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# **Government Operations Subcommittee**

**Wednesday, March 5, 2014**

**1:00 PM**

**Webster Hall (212 Knott)**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Frank Artiles  
Chair**

**Committee Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Government Operations Subcommittee**

**Start Date and Time:** Wednesday, March 05, 2014 01:00 pm  
**End Date and Time:** Wednesday, March 05, 2014 03:00 pm  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

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

CS/HB 19 Pub. Rec./Yellow Dot Critical Motorist Medical Information Program by Transportation & Highway Safety Subcommittee, Slosberg

HB 115 Public Meetings/University Direct Support Organization by Pigman

HB 117 Public Retirement Plans by Ray

HB 177 Pub. Rec./Prepaid Wireless E911 Fee by Steube

CS/HB 419 Pub. Rec./Department of Health by Health Quality Subcommittee, Renuart

CS/HB 525 Pub. Rec./Personal Identifying Information/Licensure to Carry Concealed Weapon or Firearm by Business & Professional Regulation Subcommittee, Grant

CS/HB 599 Pub. Rec./Automated License Plate Recognition Systems by Transportation & Highway Safety Subcommittee, Hutson

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

PCB GVOPS 14-04 -- OGSR Inventories of an Estate or Elective Estate


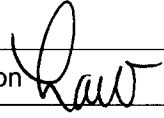
PCB GVOPS 14-05 -- OGSR Florida Defense Support Task Force

**NOTICE FINALIZED on 03/03/2014 16:15 by Love.John**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 19 Public Records/Yellow Dot Critical Motorist Medical Information Program  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Slosberg  
**TIED BILLS:** CS/HB 17 **IDEN./SIM. BILLS:** CS/SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee		 Stramski	Williamson 
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

CS/HB 17 authorizes the governing body of a county to create a yellow dot critical motorist medical information program for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle. After submitting a completed application, a participant is given a yellow dot decal to affix onto the lower left corner of his or her vehicle's rear window, a yellow dot folder, and a form that contains certain personal and medical information about the participant, to be stored in the participant's vehicle.

This bill, which is linked to the passage of CS/HB 17, creates a public record exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program that is held by the governing body of a county participating in such program. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on July 1, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant negative fiscal impact on local governments that opt to participate in a yellow dot program. The bill does not appear to have a fiscal impact on the state. See FISCAL COMMENTS.

The bill provides an effective date that is contingent on the passage of CS/HB 17 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 or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. 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.<sup>1</sup>

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

##### Yellow Dot Program

The yellow dot program is a system to alert first responders at an accident scene to search for medical information about the injured, especially if the injured is unconscious or unable to speak. The program provides medical personnel with vital information about the victim during the first critical hours after injury, often called the "crucial golden hour," when prompt treatment is most effective.<sup>3</sup>

The program began in Connecticut in 2002, and now, with slight variations, is in counties scattered across at least eight other states: Kansas, Illinois, Iowa, Minnesota, Massachusetts, Virginia, Alabama and New York.<sup>4</sup> Participants in the program receive a yellow dot sticker to place on their rear window. The sticker alerts emergency services personnel to look for a corresponding yellow folder in the glove box.<sup>5</sup> The yellow folder may include the injured participant's name, photograph, emergency contact information, medical information, hospital preference, and other vital information.

##### CS/HB 17 (2014)

CS/HB 17 authorizes the governing body of a county to create a yellow dot critical motorist medical information program for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency. After submitting a completed application, a participant is given a yellow dot decal to affix onto the lower left corner of his

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Additional information about the Yellow Dot program is available at [www.yellow-dot.com](http://www.yellow-dot.com) (last viewed on February 28, 2014).

<sup>4</sup> *Id.*

<sup>5</sup> "Yellow Dot car program speeds to help crash victims." Larry Copeland, USA Today (May 24, 2011) at [http://usatoday30.usatoday.com/news/nation/2011-05-23-yellow-dot-seniors-drivers-baby-boomers\\_n.htm](http://usatoday30.usatoday.com/news/nation/2011-05-23-yellow-dot-seniors-drivers-baby-boomers_n.htm) (last viewed on February 28, 2014).

or her vehicle's rear window (or a clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's personal and medical information.

The form, which is to be placed inside the yellow dot folder and stored in the participant's vehicle, is to contain the following information:

- The participant's name;
- The participant's photograph;
- Emergency contact information for no more than two persons;
- The participant's medical information, including medical conditions, recent surgeries, allergies and medications;
- The participant's hospital preference; and
- Contact information for no more than two physicians.

### **Effect of Proposed Changes**

The bill provides that personal identifying information of a participant in a yellow dot critical motorist medical information program, which is held by the governing body of a county participating in such program, is exempt<sup>6</sup> from public record requirements. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on July 1, 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.<sup>7</sup>

The bill provides an effective date that is contingent upon the passage of CS/HB 17 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

#### **B. SECTION DIRECTORY:**

- Section 1: Creates an unnumbered section of law exempting from public records requirements information of participants in a yellow dot critical motorist medical information program.
- Section 2: Provides a statement of public necessity.
- Section 3: Provides an effective date contingent upon the passage of CS/HB 17 or similar legislation.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.
2. Expenditures:  
None.

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<sup>6</sup> 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).

<sup>7</sup> Section 24(c), Art. I of the State Constitution.

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:

Participation in the yellow dot program by a county is not mandatory. The bill could create a minimal fiscal impact on the governing body of a county that opts to create a yellow dot program, because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the governing body of a participating county 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 county 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 records exemption. The bill creates a new public records 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 records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by the governing body of a county participating in such program. 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.

Right to Privacy

Article I, s. 23 of the State Constitution grants all Florida citizens the right to privacy. Consequently, Florida courts have recognized patients' rights to secure the confidentiality of their health information

(medical records); however, that right must be balanced with and yields to any compelling state interest.<sup>8</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DRAFTING ISSUE: Repeal Date

Lines 20-23 of the bill provide that the exemption is subject to the Open Government Review Act and will stand repealed on July 1, 2019. However, the Open Government Sunset Review Act provides that an exemption stands repealed on October 2nd of the fifth year after enactment.

DRAFTING ISSUE: Public Necessity Statement

The bill provides that personal identifying information of a participant in a yellow dot critical motorist medical information program is exempt from public record requirements. However, the last sentence of the public necessity statement contains a finding that such information must be made "confidential and exempt" from disclosure. As such, the public necessity statement does not comport with the exemption.

OTHER COMMENTS: Governing Body of a County - Records Custodian

The bill provides that such information is exempt when held by the governing body of a county participating in a yellow dot critical motorist medical program; however, such program may not be administered by the governing body of a county. It is likely the governing body would designate a county entity to administer the program. As such, it may be more appropriate to designate the county as the records custodian for purposes of the public record exemption.

OTHER COMMENTS: Records of Emergency Calls

Section 401.30, F.S., requires emergency medical services entities that are licensed<sup>9</sup> by the Department of Health to maintain accurate records of emergency calls. Such records that contain patient examination or treatment information are confidential and exempt from public record requirements, and may not be disclosed without the consent of the person to whom they pertain.<sup>10</sup> As this exemption only applies to records that are acquired by emergency medical services as a result of an emergency call, it does not appear to protect yellow dot critical motorist information held by a participating county as provided in CS/HB 17.

OTHER COMMENTS: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule<sup>11</sup> protects individually identifiable health information held by "covered entities." The information protected is referred to as protected health information or PHI. Covered entities include health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically. A health care provider is defined as any person or organization who furnishes, bills, or is paid for health care in the normal course of business.<sup>12</sup> If a state, county, or local government performs functions that make it a covered entity, compliance with the HIPAA Privacy Rule is required.<sup>13</sup> A governing body of a county, as it relates to the participation in a yellow dot critical motorist medical information program, would likely not be considered a health care provider under HIPAA, and thus, the

<sup>8</sup> See *State v. Johnson*, 814 So.2d 390 (Fla. 2002); distinguished in *Limbaugh v. State of Florida* 887 So.2d 387 (Fla. 4th DCA 2004); and *Rasmussen v. S. Fla. Blood Serv. Inc.*, 500 So.2d 533 (Fla. 1987) (privacy interests of blood donors defeated AIDS victim's claim to obtain via subpoena names and addresses of blood donors who may have contributed the tainted blood).

<sup>9</sup> Section 401.23(13), F.S., defines "licensee" as any basic life support service, advanced life support service, or air ambulance service licensed by the Department of Health pursuant to part III of ch. 401, F.S.

<sup>10</sup> Section 401.30(4), F.S.

<sup>11</sup> Pub. L. 104-191, 110 Stat. 1936.

<sup>12</sup> 45 CFR 160.103.

<sup>13</sup> See 45 CFR 160.103, for more information regarding HIPAA definitions of covered entity, health care provider, health plan and health care clearinghouse.



PHI collected under the program would not appear to be covered under the HIPAA Privacy Rule. However, a county entity that is tasked with implementing a yellow dot program may be subject to the HIPAA Privacy Rule if it comes within the definition of "health care provider."

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 14, 2014, the Transportation & Highway Safety Subcommittee adopted a strike-all amendment to HB 19 before reporting it favorably as a committee substitute. The amendment made technical changes to conform to the Senate companion. Specifically, the strike-all:

- Revises the level of protection the exemption provides from confidential and exempt to simply exempt;
- Narrows the exemption to only apply to the personal identifying information of a participant in a yellow dot critical motorist medical information program;
- Clearly defines the records custodian to be the governing body of a county participating in the program;
- Removes the exception to the exemption, which was a bill drafting error; and
- Conforms the public necessity statement to the revised exemption.

