No portion of
 520 any closed meeting shall be off the record. Subject to the

521 provisions hereof and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(d)-(f)~~,
 522 the court reporter's notes of any closed meeting shall be
 523 retained by the corporation for a minimum of 5 years. A copy of
 524 the transcript, less any exempt matters, of any closed meeting
 525 wherein claims are discussed shall become public as to
 526 individual claims after settlement of the claim.

527 Section 12. Paragraph (b) of subsection (9) of section
 528 943.031, Florida Statutes, is amended to read:

529 943.031 Florida Violent Crime and Drug Control Council.—

530 (9) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL MEETINGS
 531 AND RECORDS.—

532 (b) The Florida Violent Crime and Drug Control Council is
 533 ~~shall be~~ considered a "criminal justice agency," as that term is
 534 defined in s. 119.011 within the definition of s. 119.011(4).

535 Section 13. Subsection (7) of section 943.0313, Florida
 536 Statutes, is amended to read:

537 943.0313 Domestic Security Oversight Council.—The
 538 Legislature finds that there exists a need to provide executive
 539 direction and leadership with respect to terrorism prevention,
 540 preparation, protection, response, and recovery efforts by state
 541 and local agencies in this state. In recognition of this need,
 542 the Domestic Security Oversight Council is hereby created. The
 543 council shall serve as an advisory council pursuant to s.
 544 20.03(7) to provide guidance to the state's regional domestic
 545 security task forces and other domestic security working groups
 546 and to make recommendations to the Governor and the Legislature

PCS for HB 1151

ORIGINAL

2014


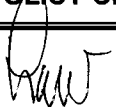
547 regarding the expenditure of funds and allocation of resources
 548 related to counter-terrorism and domestic security efforts.

549 (7) AGENCY DESIGNATION.—For purposes of this section, the
 550 Domestic Security Oversight Council is ~~shall be~~ considered a
 551 criminal justice agency, as that term is defined in s. 119.011
 552 ~~within the definition of s. 119.011(4).~~

553 Section 14. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1153 Citizen Support and Direct-Support Organizations
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		 Stramski	Williamson 

SUMMARY ANALYSIS

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. While CSOs and DSOs are subject to audits by the Auditor General and are subject to public records requirements, there is no single requirement for CSO and DSO reporting imposed by law.

There are many statutes that create or authorize the establishment of CSOs and DSOs. However, there is no formal review process in law to determine whether a CSO or DSO was established pursuant to such authorization, or whether the rationale for the authorization remains applicable.

The bill creates new reporting and transparency requirements for each CSO and DSO that is created or authorized pursuant to law or executive order and created, approved, or administered by a state agency. The bill requires each CSO and DSO to report information related to its organization, mission, and finances to the agency it was created to support. A contract between an agency and a CSO or DSO must require the CSO or DSO to provide such information to the agency, and must require the agency to terminate the contract if the CSO or DSO fails to provide the information for two consecutive years. The bill requires each agency receiving such information from a CSO or DSO to make the information available on its website, and to provide a link to the CSO's or DSO's website if such a website exists.

The bill requires each agency to annually report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability the information provided to the agency by the CSO or DSO, and to make a recommendation on whether to continue, terminate, or modify the agency's association with the CSO or DSO.

The bill provides that a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. The bill directs the Legislature to review CSOs and DSOs in existence on the effective date of the bill by July 1, 2019.

The bill provides for the future repeal of certain sections of law authorizing CSOs and DSOs unless those sections are reviewed and saved from repeal by the Legislature.

The bill may have an indeterminate fiscal impact on state government. The bill does not appear to have a fiscal impact on local government. See FISCAL COMMENTS.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. While CSOs and DSOs are subject to audits by the Auditor General¹ and are subject to public records requirements, there is no single requirement for CSO and DSO reporting imposed by law.

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, community college, or district school board, to provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency. Additionally, 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 of the CSO's or DSO's accounts and records.² The Auditor General is authorized to require and receive any records from the CSO or DSO, or from its independent auditor.³

Notwithstanding the above, CSOs and DSOs for the Department of Environmental Protection (DEP) or the Department of Agriculture and Consumer Services that are not for profit and that have annual expenditures of less than \$300,000 are not required to have an independent audit. These departments are required to establish accounting and financial management guidelines for the CSOs and DSOs under their jurisdiction, and must annually conduct operational and financial reviews of a selected number of CSOs or DSOs that fall below the \$300,000 threshold.⁴

There are many statutes that create or authorize the establishment of CSOs and DSOs. However, there is no formal review process in law to determine whether a CSO or DSO was established pursuant to such authorization, or whether the rationale for the authorization remains applicable.

Statutes that create or authorize the establishment of CSOs and DSOs include in part the following:

- Section 14.29(9), F.S., assigns the Florida Commission on Community Service to the Executive Office of the Governor to serve as an advisory board on matters relating to volunteerism and community service. Pursuant to the law, the commission may establish a DSO to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of community service programs.
- Section 16.616, F.S., requires the Department of Legal Affairs to establish a DSO that supports the Council on the Social Status of Black Men and Boys and develops funding initiatives.
- Section 20.2551, F.S., specifies the organizational requirements and duties for a DSO to support DEP or individual units of DEP.

¹ Section 11.45(3), F.S.