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

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A bill to be entitled  
An act relating to public records; providing an exemption from public records requirements for personal identifying information of participants in a yellow dot critical motorist medical information program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Public records exemption; participants in a yellow dot critical motorist medical information program.-

(1) Personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by the governing body of a county participating in such program is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and is repealed on July 1, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of a participant in a yellow dot critical motorist medical

27 information program held by the governing body of a county  
28 participating in such program be made exempt from s. 119.07(1),  
29 Florida Statutes, and s. 24(a), Article I of the State  
30 Constitution. Nevertheless, allowing the governing bodies of  
31 participating counties to distribute yellow dot folders, as well  
32 as allowing emergency medical responders and law enforcement  
33 agents to access the information provided in yellow dot folders,  
34 will ensure the most rapid and effective treatment for victims  
35 of serious traffic accidents. If the personal identifying  
36 information of a participant in such program were not exempt  
37 from disclosure, any person could inspect and copy documentation  
38 that identifies the program participant. Consequently, the  
39 availability of such information to the public would result in  
40 the invasion of the program participant's privacy. If  
41 information regarding the program participant could be  
42 correlated with his or her medical records, it would be possible  
43 for the public to become aware of any diseases or other medical  
44 concerns for which the qualifying patient is being treated by  
45 his or her physician. This knowledge could be used to embarrass  
46 or humiliate a qualifying patient or to discriminate against him  
47 or her. Finally, protecting the personal identifying information  
48 of a participant in such program prevents the identification of  
49 program participants who could be victimized by robbery,  
50 burglary, or illicit drug activities. Accordingly, the  
51 Legislature finds that the harm to a program participant which  
52 could result from the release of personal identifying

CS/HB 19

2014

53 information of the participant outweighs any minimal public  
54 benefit that would be derived from disclosure of that  
55 information to the public. Therefore, it is the finding of the  
56 Legislature that such identifying information must be made  
57 confidential and exempt from public disclosure.

58       Section 3. This act shall take effect on the same date  
59 that HB 17 or similar legislation authorizing the governing body  
60 of a county to create a yellow dot critical motorist medical  
61 information program takes effect, if such legislation is adopted  
62 in the same legislative session or an extension thereof and  
63 becomes a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**

6 Remove lines 17-57 and insert:

7 is held by a county participating in such program is exempt from  
 8 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 9 State Constitution.

10 (2) This section is subject to the Open Government Sunset  
 11 Review Act in accordance with s. 119.15, Florida Statutes, and  
 12 shall stand repealed on October 2, 2019, unless reviewed and  
 13 saved from repeal through reenactment by the Legislature.

14 Section 2. The Legislature finds that it is a public  
 15 necessity that the personal identifying information of a  
 16 participant in a yellow dot critical motorist medical  
 17 information program which is held by a county participating in



Amendment No.

18 such program be made exempt from s. 119.07(1), Florida Statutes,  
19 and s. 24(a), Article I of the State Constitution. Nevertheless,  
20 allowing participating counties to distribute yellow dot  
21 folders, as well as allowing emergency medical responders and  
22 law enforcement agents to access the information provided in  
23 yellow dot folders, will ensure the most rapid and effective  
24 treatment for victims of serious traffic accidents. If the  
25 personal identifying information of a participant in such  
26 program were not exempt from disclosure, any person could  
27 inspect and copy documentation that identifies the program  
28 participant. Consequently, the availability of such information  
29 to the public would result in the invasion of the program  
30 participant's privacy. Finally, protecting the personal  
31 identifying information of a participant in such program  
32 prevents the identification of program participants who could be  
33 victimized by robbery, burglary, or illicit drug activities.  
34 Accordingly, the Legislature finds that the harm to a program  
35 participant which could result from the release of personal  
36 identifying information of the participant outweighs any minimal  
37 public benefit that would be derived from disclosure of that  
38 information to the public. Therefore, it is the finding of the  
39 Legislature that such identifying information must be made  
40 exempt from public disclosure.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 115 Public Meetings/University Direct Support Organization  
**SPONSOR(S):** Pigman  
**TIED BILLS:** IDEN./SIM. BILLS: SB 318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	10 Y, 1 N	Ammel	Sherry
2) Government Operations Subcommittee		Williamson	Williamson
3) Education Committee			

### SUMMARY ANALYSIS

University direct-support organizations (DSO) are subject to public record and public meeting laws. Current law provides that the following records held by a DSO are confidential and exempt from public record requirements:

- The identity of a donor to a university DSO who desires to remain anonymous; and
- All records of the DSO other than the auditor's report, management letter, and any supplemental data required by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.

There is no similar public meeting exemption for DSO board meetings during which confidential and exempt records are discussed.

The bill creates a public meeting exemption for any portion of a meeting of the board of directors of the DSO, or of a committee of the DSO, in which the board or committee discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research. 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 or 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 public records or public meetings exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

###### Government in the Sunshine Law

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.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.<sup>3</sup> Minutes of a public meeting must be promptly recorded and be open to public inspection.<sup>4</sup>

###### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>5</sup> provides that a public meeting 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."<sup>6</sup> 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.<sup>7</sup>

###### University Direct-support Organizations

Current law defines "university direct-support organization" (DSO) to mean an organization that is:

- A Florida corporation not for profit incorporated under the provisions of chapter 617, F.S., and approved by the Department of State.

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<sup>1</sup> Section 286.011(1), F.S.

<sup>2</sup> *Ibid.*

<sup>3</sup> Section 286.011(6), F.S.

<sup>4</sup> Section 286.011(2), F.S.

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

- Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159, F.S.
- An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.<sup>8</sup>

The DSO serves a role in raising private support for university academic, research, and athletic activities.<sup>9</sup> The DSO may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218, F.S.<sup>10</sup> The DSO is prohibited from giving any gift to a political committee or committee of continuous existence for any purpose other than those certified by a majority roll call vote of the governing board of the DSO at a regularly scheduled meeting as being directly related to the educational mission of the university.<sup>11</sup>

DSOs are subject to public record and public meeting laws.<sup>12</sup> Current law provides that the following records held by the DSO are confidential and exempt<sup>13</sup> from public record requirements:

- The identity of a donor who desires to remain anonymous; and
- All records of the DSO other than the auditor's report,<sup>14</sup> management letter, and any supplemental data required by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.<sup>15</sup>

There is no similar exemption for DSO board meetings during which confidential and exempt records are discussed.

### **Effect of Proposed Changes**

This bill creates a public meeting exemption for meetings of the university DSO. Specifically, the bill provides that any portion of a meeting of the board of directors for the DSO, or of the executive committee or other committee of such board, where the identify of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed is exempt from public meeting requirements.

<sup>8</sup> Section 1004.28(1)(a), F.S.

<sup>9</sup> State University System Board of Governors, *2013 Legislative Bill Analysis for HB 359* (Feb. 14, 2013) (on file with the Higher Education and Workforce Subcommittee).

<sup>10</sup> Section 1004.28(2)(a), F.S.

<sup>11</sup> Section 1004.28(4), F.S.

<sup>12</sup> See *Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). The Florida Attorney General opined that community college direct-support organizations are subject to Sunshine Law. Op. Att'y Gen. Fla. 05-27 (2005). See also Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

<sup>13</sup> 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).

<sup>14</sup> Current law requires a DSO to provide for an annual financial audit of its accounts and records conducted by an independent certified public accountant in accordance with certain requirements. The annual audit report must be submitted to the Auditor General and the Board of Governors for review.

<sup>15</sup> Section 1004.28(5), F.S.

The bill provides that the 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. The bill provides a statement of public necessity that provides, in part, that the meetings included in the exemption frequently demand great sensitivity and discretion, as donors frequently seek anonymity and express concerns over the release of sensitive financial information.

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

**B. SECTION DIRECTORY:**

Section 1. Amends s. 1004.28, F.S., creating an exemption from public meetings requirements for a meeting or portion of a meeting of the board of directors of a university DSO or of the executive committee or other committees of the board; providing for review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meetings exemption. The bill creates a public meeting 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 meetings exemption. The bill creates a public meeting 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. Current law provides a public record exemption for the identity of a donor or prospective donor to a university DSO who wishes to remain anonymous. The bill, in part, creates a public meeting exemption for any portion of a meeting of a university DSO wherein donor information is discussed. As such, the public meeting exemption appears broader than the public record exemption because it protects discussions about all donor information, including information about a donor who has not requested anonymity; thus, protecting certain donor information that would otherwise be public pursuant to a public record request.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1 A bill to be entitled  
 2 An act relating to public meetings; amending s.  
 3 1004.28, F.S.; providing an exemption from public  
 4 meeting requirements for any portion of a meeting of  
 5 the board of directors of a university direct-support  
 6 organization, or of the executive committee or other  
 7 committees of such board, at which the identity of a  
 8 donor or prospective donor, any proposal seeking  
 9 research funding from the organization, or a plan or  
 10 program for either initiating or supporting research is  
 11 discussed; providing for review and repeal of the  
 12 exemption; providing a statement of public necessity;  
 13 providing an effective date.

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

16  
 17 Section 1. Subsection (5) of section 1004.28, Florida  
 18 Statutes, is amended to read:

19 1004.28 Direct-support organizations; use of property;  
 20 board of directors; activities; audit; facilities.—

21 (5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC  
 22 MEETINGS EXEMPTION.—

23 (a) Each direct-support organization shall provide for an  
 24 annual financial audit of its accounts and records to be  
 25 conducted by an independent certified public accountant in  
 26 accordance with rules adopted by the Auditor General pursuant to  
 27 s. 11.45(8) and by the university board of trustees. The annual  
 28 audit report shall be submitted, within 9 months after the end

HB115

2014

29 of the fiscal year, to the Auditor General and the Board of  
 30 Governors for review. The Board of Governors, the university  
 31 board of trustees, the Auditor General, and the Office of  
 32 Program Policy Analysis and Government Accountability shall have  
 33 the authority to require and receive from the organization or  
 34 from its independent auditor any records relative to the  
 35 operation of the organization. The identity of donors who desire  
 36 to remain anonymous shall be protected, and that anonymity shall  
 37 be maintained in the auditor's report.

38 (b) All records of the organization other than the  
 39 auditor's report, management letter, and any supplemental data  
 40 requested by the Board of Governors, the university board of  
 41 trustees, the Auditor General, and the Office of Program Policy  
 42 Analysis and Government Accountability shall be confidential and  
 43 exempt from ~~the provisions of~~ s. 119.07(1).

44 (c) Any portion of a meeting of the board of directors of  
 45 the organization, or of the executive committee or other  
 46 committees of such board, at which the identity of a donor or  
 47 prospective donor, any proposal seeking research funding from the  
 48 organization, or a plan or program for either initiating or  
 49 supporting research is discussed is exempt from s. 286.011 and s.  
 50 24(b), Art. I of the State Constitution. This paragraph is subject  
 51 to the Open Government Sunset Review Act in accordance with s.  
 52 119.15 and shall stand repealed on October 2, 2019, unless  
 53 reviewed and saved from repeal through reenactment by the  
 54 Legislature.

55 Section 2. The Legislature finds that it is a public  
 56 necessity that meetings of the board of directors of a direct-

57 | support organization established under s. 1004.28, Florida  
 58 | Statutes, or of the executive committee or other committees of  
 59 | such board, at which the identity of a donor or prospective  
 60 | donor, any proposal seeking research funding from the  
 61 | organization, or a plan or program for either initiating or  
 62 | supporting research is discussed should be held exempt from s.  
 63 | 286.011, Florida Statutes, and s. 24(b), Article I of the State  
 64 | Constitution. For the benefit of our state universities, and  
 65 | ultimately all the people of Florida, direct-support  
 66 | organizations serve a vital role in raising donations from  
 67 | private sources. This undertaking demands great sensitivity and  
 68 | discretion, as donors frequently seek anonymity and are concerned  
 69 | about the potential release of sensitive financial information.  
 70 | If direct-support organizations cannot honor those requests and  
 71 | protect such information from public disclosure, potential  
 72 | donors may decline to contribute, thus hampering the ability of  
 73 | the direct-support organization to carry out its activities. The  
 74 | state has recognized these realities by making most of the  
 75 | records of direct-support organizations confidential and exempt  
 76 | from the state's public records requirements, including the  
 77 | identity of donors and prospective donors. However, without the  
 78 | exemption from public meeting requirements, release of the  
 79 | identity of donors or prospective donors via a public meeting  
 80 | would defeat the purpose of the public records exemption. It is  
 81 | therefore the finding of the Legislature that the exemption from  
 82 | public meeting requirements is a public necessity. Additionally,  
 83 | the resources raised by direct-support organizations are  
 84 | frequently used to initiate, develop, and fund plans and

85 programs for research that routinely contain sensitive  
86 proprietary information, including university-connected research  
87 projects, which provide valuable opportunities for faculty and  
88 students and may lead to future commercial applications. This  
89 activity requires the direct-support organization to develop  
90 research strategies and evaluate proposals for research grants  
91 that routinely contain sensitive or proprietary information,  
92 including specific research approaches and targets of  
93 investigation, the disclosure of which could injure those  
94 conducting the research. Maintaining the confidentiality of  
95 research strategies, plans, and proposals is a hallmark of a  
96 responsible funding process, is practiced by the National Science  
97 Foundation and the National Institutes of Health, and allows for  
98 candid exchanges among reviewers. The state has recognized these  
99 realities by expressly making most of the records of direct-  
100 support organizations confidential and exempt from the state's  
101 public records requirements, including proposals seeking  
102 research funding. Failure to close meetings in which these  
103 activities are discussed would significantly undermine the  
104 confidentiality of the strategies, plans, and proposals  
105 themselves. Without the exemption from public meeting  
106 requirements, the release during a public meeting of a proposal  
107 seeking research funding from the direct-support organization or  
108 a plan or program for either initiating or supporting research  
109 would defeat the purpose of the public records exemption. It is  
110 therefore the finding of the Legislature that the exemption from  
111 public meeting requirements is a public necessity.

112 Section 3. This act shall take effect October 1, 2014.





Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment (with title amendment)**

Remove lines 46-83 and insert:

7 committees of such board, at which any proposal seeking research  
 8 funding from the organization or a plan or program for either  
 9 initiating or supporting research is discussed is exempt from s.  
 10 286.011 and s. 24(b), Art. I of the State Constitution. This  
 11 paragraph is subject to the Open Government Sunset Review Act in  
 12 accordance with s. 119.15 and shall stand repealed on October 2,  
 13 2019, unless reviewed and saved from repeal through reenactment  
 14 by the Legislature.

15 Section 2. The Legislature finds that it is a public  
 16 necessity that any portion of a meeting of the board of directors  
 17 of a direct-support organization established under s. 1004.28,



Amendment No.

18 Florida Statutes, or of the executive committee or other  
19 committees of such board, at which any proposal seeking research  
20 funding from the organization or a plan or program for either  
21 initiating or supporting research is discussed should be held  
22 exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I  
23 of the State Constitution. The resources raised by direct-support  
24 organizations are

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**T I T L E   A M E N D M E N T**

Remove lines 7-9 and insert:

committees of such board, at which any proposal seeking research  
funding from the organization or a plan or



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 117 Public Retirement Plans  
**SPONSOR(S):** Ray and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 388

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

**SUMMARY ANALYSIS**

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

The bill expands the applicability of the act. It provides that the act applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities. The bill requires the consolidated government to notify the Department of Management Services, Division of Retirement, when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It provides that the municipality may enact an ordinance to levy a premium tax as authorized in law, and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference estimates that the bill will have a negative, insignificant fiscal impact on state government revenues and a positive, insignificant fiscal impact on local government revenues. See Fiscal Comments for further discussion.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Municipal Police Officers' Retirement Trust Fund

Local police officer pension plans are governed by chapter 185, F.S., which is known as the Marvin B. Clayton Police Officers Pension Trust Fund Act (act). The act declares it a legitimate state purpose to provide a uniform retirement system for the benefit of municipal police officers.<sup>1</sup> Chapter 185, F.S., was originally enacted in 1953 to provide an incentive – access to premium tax revenues – to encourage the establishment of police officer pension plans by cities.

All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds.<sup>2</sup> The act sets forth the minimum benefits or minimum standards for pensions for municipal police officers. The benefits provided in the act may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:<sup>3</sup>

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

Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.<sup>4</sup> The excise tax is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division).<sup>5</sup> In 2012, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$62.6 million. Under current law, a municipality may not receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide police services.<sup>6</sup>

To qualify for insurance premium tax dollars, plans must meet requirements found in chapter 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. If the division deems that a police officer pension plan created pursuant to chapter 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.

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<sup>1</sup> Section 185.01(1), F.S.

<sup>2</sup> See s. 185.01(1), F.S.

<sup>3</sup> Section 185.07(1), F.S.

<sup>4</sup> Section 185.08, F.S.

<sup>5</sup> A copy of the 2012 Premium Tax Distribution report is available online at:

[http://www.dms.myflorida.com/human\\_resource\\_support/retirement/local\\_retirement\\_plans/municipal\\_police\\_and\\_fire\\_plans](http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans) (last visited March 3, 2014).

<sup>6</sup> Chapter 175, F.S., authorizes a municipality to receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide fire protection services. Section 175.041(3)(c), F.S.

Consolidation

Consolidation involves combining city and county governments so that the boundaries of the county and affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent government units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial.

Section 3, Art. VIII, of the State Constitution, provides:

Consolidation. – The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service from which the indebtedness was incurred.

The voters of the City of Jacksonville and Duval County adopted a municipal charter pursuant to this constitutional provision in 1967. Section 9, of Article VIII, of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. This is the only consolidated government in the state.

**Effect of the Bill**

The bill provides that chapter 185, F.S., applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution. The bill requires the consolidated government to notify the division when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It authorizes the municipality to enact an ordinance levying the tax as provided in s. 185.08, F.S., and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

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

**B. SECTION DIRECTORY:**

Sections 1. and 2. amend ss. 185.03 and 185.08, F.S., specifying applicability of chapter 185, F.S., to certain consolidated governments.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a consolidated government is entitled to premium tax distributions provided by chapter 185, F.S. As a result, this bill may have a fiscal impact on state revenues because state premium taxes paid by a casualty insurer to fund a municipal police officers' retirement plan are credited against the premium taxes paid to the state by the insurance company.<sup>7</sup> The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant negative impact on state general revenues.