² *Id.*

³ Section 11.45(3)(d), F.S.

⁴ Section 215.981, F.S.

- Section 39.0011, F.S., authorizes the Office of Adoption and Child Protection in the Executive Office of the Governor to establish a DSO to assist the state in carrying out its purposes and responsibilities regarding the promotion of adoption, support of adoptive families, and prevention of child abuse.
- Section 39.8298, F.S., authorizes the Statewide Guardian Ad Litem Office, which has oversight responsibilities for and provides technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits, to create a DSO tasked in part with raising funds and making expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office.
- Section 250.115, F.S., authorizes the creation of a DSO for the Department of Military Affairs tasked in part with raising funds and making expenditures to or for the direct or indirect benefit of the Department of Military Affairs. Section 250.116, F.S., specifies that the DSO may provide assistance in the operation of the Soldiers and Airmen Assistance Program, which provides financial assistance and services to eligible servicemembers of the Florida National Guard and eligible members of their families.
- Section 257.43, F.S., authorizes the Division of Library and Information Services of the Department of State to support the establishment of a CSO to provide assistance, funding, and promotional support for the library, archives, and records management programs of the division.
- Section 258.015, F.S., specifies the organizational requirements and duties of a CSO to support the state park system or individual units of the state park system.
- Section 259.10521, F.S., specifies the organizational requirements and duties of a CSO to support the Babcock Ranch preserve, with approval of the Fish and Wildlife Conservation Commission and the Florida Forest Service.
- Section 265.703, F.S., authorizes the Division of Cultural Affairs of the Department of State to support the establishment of CSOs to provide assistance, funding, and promotional support for the cultural, arts, historical, and museum programs of the division.
- Section 267.17, F.S., authorizes the Division of Historical Resources of the Department of State to support the establishment of CSOs to provide assistance, funding, and promotional support for the archaeology, museum, folklife, and historic preservation programs of the division.
- Section 288.1226, F.S., establishes the Florida Tourism Industry Marketing Corporation as a DSO of Enterprise Florida, Inc., intended to perform duties necessary to carry out the four-year marketing plan of Enterprise Florida, and to support state programs that relate to the statewide, national, and international promotion and marketing of tourism. This DSO staffs the Division of Tourism Marketing in Enterprise Florida.⁵
- Section 288.809, F.S., establishes the Florida Intergovernmental Relations Foundation as a DSO organized and operated exclusively to solicit, receive, hold, invest, and administer property and, subject to the approval of the state protocol officer, to make expenditures to or for the promotion of intergovernmental relations programs.
- Section 292.055, F.S., authorizes the Department of Veterans' Affairs to establish a DSO to provide assistance, funding, and support for the department, the veterans of the state, and congressionally chartered veteran service organizations having subdivisions that are incorporated in this state.

⁵ Section 288.92, F.S., authorizes Enterprise Florida, Inc., to create and dissolve divisions as necessary to carry out its mission. At a minimum, Enterprise Florida, Inc., must have divisions related to certain areas, including Tourism Marketing. Section 288.923, F.S., also establishes the division of Tourism Marketing to be staffed by the DSO.

- Section 379.223, F.S., permits the Fish and Wildlife Conservation Commission to authorize the establishment of CSOs to provide assistance, funding, and promotional support for the programs of the commission.
- Section 413.0111, F.S., authorizes the Division of Blind Services to incorporate a DSO to conduct programs and activities, initiate developmental projects, raise and administer funds or property, and make expenditures for the direct or indirect benefit of the state and for blind persons in Florida.
- Section 413.615, F.S., authorizes the Florida Endowment Foundation for Vocational Rehabilitation as a DSO of the Division of Vocational Rehabilitation within the Department of Education to encourage public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.
- Section 430.82, F.S., permits the Department of Elderly Affairs to establish a DSO to provide assistance, funding, and support for the department in carrying out its mission.
- Section 570.903, F.S., permits the Department of Agriculture and Consumer Services to authorize the establishment of DSOs to provide assistance, funding, and promotional support for the museums and other programs of the department.
- Section 570.9135, F.S., creates the Florida Beef Council, Inc., as a DSO of the Department of Agriculture and Consumer Services to conduct programs of promotion, research, and consumer or industry information designed to strengthen the cattle industry's market position in the state. The DSO may impose an assessment of up to \$1 on each head of cattle sold in the state in order to fund its activities.
- Section 626.9895, F.S., authorizes the Division of Insurance Fraud of the Department of Financial Services to establish a DSO, to be known as the Automobile Insurance Fraud Strike Force, whose sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud.
- Section 683.231, F.S., authorizes the Department of Law Enforcement to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day, designated each year in remembrance of Florida's past and present missing children and in recognition of continued state efforts to protect the safety of children through prevention, education, and community involvement.⁶
- Section 744.7082, F.S., specifies the organizational requirements for a DSO to support the Statewide Public Guardianship Office within the Department of Elderly Affairs.
- Section 893.055(11), F.S., authorizes the Department of Health to establish a DSO to provide assistance, funding, and promotional support for the activities of the prescription drug monitoring program.
- Section 944.802, F.S., specifies the organizational requirements and duties for a DSO to support the Department of Corrections or individual units of the state correctional system.
- Section 960.002, F.S., permits the Governor to authorize a DSO to assist in addressing the needs of victims of adult and juvenile crime. The DSO must operate under a contract with the Executive Office of the Governor.