The bill may result in a positive fiscal impact on local governments because the bill provides that a consolidated government may collect premium tax revenues collected by the municipality receiving police protection services if the consolidated government provides a municipal police officer retirement plan, as provided for in chapter 185, F.S. The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant positive cash and recurring impact on local revenues.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>7</sup> Section 624.509(4), F.S.

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A bill to be entitled  
 An act relating to public retirement plans; amending  
 ss. 185.03 and 185.08, F.S.; specifying applicability  
 of ch. 185, F.S., to certain consolidated governments;  
 providing that a consolidated government that has  
 entered into an interlocal agreement to provide police  
 protection services to a municipality within its  
 boundaries is eligible to receive the premium taxes  
 reported for the municipality under certain  
 circumstances; authorizing the municipality receiving  
 the police protection services to enact an ordinance  
 levying the tax as provided by law; including certain  
 consolidated governments under provisions authorizing  
 imposition of a state excise tax on casualty insurance  
 premiums covering certain property; providing an  
 effective date.

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

Section 1. Subsection (2) of section 185.03, Florida  
 Statutes, is amended to read:

185.03 Municipal police officers' retirement trust funds;  
 creation; applicability of provisions; participation by public  
 safety officers.—For any municipality, chapter plan, local law  
 municipality, or local law plan under this chapter:

(2) (a) ~~The provisions of This chapter applies shall apply~~  
 only to municipalities organized and established pursuant to the  
 laws of the state, and does ~~said provisions shall~~ not apply to

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



29 | the unincorporated areas of a any county or ~~counties nor shall~~  
 30 | ~~the provisions hereof apply~~ to a any governmental entity whose  
 31 | police officers are eligible to participate in the Florida  
 32 | Retirement System.

33 |       **(b)** With respect to the distribution of premium taxes, a  
 34 | single consolidated government consisting of a former county and  
 35 | one or more municipalities, consolidated pursuant to s. 3 or s.  
 36 | 6(e), Art. VIII of the State Constitution, is also eligible to  
 37 | participate under this chapter. The consolidated government  
 38 | shall notify the division when it has entered into an interlocal  
 39 | agreement to provide police services to a municipality within  
 40 | its boundaries. The municipality may enact an ordinance levying  
 41 | the tax as provided in s. 185.08. Upon being provided copies of  
 42 | the interlocal agreement and the municipal ordinance levying the  
 43 | tax, the division may distribute any premium taxes reported for  
 44 | the municipality to the consolidated government as long as the  
 45 | interlocal agreement is in effect.

46 |       Section 2. Subsection (1) of section 185.08, Florida  
 47 | Statutes, is amended to read:

48 |       185.08 State excise tax on casualty insurance premiums  
 49 | authorized; procedure.—For any municipality, chapter plan, local  
 50 | law municipality, or local law plan under this chapter:

51 |       **(1)(a)** Each incorporated municipality in this state  
 52 | described and classified in s. 185.03, as well as each other  
 53 | city or town of this state which on July 31, 1953, had a  
 54 | lawfully established municipal police officers' retirement trust  
 55 | fund or city fund, by whatever name known, providing pension or  
 56 | relief benefits to police officers as provided under this

57 | chapter, may assess and impose on every insurance company,  
 58 | corporation, or other insurer now engaged in or carrying on, or  
 59 | who shall hereafter engage in or carry on, the business of  
 60 | casualty insurance as shown by records of the Office of  
 61 | Insurance Regulation of the Financial Services Commission, an  
 62 | excise tax in addition to any lawful license or excise tax now  
 63 | levied by each of the ~~said~~ municipalities, respectively,  
 64 | amounting to .85 percent of the gross amount of receipts of  
 65 | premiums from policyholders on all premiums collected on  
 66 | casualty insurance policies covering property within the  
 67 | corporate limits of such municipalities, respectively.

68 |       (b) This section applies to a municipality consisting of a  
 69 | single consolidated government consisting of a former county and  
 70 | one or more municipalities, consolidated pursuant to s. 3 or s.  
 71 | 6(e), Art. VIII of the State Constitution, and to casualty  
 72 | insurance policies covering property within the boundaries of  
 73 | the consolidated government, regardless of whether the  
 74 | properties are located within one or more separately  
 75 | incorporated areas within the consolidated government, and  
 76 | provided the properties are being provided with police  
 77 | protection services by the consolidated government.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 177 Pub. Rec./Prepaid Wireless E911 Fee

**SPONSOR(S):** Steubé

**TIED BILLS:** CS/HB 175 **IDEN./SIM. BILLS:** SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Whittier	Keating
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Current law provides a public record exemption for all information contained in returns, reports, accounts, or declarations received by the Department of Revenue. The exemption includes investigative reports and information, and letters of technical advice.

Current law also provides a public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to the E911 Board (Board) or Technology Program within the Department of Management Services (DMS).

This bill, which is linked to the passage of House Bill 175, provides public record exemptions for information relating to the emergency communications number E911 system. Specifically, the bill expands the public record exemption for all information contained in returns, reports, accounts, or declarations received by the Department of Revenue to include information relating to the prepaid wireless E911 fee. It also expands the public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to include such information when it is submitted to the Department of Revenue.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and stand repealed on July 1, 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 state or local government.

The bill provides an effective date that is contingent upon the passage of House Bill 175 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 or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### E911 System for Wireless Users

The Emergency Communications Number E911 Act<sup>1</sup> establishes a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposes a monthly fee, capped at \$0.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses wireless providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but there is no mechanism in place for collection of the fee from the sale of prepaid wireless services.<sup>2</sup> State and local governments are not subject to the fee.<sup>3</sup> The E911 Board (Board), formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee.

##### House Bill 175 (2014)

House Bill 175 provides a mechanism for collection of the E911 fee on each retail purchase of prepaid wireless service from a seller. The bill defines "prepaid wireless service" to mean

[A] right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

House Bill 175 includes provisions designed to address the expense incurred by sellers to collect the E911 fee on prepaid wireless service. It requires sellers to begin collecting the fee on the first day of the month following 180 days after the act takes effect, at a rate of \$0.46 per retail transaction. The bill specifies the manner in which sellers must file returns and remit the E911 fees collected. On or before the 20th day of each month, beginning the first month after the fee is imposed, each seller must file a return and remit to the Department of Revenue (DOR) the fees it collected in the prior month.<sup>4</sup>

The bill specifies the information that must be provided in each E911 fee return filed with DOR. This information includes the:

- Seller's name, tax identification numbers, business location and address;
- County of the business location;
- Reporting period;
- Number of prepaid wireless services sold during the reporting period and the amount of E911 fees collected on those services, including the amount of any adjustments made to the fees collected;
- Amount of the retailer collection allowance deducted from the amount of fees collected; and

<sup>1</sup> Formerly known as the Wireless Emergency Communications Act (chapter 99-367, L.O.F., codified as s. 365.172, F.S.).

<sup>2</sup> Prepaid wireless service is defined as "the right to access telecommunications services, which must be paid for in advance and sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount." See s. 365.172(8)(a)2.b.(I), F.S.

<sup>3</sup> Section 365.172(8)(c), F.S.

<sup>4</sup> If the 20<sup>th</sup> day of the month is a Saturday, Sunday, or legal holiday, the deadline is extended until the next business day.

- Amount to be remitted to DOR.

The bill requires every seller of prepaid wireless service in Florida to register with DOR for each place of business, as required by existing laws regarding registration as a sales and use tax dealer. A separate application is required for each place of business. It provides that a valid certificate of registration issued by DOR for sales and use tax purposes is sufficient for these purposes, and there is no fee for registration for remittance of E911 fees.

### 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.<sup>5</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>6</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

### Public Record Exemptions

Current law provides a public record exemption for all information contained in returns, reports, accounts, or declarations received by DOR. The exemption includes investigative reports and information, and letters of technical advice.<sup>7</sup> Section 212.053(1), F.S., lists all the sections of law to which the exemption applies.

Section 365.174, F.S., provides a public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to the Board or Technology Program within the Department of Management Services (DMS). Statistical abstracts of information collected by the Board or Technology Program may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.<sup>8</sup> "Proprietary confidential business information" is defined as customer lists, customer numbers, individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers, technology descriptions, technical information, or trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.<sup>9</sup>

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<sup>5</sup> Section 24(c), Art. I of the State Constitution.

<sup>6</sup> See s. 119.15, F.S.

<sup>7</sup> Section 213.053(2)(a), F.S.

<sup>8</sup> Section 365.174(1), F.S.

<sup>9</sup> Section 365.174(2), F.S.

## Effect of Proposed Changes

This bill, which is linked to the passage of House Bill 175, creates public record exemptions relating to the E911 system changes.

The bill amends s. 213.053, F.S., to expand the current public record exemption for all information contained in returns, reports, accounts, or declarations received by DOR to include such information as it relates to the prepaid wireless E911 fee. It authorizes DOR to provide such information to the Secretary of Management Services, or his or her authorized agent, or the Board for use in the official business of DMS.

The bill also amends s. 365.174, F.S., to expand the public record exemption for proprietary confidential business information submitted to the Board or Technology Program to include such information when it is submitted to DOR as an agent of the E911 Board.

The bill provides that the exemptions are 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. 213.053, F.S., relating to confidentiality and information sharing.