⁶ Section 683.23, F.S.

- Section 985.672, F.S., specifies the organizational requirements and duties for a DSO to support the Department of Juvenile Justice or the juvenile justice system operated by a county commission or a circuit board.
- Section 1009.983, F.S., authorizes the Florida Prepaid College Board, which administers the Florida College Savings Program, to establish a DSO to make expenditures to or for the benefit of the board, and to administer the Florida Prepaid Tuition Scholarship Program, which provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.⁷

Effect of Bill

The bill creates new reporting and transparency requirements for each CSO and DSO that is created or authorized pursuant to law or executive order and created, approved, or administered by a state agency. The bill requires each CSO and DSO to report information related to its organization, mission, and finances to the agency it was created to support. Specifically, the CSO or DSO must provide:

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

A contract between an agency and a CSO or DSO entered into on or after July 1, 2014, must require the CSO or DSO to submit the information that must be provided to an agency pursuant to this bill. The contract also must require the agency to terminate the contract if a CSO or DSO fails to submit the required information for two consecutive years. Each agency receiving such information from a CSO or DSO must make the information available on its website, and must provide a link to the CSO's or DSO's website if such a website exists.

The bill requires each agency to report the information provided to the agency by the CSO or DSO by August 30 of each year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability, and to make a recommendation on whether to continue, terminate, or modify the agency's association with the CSO or DSO.

The bill provides that a law creating or authorizing the creation of a CSO or DSO must state that the creation authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. The bill directs the Legislature to review CSOs and DSOs in existence on the effective date of the bill by July 1, 2019.

The bill provides for the future repeal of certain sections of law establishing, authorizing, or permitting the creation of CSOs or DSOs, or specifying requirements for and duties of a CSO or DSO. The bill does not provide for future repeal of all sections pertaining to a CSO or DSO. For example, the bill excludes university DSOs and the CSO authorized to support the Florida Historic Capitol.

⁷ Section 1009.984, F.S.

The bill provides for repeal of the sections provided in the following chart, unless reviewed and saved from repeal by the Legislature:

Bill Section	Statute	Organization	Repealed October 1 of:
5	39.0011	Office of Adoption and Child Protection DSO (Executive Office of the Governor)	2017
7	250.115	Department of Military Affairs DSO	2017
16	292.055	Department of Veterans' Affairs DSO	2017
18	413.0111	Blind Services DSO	2017
19	413.615	Florida Endowment for Vocational Rehabilitation (DSO of Department of Education)	2017
20	430.82	Department of Elderly Affairs DSO	2017
26	893.055	Prescription drug monitoring program DSO	2017
30	1009.983	Florida Prepaid College Board DSO	2017
1	14.29(9)	Florida Commission on Community Service DSO	2018
2	16.616	Council on Social Status of Black Men and Boys DSO	2018
6	39.8298	Guardian Ad Litem DSO	2018
24	683.231	Florida Missing Children's Day CSO	2018
25	744.7082	Statewide Public Guardianship Office DSO	2018
27	944.802	Department of Corrections DSO	2018
28	960.002	DSO to assist victims of crime	2018
29	985.672	Department of Juvenile Justice DSO	2018
4	20.2551	Department of Environmental Protection CSO	2019
8	257.43	Division of Library and Information Services of the Department of State CSO	2019
9	258.015	Division of Recreation and Parks of the Department of Environmental Protection CSOs	2019
10	259.10521	Babcock Ranch CSO	2019
11	265.703	Department of State CSO	2019
12	267.17	Division of Historical Resources of the Department of State CSOs	2019
13	288.1226	Florida Tourism Industry Marketing Corporation (DSO of Enterprise Florida, Inc.) and the Division of Tourism Marketing ⁸	2019
14	288.809	Florida Intergovernmental Relations Foundation (DSO of the Executive Office of the Governor)	2019
15	288.923	Duties of the Division of Tourism Marketing	2019
17	379.223	Fish and Wildlife Conservation Commission CSOs	2019
21	570.903	Department of Agriculture and Consumer Services DSO	2019
22	570.9135	Florida Beef Council (DSO of the Department of Agriculture and Consumer Services)	2019
23	626.9895	Motor vehicle insurance fraud DSO	2019
			TOTAL: 29

B. SECTION DIRECTORY:

Section 1 amends s. 14.29, F.S.; providing for future review and repeal of provisions authorizing the Florida Commission on Community Service to establish and operate a DSO.

Section 2 amends s. 16.616, F.S.; providing for future review and repeal of the DSO established within the Department of Legal Affairs.

⁸ See FN 5.

Section 3 creates s. 20.058, F.S.; requiring CSOs and DSOs to annually submit certain information to the agency the organization was created to support; requiring each agency receiving such information to post submissions on the agency's website; requiring each agency receiving such information to annually submit a report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability; providing report requirements; requiring that a contract entered into between an agency and a CSO or DSO on or after July 1, 2014, contain certain provisions; requiring that each CSO or DSO created or authorized by law be subject to legislative review and repeal; and requiring that CSOs and DSOs in existence as of a certain date be subject to future legislative review.

Section 4 amends s. 20.2551, F.S.; providing for future review and repeal of the CSO established within DEP.

Section 5 amends s. 39.0011, F.S.; providing for future review and repeal of the DSO of the Office of Adoption and Child Protection.

Section 6 amends s. 39.8298, F.S.; providing for future review and repeal of the Statewide Guardian Ad Litem Office's authorization to create a DSO.

Section 7 amends s. 250.115, F.S.; providing for future review and repeal of the DSO of the Department of Military Affairs.

Section 8 amends s. 257.43, F.S.; providing for future review and repeal of the CSO of the Division of Library and Information Services of the Department of State.

Section 9 amends s. 258.015, F.S.; providing for future review and repeal of provisions relating to CSOs under the Division of Recreation and Parks of DEP.

Section 10 amends s. 259.10521, F.S.; providing for future review and repeal of the CSO benefitting the Babcock Ranch Preserve.

Section 11 amends s. 265.703, F.S.; providing for future review and repeal of the CSO of the Division of Cultural Affairs of the Department of State.

Section 12 amends s. 267.17, F.S.; providing for future review and repeal of the CSO of the Division of Historical Resources of the Department of State.

Section 13 amends s. 288.1226, F.S.; providing for future review and repeal of the Florida Tourism Industry Marketing Corporation.

Section 14 amends s. 288.809, F.S.; providing for future review and repeal of the Florida Intergovernmental Relations Foundation.

Section 15 amends s. 288.923, F.S.; providing for future review and repeal of the Division of Tourism Marketing of Enterprise Florida, Inc.

Section 16 amends s. 292.055, F.S.; providing for future review and repeal of the DSO of the Department of Veterans' Affairs.

Section 17 amends s. 379.223, F.S.; providing for future review and repeal of the Fish and Wildlife Conservation Commission's authorization to establish CSOs.

Section 18 amends s. 413.0111, F.S.; providing for future review and repeal of the DSO of the Division of Blind Services of the Department of Education.

Section 19 amends s. 413.615, F.S.; providing for future review and repeal of the Florida Endowment Foundation for Vocational Rehabilitation.

Section 20 amends s. 430.82, F.S.; providing for future review and repeal of the Department of Elderly Affairs' authority to establish a DSO.

Section 21 amends s. 570.903, F.S.; providing for future review and repeal of the Department of Agriculture and Consumer Services' authority to establish a DSO.

Section 22 amends s. 570.9135, F.S.; providing for future review and repeal of Florida Beef Council, Inc.

Section 23 amends s. 626.9895, F.S.; providing for future review and repeal of the Division of Insurance Fraud of the Department of Financial Services' authority to establish a DSO.

Section 24 amends s. 683.231, F.S.; providing for future review and repeal of the Department of Law Enforcement's authority to establish a CSO for Florida Missing Children's Day.

Section 25 amends s. 744.7082, F.S.; providing for future review and repeal of the DSO supporting the Statewide Public Guardianship Office.

Section 26 amends s. 893.055, F.S.; providing for future review and repeal of the Department of Health's authority to establish a DSO supporting the prescription drug monitoring program.

Section 27 amends s. 944.802, F.S.; providing for future review and repeal of the Department of Corrections' authority to establish a DSO.

Section 28 amends s. 960.002, F.S.; providing for future review and repeal of the Governor's authority to authorize a DSO to assist victims of adult and juvenile crime.

Section 29 amends s. 985.672, F.S.; providing for future review and repeal of the Department of Juvenile Justice's DSO.

Section 30 amends s. 1009.983, F.S.; providing for future review and repeal of the Florida Prepaid College Board's authority to establish a DSO.

Section 31 provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an indeterminate fiscal impact to CSOs and DSOs caused by the reporting requirements in this bill.

D. FISCAL COMMENTS:

If the bill results in the repeal of CSOs or DSOs, the state may experience indeterminate negative and positive fiscal impacts.

An indeterminate negative fiscal impact may result from reduced revenues available to certain public entities that may receive support from CSOs or DSOs.⁹

The bill requires agencies to prepare and submit reports relating to information provided to them by CSOs and DSOs, and to make such information available on agency websites. These reporting and website modification requirements may result in a minimal negative fiscal impact on agencies.

An indeterminate positive fiscal impact on the state might result following the repeal of CSOs or DSOs if the state was required to provide financial support to such CSOs or DSOs, for example if the state was required to provide for reimbursement of per diem and travel reimbursements for the board members of such CSOs and DSOs.¹⁰

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:

None.

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: Reporting Requirements for CSOs and DSOs

The bill requires each CSO and DSO to annually submit to the agency that the organization was created to support a copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990). However, not all CSOs or DSOs are required by law to have federal tax exempt status.¹¹

⁹ The Department of Elderly Affairs has indicated that if this bill results in the repeal of the authority for the Foundation for Indigent Guardianship, Inc., a DSO, the department would no longer receive support for its public guardianship programs through the State of Florida Public Guardianship Pooled Special Needs Trust. Agency Bill Analysis for HB 1153 by the Department of Elderly Affairs, March 5, 2014 (on file with the Government Operations Subcommittee).

¹⁰ See for example s. 14.29(6), F.S.