**Section 2.** Amends s. 365.174, F.S., relating to proprietary confidential business information.

**Section 3.** Provides public necessity statements.

**Section 4.** Provides a contingent effective date.

## 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:

None.

D. FISCAL COMMENTS:

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

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill 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 or public meeting exemption. The bill 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 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 prepaid wireless E911 fee that is contained in returns, reports, accounts, or declarations submitted to DOR. It also creates a public record exemption for proprietary confidential business information submitted to DOR by a prepaid wireless service provider. These exemptions treat such information in the same manner as similar information provided to DOR in other returns, reports, accounts, or declarations, and in the same manner as proprietary confidential business information that is submitted to the Board or Technology Program. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

It appears that no additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The State Constitution provides that only the Legislature may create an exemption from public record requirements.<sup>10</sup> Such exemption must be created by general law, passed by a two-thirds vote of each house of the Legislature. It must provide a statement of public necessity and be as narrowly drafted as possible to accomplish the stated public purpose.<sup>11</sup> Because the constitutional provision took effect on

<sup>10</sup> Section 24(c), Art. I of the State Constitution.

<sup>11</sup> *Id.*



July 1, 1993, any public record exemption already in law on that date was grandfathered in pursuant to the State Constitution.<sup>12</sup> A pre-1993 exemption is only made subject to the constitutional requirements if it is expanded in scope, thereby, effectively creating a new exemption for an additional category of public record.

In part, this bill expands a public record exemption that was created before 1993. Because this bill expands a pre-1993 public record exemption, it must be further amended to add a cross-reference to Art. I, s. 24(a) of the State Constitution. In order to add such cross-reference, s. 213.053, F.S., must be republished in its entirety.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           213.053, F.S.; providing an exemption from public  
 4           records requirements for specified information  
 5           received by the Department of Revenue relating to the  
 6           prepaid wireless E911 fee; authorizing the department  
 7           to share such information with the Secretary of  
 8           Management Services and the E911 Board; amending s.  
 9           365.174, F.S.; including the Department of Revenue as  
 10          an additional recipient of specified confidential  
 11          information relating to wireless service; providing  
 12          for future legislative review and repeal; providing  
 13          statements of public necessity; providing a contingent  
 14          effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraphs (n) through (v) of subsection (1) of  
 19           section 213.053, Florida Statutes, are redesignated as  
 20           paragraphs (o) through (w), respectively, a new paragraph (n) is  
 21           added to that subsection, and paragraph (cc) is added to  
 22           subsection (8) of that section, to read:

23           213.053 Confidentiality and information sharing.—

24           (1) This section applies to:

25           (n) Section 365.172(9), prepaid wireless E911 fee. This  
 26           paragraph is subject to the Open Government Sunset Review Act in  
 27           accordance with s. 119.15 and is repealed on October 2, 2019,  
 28           unless reviewed and saved from repeal through reenactment by the

29 Legislature;

30 (8) Notwithstanding any other provision of this section,  
 31 the department may provide:

32 (cc) Information relative to s. 365.172(9) to the  
 33 Secretary of Management Services or his or her authorized agent  
 34 or to the E911 Board established in s. 365.172(5) for use in the  
 35 conduct of the department's official business.

36  
 37 Disclosure of information under this subsection shall be  
 38 pursuant to a written agreement between the executive director  
 39 and the agency. Such agencies, governmental or nongovernmental,  
 40 shall be bound by the same requirements of confidentiality as  
 41 the Department of Revenue. Breach of confidentiality is a  
 42 misdemeanor of the first degree, punishable as provided by s.  
 43 775.082 or s. 775.083.

44 Section 2. Subsection (1) of section 365.174, Florida  
 45 Statutes, is amended to read:

46 365.174 Proprietary confidential business information.—

47 (1) (a) All proprietary confidential business information  
 48 ~~submitted by a provider to the board or the office,~~ including  
 49 the name and billing or service addresses of service  
 50 subscribers, and trade secrets as defined by s. 812.081, which  
 51 is submitted to:

- 52 1. The board or the office; or
- 53 2. The Department of Revenue as an agent of the board,

54  
 55 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 56 I of the State Constitution. Statistical abstracts of

57 information collected by the board or the office may be released  
 58 or published, but only in a manner that does not identify or  
 59 allow identification of subscribers or their service numbers or  
 60 of revenues attributable to any provider.

61 (b) Subparagraph (a)2. is subject to the Open Government  
 62 Sunset Review Act in accordance with s. 119.15 and shall stand  
 63 repealed on October 2, 2019, unless reviewed and saved from  
 64 repeal through reenactment by the Legislature.

65 Section 3. (1) The Legislature finds that it is a public  
 66 necessity that any confidential proprietary business information  
 67 contained in returns, reports, accounts, or declarations  
 68 received by the Department of Revenue pursuant to s. 365.172,  
 69 Florida Statutes, be exempt from public records requirements.  
 70 The disclosure of such information would adversely affect the  
 71 business interests of prepaid wireless service providers or  
 72 sellers providing the information by harming them in the  
 73 marketplace and would impair competition in the communications  
 74 industry. Disclosure of data that reveals the business interests  
 75 of prepaid wireless service providers or sellers creates a  
 76 competitive disadvantage and an unfair advantage for their  
 77 competitors. Competitors can use such information to impair full  
 78 and fair competition and impede competition in the wireless  
 79 marketplace to the disadvantage of consumers of wireless  
 80 services. Thus, the public and private harm in disclosing this  
 81 information significantly outweighs any public benefit derived  
 82 from disclosure and the ability of the public to scrutinize or  
 83 monitor agency action is not diminished by nondisclosure of this  
 84 information.

85           (2) The Legislature finds that it is a public necessity  
 86 that any confidential proprietary business information contained  
 87 in returns, reports, accounts, or declarations submitted to the  
 88 E911 Board, the Technology Program within the Department of  
 89 Management Services, or the Department of Revenue as an agent of  
 90 the board pursuant to s. 365.174, Florida Statutes, be exempt  
 91 from public records requirements. The disclosure of such  
 92 information would adversely affect the business interests of  
 93 prepaid wireless service providers or sellers providing the  
 94 information by harming them in the marketplace and would impair  
 95 competition in the communications industry. Disclosure of data  
 96 that reveals the business interests of prepaid wireless service  
 97 providers or sellers creates a competitive disadvantage and an  
 98 unfair advantage for their competitors. Competitors can use such  
 99 information to impair full and fair competition and impede  
 100 competition in the wireless marketplace to the disadvantage of  
 101 consumers of wireless services. Thus, the public and private  
 102 harm in disclosing this information significantly outweighs any  
 103 public benefit derived from disclosure and the ability of the  
 104 public to scrutinize or monitor agency action is not diminished  
 105 by nondisclosure of this information.

106           Section 4. This act shall take effect on the same date  
 107 that HB 175 or similar legislation takes effect, if such  
 108 legislation is adopted in the same legislative session or an  
 109 extension thereof and becomes a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee

3 Representative Steube offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 365.174, Florida Statutes, is amended  
 8 to read:

9 365.174 Proprietary confidential business information.—

10 (1) (a) All proprietary confidential business information  
 11 submitted by a provider to the board or the office, ~~including~~  
 12 ~~the name and billing or service addresses of service~~  
 13 ~~subscribers, and trade secrets as defined by s. 812.081,~~ is  
 14 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 15 of the State Constitution.

16 (b) Statistical abstracts of information collected by the  
 17 board or the office may be released or published, but only in a



Amendment No.

18 manner that does not identify or allow identification of  
19 subscribers or their service numbers or of revenues attributable  
20 to any provider.

21 (2)(a) All proprietary confidential business information  
22 submitted by a provider to the Department of Revenue, as an  
23 agent of the board, is confidential and exempt from s. 119.07(1)  
24 and s. 24(a), Art. I of the State Constitution.

25 (b) The Department of Revenue may provide information  
26 relative to s. 365.172(9) to the Secretary of Management  
27 Services, or his or her authorized agent, or to the E911 Board  
28 established in s. 365.172(5) for use in the conduct of the  
29 official business of the Department of Management Services or  
30 the E911 Board.

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

35 (3)~~(2)~~ As used in this section, the term "proprietary  
36 confidential business information" means customer lists,  
37 customer numbers, individual or aggregate customer data by  
38 location, usage and capacity data, network facilities used to  
39 serve subscribers, technology descriptions, technical  
40 information, or trade secrets, including trade secrets as  
41 defined in s. 812.081, and the actual or developmental costs of  
42 E911 systems that are developed, produced, or received



Amendment No.

43 internally by a provider or by a provider's employees,  
44 directors, officers, or agents.

45       Section 2. The Legislature finds that it is a public  
46 necessity that proprietary confidential business information  
47 submitted by a prepaid wireless service provider to the  
48 Department of Revenue, as an agent of the E911 Board, be made  
49 confidential and exempt from s. 119.07(1), Florida Statutes, and  
50 s. 24(a), Art. I of the State Constitution. The disclosure of  
51 such information would adversely affect the business interests  
52 of prepaid wireless service providers providing the information  
53 by harming them in the marketplace and would impair competition  
54 in the communications industry. Disclosure of data that reveals  
55 the business interests of prepaid wireless service providers  
56 creates a competitive disadvantage and an unfair advantage for  
57 their competitors. Competitors can use such information to  
58 impair full and fair competition and impede competition in the  
59 wireless marketplace to the disadvantage of consumers of  
60 wireless services. Thus, the public and private harm in  
61 disclosing this information significantly outweighs any public  
62 benefit derived from disclosure and the ability of the public to  
63 scrutinize or monitor agency action is not diminished by  
64 nondisclosure of this information.