¹¹ See for example s. 744.7082, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to citizen support and direct-support
 3 organizations; amending s. 14.29, F.S.; providing for
 4 future review and repeal of provisions authorizing the
 5 Florida Commission on Community Service to establish
 6 and operate a direct-support organization; amending s.
 7 16.616, F.S.; providing for future review and repeal
 8 of the direct-support organization established within
 9 the Department of Legal Affairs; creating s. 20.058,
 10 F.S.; requiring citizen support and direct-support
 11 organizations to annually submit certain information
 12 to the agency the organization was created to support;
 13 requiring each agency receiving such information to
 14 post submissions on the agency's website; requiring
 15 each agency receiving such information to annually
 16 submit a report to the Governor, the Legislature, and
 17 the Office of Program Policy Analysis and Government
 18 Accountability; providing report requirements;
 19 requiring that a contract entered into between an
 20 agency and a citizen support organization or direct-
 21 support organization on or after July 1, 2014, contain
 22 certain provisions; requiring that each citizen
 23 support organization or direct-support organization
 24 created or authorized by law be subject to legislative
 25 review and repeal; requiring that citizen support
 26 organizations or direct-support organizations in

27 existence as of a certain date be subject to future
 28 legislative review; amending s. 20.2551, F.S.;

29 providing for future review and repeal of the citizen
 30 support organization established within the Department
 31 of Environmental Protection; amending s. 39.0011,
 32 F.S.; providing for future review and repeal of the
 33 direct-support organization of the Office of Adoption
 34 and Child Protection; amending s. 39.8298, F.S.;

35 providing for future review and repeal of the
 36 Statewide Guardian Ad Litem Office's authorization to
 37 create a direct-support organization; amending s.
 38 250.115, F.S.; providing for future review and repeal
 39 of the direct-support organization of the Department
 40 of Military Affairs; amending s. 257.43, F.S.;

41 providing for future review and repeal of the citizen
 42 support organization of the Division of Library and
 43 Information Services of the Department of State;
 44 amending s. 258.015, F.S.; providing for future review
 45 and repeal of provisions relating to citizen support
 46 organizations under the Division of Recreation and
 47 Parks of the Department of Environmental Protection;
 48 amending s. 259.10521, F.S.; providing for future
 49 review and repeal of the citizen support organization
 50 benefitting the Babcock Ranch Preserve; amending s.
 51 265.703, F.S.; providing for future review and repeal
 52 of the citizen support organization of the Division of

53 Cultural Affairs of the Department of State; amending
 54 s. 267.17, F.S.; providing for future review and
 55 repeal of the citizen support organization of the
 56 Division of Historical Resources of the Department of
 57 State; amending s. 288.1226, F.S.; providing for
 58 future review and repeal of the Florida Tourism
 59 Industry Marketing Corporation; amending s. 288.809,
 60 F.S.; providing for future review and repeal of the
 61 Florida Intergovernmental Relations Foundation;
 62 amending s. 288.923, F.S.; providing for future review
 63 and repeal of the Division of Tourism Marketing of
 64 Enterprise Florida, Inc.; amending s. 292.055, F.S.;
 65 providing for future review and repeal of the direct-
 66 support organization of the Department of Veterans'
 67 Affairs; amending s. 379.223, F.S.; providing for
 68 future review and repeal of the Fish and Wildlife
 69 Conservation Commission's authorization to establish
 70 citizen support organizations; amending s. 413.0111,
 71 F.S.; providing for future review and repeal of the
 72 direct-support organization of the Division of Blind
 73 Services of the Department of Education; amending s.
 74 413.615, F.S.; providing for future review and repeal
 75 of the Florida Endowment Foundation for Vocational
 76 Rehabilitation; amending s. 430.82, F.S.; providing
 77 for future review and repeal of the Department of
 78 Elderly Affairs' authority to establish a direct-

79 support organization; amending s. 570.903, F.S.;

80 providing for future review and repeal of the

81 Department of Agriculture and Consumer Services'

82 authority to establish a direct-support organization;

83 amending s. 570.9135, F.S.; providing for future

84 review and repeal of Florida Beef Council, Inc.;

85 amending s. 626.9895, F.S.; providing for future

86 review and repeal of the Division of Insurance Fraud

87 of the Department of Financial Services' authority to

88 establish a direct-support organization; amending s.

89 683.231, F.S.; providing for future review and repeal

90 of the Department of Law Enforcement's authority to

91 establish a citizen support organization for Florida

92 Missing Children's Day; amending s. 744.7082, F.S.;

93 providing for future review and repeal of the direct-

94 support organization supporting the Statewide Public

95 Guardianship Office; amending s. 893.055, F.S.;

96 providing for future review and repeal of the

97 Department of Health's authority to establish a

98 direct-support organization supporting the

99 prescription drug monitoring program; amending s.

100 944.802, F.S.; providing for future review and repeal

101 of the Department of Corrections' authority to

102 establish a direct-support organization; amending s.

103 960.002, F.S.; providing for future review and repeal

104 of the Governor's authority to authorize a direct-

105 support organization to assist victims of adult and
 106 juvenile crime; amending s. 985.672, F.S.; providing
 107 for future review and repeal of the Department of
 108 Juvenile Justice's direct-support organization;
 109 amending s. 1009.983, F.S.; providing for future
 110 review and repeal of the Florida Prepaid College
 111 Board's authority to establish a direct-support
 112 organization; providing an effective date.