65       Section 3. This act shall take effect on the same date  
66 that HB 175 or similar legislation takes effect, if such  
67 legislation is adopted in the same legislative session or an  
68 extension thereof and becomes a law.





Amendment No.

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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:  
An act relating to public records; amending s.  
365.174, F.S.; providing an exemption from public  
records requirements for proprietary confidential  
business information submitted by a wireless service  
provider to the Department of Revenue; authorizing the  
department to share such information with the  
Secretary of Management Services and the E911 Board;  
providing for future legislative review and repeal;  
providing a statement of public necessity; providing a  
contingent effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 419 Pub. Rec./Department of Health Personnel  
**SPONSOR(S):** Health Quality Subcommittee; Renuart  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 390

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

### SUMMARY ANALYSIS

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

The bill expands the current public record exemption to include the home addresses, telephone numbers, dates of birth, and photographs of current and former Department of Health (DOH) personnel, whose duties include, or result in, the:

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

In addition to providing a public record exemption for DOH personnel, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

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 may have a minimal fiscal impact on DOH.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Public Records

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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Public Record Exemptions

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.<sup>3</sup> Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt<sup>4</sup> from public record requirements for all of the above-listed public employees:

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

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> See s. 119.071(4)(d), F.S.

<sup>4</sup> 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).

If exempt information is held by an agency<sup>5</sup> that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.<sup>6</sup>

Currently, personal information of Department of Health investigative staff and their spouses and children is not exempt from public disclosure.<sup>7</sup>

#### Department of Health – Complaints and Investigations

Pursuant to s. 20.43, F.S., the Department of Health (DOH) is responsible for the regulation of health care practitioners and certain facilities. DOH requires initial and periodic inspections for:<sup>8</sup>

- Pain Management Clinics;
- Pharmacies;
- Dental Laboratories;
- Massage Establishments;
- Electrolysis Establishments;
- Optical Establishments;
- Dispensing Practitioners; and
- Any place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale.

Many individuals may be involved in an investigative manner throughout the investigation process. Section 456.073(1), F.S., requires DOH inspectors and investigators to investigate any complaint that is determined to be legally sufficient. After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred, the complaint is considered legally sufficient for investigation. A complaint is legally sufficient if it contains ultimate facts that show there has been a violation of chapter 456, F.S., any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or a regulatory board.

The Investigative Services Unit (ISU) functions as the investigative arm of DOH as it investigates complaints against health care practitioners and facilities regulated by DOH. ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders of DOH. Upon completion of collecting information and conducting interviews, the investigator writes an investigative report and the report is forwarded to DOH's attorneys for legal review.<sup>9</sup>

Attorneys within the PSU then review the investigative report to recommend a course of action, which may include:<sup>10</sup>

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;
- Expert reviews for complex cases that require professional health care experts to render an opinion;
- Closing orders if the investigation or the expert review does not support the allegations;<sup>11</sup> or
- Administrative complaints when the investigation supports the allegations.

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<sup>5</sup> Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> Section 119.071(4)(d)3., F.S.

<sup>7</sup> *But see* s. 119.071(4)(d)2.a., F.S., re: Department of Health investigators of child abuse.

<sup>8</sup> Sections 456.069 and 465.017, F.S.

<sup>9</sup> Florida Department of Health, Division of Medical Quality Assurance, [http://www.doh.state.fl.us/mqa/enforcement/enforce\\_csu.html](http://www.doh.state.fl.us/mqa/enforcement/enforce_csu.html) (last visited February 13, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

When an administrative complaint is filed, the subject has the right to choose a hearing, consent/stipulation agreement, or voluntarily relinquish his or her license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the PSU attorney defends the final order before the appropriate appellate court.

According to DOH, investigators have recently had to be involved in more investigations that include criminal elements.<sup>12</sup> Investigators who inspect massage establishments are identifying and reporting to law enforcement possible human trafficking activities. Further, investigators have forged strong relationships with law enforcement in an effort to combat the health care concerns caused by illegal “pill mills” and controlled substance abuse in Florida. As DOH investigators are increasingly exposed to potentially dangerous criminal situations, they have become concerned about the release of personal information that may be used by criminals, or individuals under investigation by DOH, to target investigative staff and their families.

### Disability Determinations

The Division of Disability Determinations (DDD) within DOH<sup>13</sup> is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It also is responsible for the continuing disability review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.<sup>14</sup>

Applications for Social Security disability benefits are filed at the claimant’s local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant’s medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant’s alleged disability. The claimant also is contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.<sup>15</sup>

According to DOH, in the past three years, DDD has received 100 credible and significant threats against their employees, usually stemming from the denial of disability benefits.<sup>16</sup>

### **Effect of Proposed Changes**

The bill expands the current public record exemption for identification and location information of public employees to include the home addresses, telephone numbers, dates of birth, and photographs of current and former DOH personnel, whose duties include, or result in, the:

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

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<sup>12</sup> HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

<sup>13</sup> Section 20.43(3)(h), F.S.

<sup>14</sup> Florida Department of Health, Disability Determinations, <http://www.floridahealth.gov/healthy-people-and-families/people-with-disabilities/disability-determinations/index.html> (last visited February 13, 2014).

<sup>15</sup> *Id.*

<sup>16</sup> HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

In addition, the bill provides a public record exemption for certain identification and location information for the spouses and children of such DOH personnel. Specifically, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The public record exemption only applies if such DOH personnel have made reasonable efforts to protect the information from being accessible through other means available to the public.

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

The bill provides a statement of public necessity as required by the State Constitution.<sup>17</sup> The public necessity statement declares the public record exemption is necessary as the release of such identifying and location information might place these current or former personnel of DOH and their families in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel. Further, the harm that may result from the release of such personal identifying information outweighs any public benefit derived from disclosure of the information.

#### B. SECTION DIRECTORY:

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

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

<sup>17</sup> See s. 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

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 certain personnel of the Department of Health. 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Adds "dates of birth" to the personal identification information included in the public record exemptions for certain DOH personnel and their families; and
- Clarifies the specific DOH personnel to whom the public record exemptions apply.

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



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

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

13  
14            Section 1. Paragraph (d) of subsection (4) of section  
15    119.071, Florida Statutes, is amended to read:

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

18            (4) AGENCY PERSONNEL INFORMATION.—

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

24            2.a.(I) The home addresses, telephone numbers, social  
25    security numbers, dates of birth, and photographs of active or  
26    former sworn or civilian law enforcement personnel, including

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

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

45 |       (III) Sub-sub-subparagraph (II) is subject to the Open  
 46 | Government Sunset Review Act in accordance with s. 119.15~~7~~ and  
 47 | shall stand repealed on October 2, 2018, unless reviewed and  
 48 | saved from repeal through reenactment by the Legislature.

49 |       b. The home addresses, telephone numbers, dates of birth,  
 50 | and photographs of firefighters certified in compliance with s.  
 51 | 633.408; the home addresses, telephone numbers, photographs,  
 52 | dates of birth, and places of employment of the spouses and

53 children of such firefighters; and the names and locations of  
54 schools and day care facilities attended by the children of such  
55 firefighters are exempt from s. 119.07(1).

56       c. The home addresses, dates of birth, and telephone  
57 numbers of current or former justices of the Supreme Court,  
58 district court of appeal judges, circuit court judges, and  
59 county court judges; the home addresses, telephone numbers,  
60 dates of birth, and places of employment of the spouses and  
61 children of current or former justices and judges; and the names  
62 and locations of schools and day care facilities attended by the  
63 children of current or former justices and judges are exempt  
64 from s. 119.07(1).

65       d.(I) The home addresses, telephone numbers, social  
66 security numbers, dates of birth, and photographs of current or  
67 former state attorneys, assistant state attorneys, statewide  
68 prosecutors, or assistant statewide prosecutors; the home  
69 addresses, telephone numbers, social security numbers,  
70 photographs, dates of birth, and places of employment of the  
71 spouses and children of current or former state attorneys,  
72 assistant state attorneys, statewide prosecutors, or assistant  
73 statewide prosecutors; and the names and locations of schools  
74 and day care facilities attended by the children of current or  
75 former state attorneys, assistant state attorneys, statewide  
76 prosecutors, or assistant statewide prosecutors are exempt from  
77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78       (II) The names of the spouses and children of current or

79 former state attorneys, assistant state attorneys, statewide  
80 prosecutors, or assistant statewide prosecutors are exempt from  
81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open  
83 Government Sunset Review Act in accordance with s. 119.15~~7~~ and  
84 shall stand repealed on October 2, 2018, unless reviewed and  
85 saved from repeal through reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone  
87 numbers of general magistrates, special magistrates, judges of  
88 compensation claims, administrative law judges of the Division  
89 of Administrative Hearings, and child support enforcement  
90 hearing officers; the home addresses, telephone numbers, dates  
91 of birth, and places of employment of the spouses and children  
92 of general magistrates, special magistrates, judges of  
93 compensation claims, administrative law judges of the Division  
94 of Administrative Hearings, and child support enforcement  
95 hearing officers; and the names and locations of schools and day  
96 care facilities attended by the children of general magistrates,  
97 special magistrates, judges of compensation claims,  
98 administrative law judges of the Division of Administrative  
99 Hearings, and child support enforcement hearing officers are  
100 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
101 Constitution if the general magistrate, special magistrate,  
102 judge of compensation claims, administrative law judge of the  
103 Division of Administrative Hearings, or child support hearing  
104 officer provides a written statement that the general

105 | magistrate, special magistrate, judge of compensation claims,  
 106 | administrative law judge of the Division of Administrative  
 107 | Hearings, or child support hearing officer has made reasonable  
 108 | efforts to protect such information from being accessible  
 109 | through other means available to the public.

110 |       f. The home addresses, telephone numbers, dates of birth,  
 111 | and photographs of current or former human resource, labor  
 112 | relations, or employee relations directors, assistant directors,  
 113 | managers, or assistant managers of any local government agency  
 114 | or water management district whose duties include hiring and  
 115 | firing employees, labor contract negotiation, administration, or  
 116 | other personnel-related duties; the names, home addresses,  
 117 | telephone numbers, dates of birth, and places of employment of  
 118 | the spouses and children of such personnel; and the names and  
 119 | locations of schools and day care facilities attended by the  
 120 | children of such personnel are exempt from s. 119.07(1) and s.  
 121 | 24(a), Art. I of the State Constitution.

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

130 |       h. The home addresses, telephone numbers, places of

131 employment, dates of birth, and photographs of current or former  
 132 guardians ad litem, as defined in s. 39.820; the names, home  
 133 addresses, telephone numbers, dates of birth, and places of  
 134 employment of the spouses and children of such persons; and the  
 135 names and locations of schools and day care facilities attended  
 136 by the children of such persons are exempt from s. 119.07(1) and  
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 138 litem provides a written statement that the guardian ad litem  
 139 has made reasonable efforts to protect such information from  
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former juvenile probation  
 143 officers, juvenile probation supervisors, detention  
 144 superintendents, assistant detention superintendents, juvenile  
 145 justice detention officers I and II, juvenile justice detention  
 146 officer supervisors, juvenile justice residential officers,  
 147 juvenile justice residential officer supervisors I and II,  
 148 juvenile justice counselors, juvenile justice counselor  
 149 supervisors, human services counselor administrators, senior  
 150 human services counselor administrators, rehabilitation  
 151 therapists, and social services counselors of the Department of  
 152 Juvenile Justice; the names, home addresses, telephone numbers,  
 153 dates of birth, and places of employment of spouses and children  
 154 of such personnel; and the names and locations of schools and  
 155 day care facilities attended by the children of such personnel  
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

157 Constitution.

158       j. The home addresses, telephone numbers, dates of birth,  
 159 and photographs of current or former public defenders, assistant  
 160 public defenders, criminal conflict and civil regional counsel,  
 161 and assistant criminal conflict and civil regional counsel; the  
 162 home addresses, telephone numbers, dates of birth, and places of  
 163 employment of the spouses and children of such defenders or  
 164 counsel; and the names and locations of schools and day care  
 165 facilities attended by the children of such defenders or counsel  
 166 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 167 Constitution.

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

183 1. The home addresses and telephone numbers of county tax  
 184 collectors; the names, home addresses, telephone numbers, and  
 185 places of employment of the spouses and children of such tax  
 186 collectors; and the names and locations of schools and day care  
 187 facilities attended by the children of such tax collectors are  
 188 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 189 Constitution if the county tax collector has made reasonable  
 190 efforts to protect such information from being accessible  
 191 through other means available to the public. This sub-  
 192 subparagraph is subject to the Open Government Sunset Review Act  
 193 in accordance with s. 119.15 and shall stand repealed on October  
 194 2, 2017, unless reviewed and saved from repeal through  
 195 reenactment by the Legislature.

196 m. The home addresses, telephone numbers, dates of birth,  
 197 and photographs of current or former personnel of the Department  
 198 of Health whose duties include, or result in, the determination  
 199 or adjudication of eligibility for social security disability  
 200 benefits, the investigation or prosecution of complaints filed  
 201 against health care practitioners, or the inspection of health  
 202 care practitioners or health care facilities licensed by the  
 203 Department of Health; the names, home addresses, telephone  
 204 numbers, dates of birth, and places of employment of the spouses  
 205 and children of such personnel; and the names and locations of  
 206 schools and day care facilities attended by the children of such  
 207 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 208 the State Constitution if the personnel have made reasonable



209 efforts to protect such information from being accessible  
 210 through other means available to the public. This sub-  
 211 subparagraph is subject to the Open Government Sunset Review Act  
 212 in accordance with s. 119.15 and shall stand repealed on October  
 213 2, 2019, unless reviewed and saved from repeal through  
 214 reenactment by the Legislature.

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

223 4. The exemptions in this paragraph apply to information  
 224 held by an agency before, on, or after the effective date of the  
 225 exemption.

226 5. Except as otherwise expressly provided in this  
 227 paragraph, this paragraph is subject to the Open Government  
 228 Sunset Review Act in accordance with s. 119.15, and shall stand  
 229 repealed on October 2, 2017, unless reviewed and saved from  
 230 repeal through reenactment by the Legislature.

231 Section 2. The Legislature finds that it is a public  
 232 necessity that the home addresses, telephone numbers, dates of  
 233 birth, and photographs of current or former personnel of the  
 234 Department of Health whose duties include, or result in, the

235 determination or adjudication of eligibility for social security  
 236 disability benefits, the investigation or prosecution of  
 237 complaints filed against health care practitioners, or the  
 238 inspection of health care practitioners or health care  
 239 facilities licensed by the Department of Health; that the names,  
 240 home addresses, telephone numbers, dates of birth, and places of  
 241 employment of the spouses and children of such personnel; and  
 242 that the names and locations of schools and day care facilities  
 243 attended by the children of such personnel be made exempt from  
 244 public records requirements. The Legislature finds that the  
 245 release of such identifying and location information might place  
 246 such current or former personnel of the Department of Health and  
 247 their family members in danger of physical and emotional harm  
 248 from disgruntled individuals who have contentious reactions to  
 249 actions carried out by such personnel of the Department of  
 250 Health, or whose business or professional practices have come  
 251 under the scrutiny of investigators and inspectors of the  
 252 Department of Health. The Legislature further finds that the  
 253 harm that may result from the release of such identifying and  
 254 location information outweighs any public benefit derived from  
 255 disclosure of the information.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 525 Pub. Rec./Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Grant and others

**TIED BILLS:** CS/HB 523 **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 2 N, As CS	Brown-Blake	Luczynski
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Current law provides a public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing (Division) of the Department of Agriculture and Consumer Services (Department). It authorizes release of such information in certain circumstances.

Committee Substitute for House Bill 523 authorizes the Department to appoint elected county tax collectors for the purpose of accepting and forwarding to the Department applications for concealed weapon or firearm licenses or renewals on behalf of the Division.

This bill, which is contingent upon the passage of Committee Substitute for House Bill 523, expands the current public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division. It is expanded to include such information when it is held by a tax collector appointed by the Department to receive applications for concealed weapon or firearm licenses or renewals and fees.

The bill provides for retroactive application of the public record exemption. In addition, it authorizes release of the confidential and exempt information in certain circumstances.

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 public necessity statement as required by the State Constitution.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Public Records

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.<sup>1</sup>

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

##### Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry a concealed weapon or concealed firearm to those who qualify.<sup>3</sup> Carrying a concealed weapon without first obtaining a license could be a crime pursuant to s. 790.01, F.S. A concealed weapon or firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.<sup>4</sup>

In order to obtain a concealed weapon license, applicants must make application and meet the following general requirements:

- Is a citizen or permanent resident alien of the United States or is a consular security official of a foreign government with diplomatic relations with the United States.
- Is at least 21 years old.
- Can physically handle a weapon safely.
- Is not a convicted felon.
- Has not been convicted of a crime under ch. 893, F.S., or been committed for the abuse of a controlled substance within a 3-year period immediately preceding the application date.
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired.
- Demonstrates competence with a firearm by completing a firearm training course or presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service, or is or has previously been licensed to carry a firearm in Florida.

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 790.06(1), F.S.

<sup>4</sup> *Id.*

- Has not been adjudicated an incapacitated person under s. 744.331, F.S.
- Has not been committed to a mental institution under ch. 394, F.S.
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled.
- Is not currently under a domestic violence injunction.
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.<sup>5</sup>

To obtain a concealed weapon license, a person must complete under oath an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A full frontal view color photograph of the applicant, which must be taken within the preceding 30 days.
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms, and is knowledgeable of its provisions.
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents.
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.
- A full set of fingerprints.
- Documented proof of completion of a firearms safety and training course.
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.<sup>6</sup>

Concealed weapon license application submissions have steadily increased over the last 14 years. During fiscal year 1999-2000, the Department received 28,618 applications for initial licensure and 73,821 applications for licensure renewal.<sup>7</sup> During fiscal year 2012-2013, the Department received 204,288 new license applications and 60,293 applications for license renewal.<sup>8</sup> During the same time period, the Department issued 192,026 new concealed weapon licenses and 59,856 renewals.<sup>9</sup> As of the end of fiscal year 2012-2013, there were 1,098,458 valid Florida concealed weapon licenses.<sup>10</sup>

#### Public Record Exemption for Concealed Weapon Licensure Application Information

Section 790.0601, F.S., provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing (Division) of the Department is confidential and exempt<sup>11</sup> from public record requirements. Current law

<sup>5</sup> Section 790.06(2), F.S.