113

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

115

116 Section 1. Subsections (9), (10), (11), (12), (13), (14),
 117 and (15) of section 14.29, Florida Statutes, are amended to
 118 read:

119 14.29 Florida Commission on Community Service.—

120 (9) (a) The commission may establish a direct-support
 121 organization which is:

122 1.(a) A Florida corporation, not for profit, incorporated
 123 under the provisions of chapter 617 and approved by the
 124 Secretary of State.

125 2.(b) Organized and operated exclusively to receive, hold,
 126 invest, and administer property and funds and to make
 127 expenditures to or for the benefit of the program.

128 3.(e) An organization which the commission, after review,
 129 has certified to be operating in a manner consistent with the
 130 goals of the program and in the best interests of the state.

131 (b)~~(10)~~ The direct-support organization shall operate
 132 under written contract with the commission. The contract must
 133 provide for:

134 1.~~(a)~~ Approval of the articles of incorporation and bylaws
 135 of the direct-support organization by the commission.

136 2.~~(b)~~ Submission of an annual budget for the approval of
 137 the commission. The budget must comply with rules adopted by the
 138 commission.

139 3.~~(e)~~ Certification by the commission that the direct-
 140 support organization is complying with the terms of the contract
 141 and in a manner consistent with the goals and purposes of the
 142 commission and in the best interest of the state. Such
 143 certification must be made annually and reported in the official
 144 minutes of a meeting of the commission.

145 4.~~(d)~~ The reversion to the commission, or the state if the
 146 commission ceases to exist, of moneys and property held in trust
 147 by the direct-support organization if the direct-support
 148 organization is no longer approved to operate for the commission
 149 or the commission ceases to exist.

150 5.~~(e)~~ The fiscal year of the direct-support organization,
 151 to begin July 1 of each year and end June 30 of the following
 152 year.

153 6.~~(f)~~ The disclosure of material provisions of the
 154 contract and the distinction between the board of directors and
 155 the direct-support organization to donors of gifts,
 156 contributions, or bequests, as well as on all promotional and

157 fundraising publications.

158 (c) ~~(11)~~ The members of the direct-support organization's
 159 board of directors must include members of the commission.

160 (d) ~~(12)~~ The commission may authorize a direct-support
 161 organization to use its personal services, facilities, and
 162 property, ~~(except money), facilities, and personal services,~~
 163 subject to the provisions of this section. A direct-support
 164 organization that does not provide equal employment
 165 opportunities to all persons regardless of race, color,
 166 religion, sex, age, or national origin may not use the property,
 167 facilities, or personal services of the commission. For the
 168 purposes of this subsection, the term "personal services"
 169 includes full-time personnel and part-time personnel as well as
 170 payroll processing.

171 (e) ~~(13)~~ The commission shall adopt rules prescribing the
 172 procedures by which the direct-support organization is governed
 173 and any conditions with which the direct-support organization
 174 must comply to use property, facilities, or personal services of
 175 the commission.

176 (f) ~~(14)~~ Moneys of the direct-support organization may be
 177 held in a separate depository account in the name of the direct-
 178 support organization and subject to the provisions of the
 179 contract with the commission. Such moneys may include membership
 180 fees, private donations, income derived from fundraising
 181 activities, and grants applied for and received by the direct-
 182 support organization.

183 (g)~~(15)~~ The direct-support organization shall provide for
 184 an annual financial audit in accordance with s. 215.981.

185 (h) This subsection is repealed effective October 1, 2018,
 186 unless reviewed and saved from repeal by the Legislature.

187 Section 2. Subsection (7) is added to section 16.616,
 188 Florida Statutes, to read:

189 16.616 Direct-support organization.—

190 (7) This section is repealed October 1, 2018, unless
 191 reviewed and saved from repeal by the Legislature.

192 Section 3. Section 20.058, Florida Statutes, is created to
 193 read:

194 20.058 Citizen support and direct-support organizations.—

195 (1) By August 1 of each year, a citizen support
 196 organization or direct-support organization created or
 197 authorized pursuant to law or executive order and created,
 198 approved, or administered by an agency, shall submit the
 199 following information to the agency that the organization was
 200 created to support:

201 (a) The name, mailing address, telephone number, and
 202 website address of the organization.

203 (b) The statutory authority or executive order that
 204 created the organization.

205 (c) A brief description of the mission of, and results
 206 obtained by, the organization.

207 (d) A brief description of the organization's plans for
 208 the next 3 fiscal years.

209 (e) A copy of the organization's code of ethics.
 210 (f) A copy of the organization's most recent federal
 211 Internal Revenue Service Return of Organization Exempt from
 212 Income Tax form (Form 990).

213 (2) Each agency receiving information from a citizen
 214 support organization or direct-support organization pursuant to
 215 subsection (1) shall make such information available to the
 216 public through the agency's website. In addition, if the
 217 organization maintains a website, the agency's website must
 218 provide a link to that website.

219 (3) By August 30 of each year, each agency shall report to
 220 the Governor, the President of the Senate, the Speaker of the
 221 House of Representatives, and the Office of Program Policy
 222 Analysis and Government Accountability the information provided
 223 by each citizen-support organization or direct support
 224 organization. The report must also include a recommendation by
 225 the agency, with supporting rationale, to continue, terminate,
 226 or modify the agency's association with each organization.

227 (4) Each contract entered into between an agency and a
 228 citizen support organization or direct-support organization on
 229 or after July 1, 2014, shall contain provisions that require the
 230 organization to submit information in compliance with subsection
 231 (1) and require the agency to terminate the contract if the
 232 organization fails to do so for 2 consecutive years.

233 (5) A law creating, or authorizing the creation of, a
 234 citizen support organization or a direct-support organization

235 must state that the creation of or authorization for the
 236 organization is repealed on October 1 of the 5th year after
 237 enactment, unless reviewed and saved from repeal through
 238 reenactment by the Legislature. Citizen support organizations
 239 and direct-support organizations in existence on July 1, 2014,
 240 must be reviewed by the Legislature by July 1, 2019.

241 Section 4. Subsection (6) is added to section 20.2551,
 242 Florida Statutes, to read:

243 20.2551 Citizen support organizations; use of property;
 244 audit; public records; partnerships.—

245 (6) REPEAL.—This section is repealed October 1, 2019,
 246 unless reviewed and saved from repeal by the Legislature.

247 Section 5. Subsection (5) is added to section 39.0011,
 248 Florida Statutes, to read:

249 39.0011 Direct-support organization.—

250 (5) This section is repealed October 1, 2017, unless
 251 reviewed and saved from repeal by the Legislature.

252 Section 6. Subsection (8) is added to section 39.8298,
 253 Florida Statutes, to read:

254 39.8298 Guardian Ad Litem direct-support organization.—

255 (8) REPEAL.—This section is repealed October 1, 2018,
 256 unless reviewed and saved from repeal by the Legislature.

257 Section 7. Subsection (8) is added to section 250.115,
 258 Florida Statutes, to read:

259 250.115 Department of Military Affairs direct-support
 260 organization.—

261 (8) REPEAL.—This section is repealed October 1, 2017,
 262 unless reviewed and saved from repeal by the Legislature.

263 Section 8. Subsection (4) is added to section 257.43,
 264 Florida Statutes, to read:

265 257.43 Citizen support organization; use of state
 266 administrative services and property; audit.—

267 (4) REPEAL.—This section is repealed October 1, 2019,
 268 unless reviewed and saved from repeal by the Legislature.

269 Section 9. Subsection (4) is added to section 258.015,
 270 Florida Statutes, to read:

271 258.015 Citizen support organizations; use of property;
 272 audit.—

273 (4) REPEAL.—This section is repealed October 1, 2019,
 274 unless reviewed and saved from repeal by the Legislature.

275 Section 10. Subsection (4) is added to section 259.10521,
 276 Florida Statutes, to read:

277 259.10521 Citizen support organization; use of property.—

278 (4) REPEAL.—This section is repealed October 1, 2019,
 279 unless reviewed and saved from repeal by the Legislature.

280 Section 11. Subsection (4) is added to section 265.703,
 281 Florida Statutes, to read:

282 265.703 Citizen support organizations; use of state
 283 administrative services and property; audit.—

284 (4) REPEAL.—This section is repealed October 1, 2019,
 285 unless reviewed and saved from repeal by the Legislature.

286 Section 12. Subsection (4) is added to section 267.17,

287 Florida Statutes, to read:

288 267.17 Citizen support organizations; use of state
 289 administrative services and property; audit.-

290 (4) REPEAL.—This section is repealed October 1, 2019,
 291 unless reviewed and saved from repeal by the Legislature.

292 Section 13. Subsections (7) and (8) of section 288.1226,
 293 Florida Statutes, are amended, and a new subsection (9) is added
 294 to that section, to read:

295 288.1226 Florida Tourism Industry Marketing Corporation;
 296 use of property; board of directors; duties; audit.-

297 (7) REPORT.—The corporation shall provide a quarterly
 298 report to Enterprise Florida, Inc., which shall:

299 (a) Measure the current vitality of the visitor industry
 300 of this state as compared to the vitality of such industry for
 301 the year to date and for comparable quarters of past years.
 302 Indicators of vitality shall be determined by Enterprise
 303 Florida, Inc., and shall include, but not be limited to,
 304 estimated visitor count and party size, length of stay, average
 305 expenditure per party, and visitor origin and destination.

306 (b) Provide detailed, unaudited financial statements of
 307 sources and uses of public and private funds.

308 (c) Measure progress towards annual goals and objectives
 309 set forth in the 4-year marketing plan.

310 (d) Review all pertinent research findings.

311 (e) Provide other measures of accountability as requested
 312 by Enterprise Florida, Inc.

313 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
 314 who responds to a marketing project or advertising research
 315 project conducted by the corporation in the performance of its
 316 duties on behalf of Enterprise Florida, Inc., or trade secrets
 317 as defined by s. 812.081 obtained pursuant to such activities,
 318 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 319 Constitution.

320 (9) REPEAL.—This section is repealed October 1, 2019,
 321 unless reviewed and saved from repeal by the Legislature.

322 Section 14. Subsection (5) is added to section 288.809,
 323 Florida Statutes, to read:

324 288.809 Florida Intergovernmental Relations Foundation;
 325 use of property; board of directors; audit.—

326 (5) REPEAL.—This section is repealed October 1, 2019,
 327 unless reviewed and saved from repeal by the Legislature.

328 Section 15. Subsection (6) is added to section 288.923,
 329 Florida Statutes, to read:

330 288.923 Division of Tourism Marketing; definitions;
 331 responsibilities.—

332 (6) This section is repealed October 1, 2019, unless
 333 reviewed and saved from repeal by the Legislature.

334 Section 16. Subsection (10) is added to section 292.055,
 335 Florida Statutes, to read:

336 292.055 Direct-support organization.—

337 (10) REPEAL.—This section is repealed October 1, 2017,
 338 unless reviewed and saved from repeal by the Legislature.

339 Section 17. Subsection (4) is added to section 379.223,
 340 Florida Statutes, to read:

341 379.223 Citizen support organizations; use of state
 342 property; audit.—

343 (4) This section is repealed October 1, 2019, unless
 344 reviewed and saved from repeal by the Legislature.

345 Section 18. Subsection (7) is added to section 413.0111,
 346 Florida Statutes, to read:

347 413.0111 Blind services direct-support organization.—

348 (7) This section is repealed October 1, 2017, unless
 349 reviewed and saved from repeal by the Legislature.

350 Section 19. Subsection (14) is added to section 413.615,
 351 Florida Statutes, to read:

352 413.615 Florida Endowment for Vocational Rehabilitation.—

353 (14) REPEAL.—This section is repealed October 1, 2017,
 354 unless reviewed and saved from repeal by the Legislature.

355 Section 20. Subsection (9) is added to section 430.82,
 356 Florida Statutes, to read:

357 430.82 Direct-support organization.—

358 (9) This section is repealed October 1, 2017, unless
 359 reviewed and saved from repeal by the Legislature.

360 Section 21. Subsection (10) is added to section 570.903,
 361 Florida Statutes, to read:

362 570.903 Direct-support organization.—

363 (10) This section is repealed October 1, 2019, unless
 364 reviewed and saved from repeal by the Legislature.

365 Section 22. Subsection (14) is added to section 570.9135,
 366 Florida Statutes, to read:

367 570.9135 Beef Market Development Act; definitions; Florida
 368 Beef Council, Inc., creation, purposes, governing board, powers,
 369 and duties; referendum on assessments imposed on gross receipts
 370 from cattle sales; payments to organizations for services;
 371 collecting and refunding assessments; vote on continuing the
 372 act; council bylaws.—

373 (14) REPEAL.—This section is repealed October 1, 2019,
 374 unless reviewed and saved from repeal by the Legislature.

375 Section 23. Subsection (9) is added to section 626.9895,
 376 Florida Statutes, to read:

377 626.9895 Motor vehicle insurance fraud direct-support
 378 organization.—

379 (9) REPEAL.—This section is repealed October 1, 2019,
 380 unless reviewed and saved from repeal by the Legislature.

381 Section 24. Subsection (8) is added to section 683.231,
 382 Florida Statutes, to read:

383 683.231 Citizen support organization for Florida Missing
 384 Children's Day.—

385 (8) This section is repealed October 1, 2018, unless
 386 reviewed and saved from repeal by the Legislature.

387 Section 25. Subsection (9) is added to section 744.7082,
 388 Florida Statutes, to read:

389 744.7082 Direct-support organization; definition; use of
 390 property; board of directors; audit; dissolution.—

391 (9) REPEAL.—This section is repealed October 1, 2018,
 392 unless reviewed and saved from repeal by the Legislature.

393 Section 26. Paragraph (k) is added to subsection (11) of
 394 section 893.055, Florida Statutes, to read:

395 893.055 Prescription drug monitoring program.—

396 (11) The department may establish a direct-support
 397 organization that has a board consisting of at least five
 398 members to provide assistance, funding, and promotional support
 399 for the activities authorized for the prescription drug
 400 monitoring program.

401 (k) This subsection is repealed October 1, 2017, unless
 402 reviewed and saved from repeal by the Legislature.

403 Section 27. Subsection (4) is added to section 944.802,
 404 Florida Statutes, to read:

405 944.802 Direct-support organization; definition; use of
 406 property; board of directors; audit.—

407 (4) REPEAL.—This section is repealed October 1, 2018,
 408 unless reviewed and saved from repeal by the Legislature.

409 Section 28. Subsection (6) is added to section 960.002,
 410 Florida Statutes, to read:

411 960.002 Direct-support organization to assist victims of
 412 adult and juvenile crime.—

413 (6) This section is repealed October 1, 2018, unless
 414 reviewed and saved from repeal by the Legislature.

415 Section 29. Subsections (5) and (6) of section 985.672,
 416 Florida Statutes, are amended, and a new subsection (7) is added

417 to that section, to read:

418 985.672 Direct-support organization; definition; use of
 419 property; board of directors; audit.—

420 (5) DEPOSIT OF FUNDS.—Any moneys may be held in a separate
 421 depository account in the name of the direct-support
 422 organization and subject to the provisions of the contract with
 423 the department.

424 (6) AUDIT.—The direct-support organization shall provide
 425 for an annual financial audit in accordance with s. 215.981.

426 (7) REPEAL.—This section is repealed October 1, 2018,
 427 unless reviewed and saved from repeal by the Legislature.

428 Section 30. Subsection (9) is added to section 1009.983,
 429 Florida Statutes, to read:

430 1009.983 Direct-support organization; authority.—

431 (9) This section is repealed October 1, 2017, unless
 432 reviewed and saved from repeal by the Legislature.

433 Section 31. This act shall take effect upon becoming a
 434 law.