<sup>6</sup> Section 790.06(4)-(5), F.S.

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 1999-June 30, 2000, *available at* [http://www.freshfromflorida.com/content/download/7497/118839/07011999\\_06302000\\_cw\\_annual.pdf](http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf) (last viewed February 10, 2014).

<sup>8</sup> Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 2012-June 30, 2013, *available at* [http://www.freshfromflorida.com/content/download/7484/118761/07012012\\_06302013\\_cw\\_annual.pdf](http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf) (last viewed February 10, 2014).

<sup>9</sup> *Id.*

<sup>10</sup> Florida Department of Agriculture and Consumer Services, Number of Valid Florida Concealed Weapon Licenses as Reported at the End of Each Fiscal year (June 30) Since Program Inception in October 1987, *available at* [http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses\\_FiscalYearEndSince1987-1988.pdf](http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf) (last viewed February 10, 2014).

<sup>11</sup> 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

provides for retroactive application<sup>12</sup> of the public record exemption.<sup>13</sup>

The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or licensee, or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department.<sup>14</sup>

#### Committee Substitute for House Bill 523 (2014)

Committee Substitute for House Bill 523 creates s. 790.0625, F.S., which authorizes the Department to appoint elected county tax collectors for the purpose of accepting and forwarding to the Department applications for concealed weapon or firearm licenses or renewals on behalf of the Division.

In order to be considered by the Department, tax collectors must submit a request to the Division to accept applications for concealed weapon or firearm licenses. The Division has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. The Department and the Division has the authority to rescind the MOU for any reason at any time.

Any personal identifying information of an applicant for a license or renewal that is held by the tax collector, as a result of the MOU arrangement with the Department, is a public record. However, if the same application is submitted to the Department at one of its eight regional offices, the personal identifying information is confidential and exempt from public record requirements.

#### **Effect of the Bill**

This bill, which is contingent upon the passage of Committee Substitute for House Bill 523, expands the current public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division. The exemption is expanded to include such information when it is held by a tax collector appointed by the Department to receive applications and fees.

The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or licensee, or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department.

The bill provides for retroactive application of the public record exemption. In addition, it 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.

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687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>12</sup> 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).

<sup>13</sup> Section 790.0601(1), F.S.

<sup>14</sup> Section 790.0601(2), F.S.

The bill also provides a public necessity statement as required by the State Constitution. It provides that:

The knowledge that an individual has applied for a license to carry a concealed weapon or firearm may logically lead to the conclusion that he or she is carrying a concealed weapon or firearm. This defeats the purpose of carrying a concealed weapon or firearm. The Legislature has found in past legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution." Release of personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm could be used to harass an innocent individual based solely on his or her exercised right to carry a concealed weapon or firearm.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 790.0601, F.S., expanding the public record exemption for personal identifying information of an individual who applies for a license to carry a concealed weapon or firearm.

**Section 2** provides a public necessity statement.

**Section 3** provides a contingent effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on tax collectors, because staff responsible for complying with public record requests could require training related to 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 tax collectors.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

###### Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill 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 or public meeting exemption. The bill 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 or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division, to include such information when it is held by certain tax collectors. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment updates a reference to newly created s. 790.0625, F.S., in CS/HB 523.

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

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           790.0601, F.S.; providing an exemption from public  
 4           records requirements for certain personal identifying  
 5           information held by the tax collector when an  
 6           individual applies for a license to carry a concealed  
 7           weapon or firearm pursuant to s. 790.06, F.S.;  
 8           providing for retroactive application of the  
 9           exemption; providing for disclosure of such  
 10          information under specified conditions; providing for  
 11          legislative review and repeal of the exemption;  
 12          providing a statement of public necessity; providing a  
 13          contingent effective date.

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

16  
 17          Section 1. Section 790.0601, Florida Statutes, is amended  
 18          to read:

19          790.0601 Public records exemption for concealed weapons.—

20          (1) Personal identifying information of an individual who  
 21          has applied for or received a license to carry a concealed  
 22          weapon or firearm pursuant to s. 790.06 held by the Division of  
 23          Licensing of the Department of Agriculture and Consumer Services  
 24          is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 25          I of the State Constitution. This exemption applies to such  
 26          information held by the division before, on, or after the

27 effective date of this section.

28 (2) Personal identifying information of an individual who  
29 has applied for a license to carry a concealed weapon or firearm  
30 pursuant to s. 790.0625 which is held by a tax collector  
31 appointed by the Department of Agriculture and Consumer Services  
32 to receive applications and fees is confidential and exempt from  
33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
34 This exemption applies to such information held by the tax  
35 collector before, on, or after the effective date of this  
36 subsection.

37 (3)~~(2)~~ Information made confidential and exempt by this  
38 section shall be disclosed:

39 (a) With the express written consent of the applicant or  
40 licensee or his or her legally authorized representative.

41 (b) By court order upon a showing of good cause.

42 (c) Upon request by a law enforcement agency in connection  
43 with the performance of lawful duties, which shall include  
44 access to any automated database containing such information  
45 maintained by the Department of Agriculture and Consumer  
46 Services.

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

51 Section 2. (1) The Legislature finds that, with certain  
52 exceptions, it is a public necessity that personal identifying

53 information of an individual who has applied for a license to  
54 carry a concealed weapon or firearm which is held by a tax  
55 collector be made confidential and exempt from public records  
56 requirements. The carrying of a concealed weapon or firearm in  
57 this state by members of the general public requires an  
58 individual to file an application containing personal  
59 identifying information. The Legislature has made the Department  
60 of Agriculture and Consumer Services the responsible agency for  
61 collecting this information and issuing the concealed weapon or  
62 firearm license. The collected information must include a  
63 statement from the applicant that he or she seeks a concealed  
64 weapon or firearm license as a means of lawful self-defense.

65 (2) There has been substantial demand for the concealed  
66 weapon or firearm license. The availability of additional  
67 licensure locations would benefit individuals who require self-  
68 protection.

69 (3) The potential addition of licensure locations raises  
70 issues of confidentiality. The knowledge that an individual has  
71 applied for a license to carry a concealed weapon or firearm may  
72 logically lead to the conclusion that he or she is carrying a  
73 concealed weapon or firearm. This defeats the purpose of  
74 carrying a concealed weapon or firearm. The Legislature has  
75 found in past legislative sessions and has expressed in s.  
76 790.335(1)(a)3., Florida Statutes, that a record of legally  
77 owned firearms or law-abiding firearm owners is "an instrument  
78 that can be used as a means to profile innocent citizens and to

79 harass and abuse American citizens based solely on their choice  
80 to own firearms and exercise their Second Amendment right to  
81 keep and bear arms as guaranteed under the United States  
82 Constitution." Release of personal identifying information of an  
83 individual who has applied for a license to carry a concealed  
84 weapon or firearm could be used to harass an innocent individual  
85 based solely on his or her exercised right to carry a concealed  
86 weapon or firearm. Therefore, the Legislature finds that the  
87 personal identifying information of an individual who has  
88 applied for a license to carry a concealed weapon or firearm  
89 pursuant to chapter 790, Florida Statutes, must be held  
90 confidential and exempt from public records requirements.

91       Section 3. This act shall take effect on the same date  
92 that HB 523 or similar legislation takes effect, if such  
93 legislation is adopted in the same legislative session or an  
94 extension thereof and becomes a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 599 Pub. Rec./Automated License Plate Recognition Systems  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Hutson  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee		Williamson	Williamson
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

Automated license plate recognition (ALPR) is a mass surveillance method that uses optical character recognition of images to read vehicle license plates. ALPRs are used by law enforcement as a method of cataloging the movements of traffic or individuals. In Florida, ALPR technology has been utilized by local and state law enforcement for the last several years.

The bill creates a public record exemption for the following information held by an agency:

- Images and data obtained through the use of an ALPR system; and
- Personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

The bill authorizes release of the confidential and exempt information in certain circumstances.

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 may have a negative fiscal impact on state and local governments. See FISCAL COMMENTS section.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created 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.<sup>1</sup>

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

##### Automated License Plate Recognition

Automated license plate recognition (ALPR) is a surveillance method that uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. ALPR is used by law enforcement as a method of cataloging the movements of traffic or individuals.

ALPR cameras can be set up at fixed locations or mounted on police cars. They can capture over 3,000 license plate images per minute<sup>3</sup> and make a record of the license plate. ALPR images can be captured clearly, day or night, no matter how fast the car is traveling.<sup>4</sup> The data also includes the date, time, and location of the image.

The records are stored in law enforcement databases and checked against hot lists, contained within electronic clearinghouses such as the National Crime Information Center database,<sup>5</sup> for tags associated with criminal activity.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> New York State Division of Criminal Justice Services, Suggested Guidelines: Operation of License Plate Reader Technology 2011, <http://criminaljustice.state.ny.us/ofpa/pdfdocs/finalprguidelines01272011a.pdf>, page 11 (last viewed January 16, 2014).

<sup>4</sup> *Id.*, at pages 5-7.

<sup>5</sup> According to the Federal Bureau of Investigation, the National Crime Information Center database (NCIC) is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, and 365 days a year. By the end of Fiscal Year (FY) 2011, NCIC contained 11.7 million active records in 19 files. During FY 2011, NCIC averaged 7.9 million transactions per day. The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified



License plate images and data associated with these images are the primary forms of information collected by ALPR systems. ALPR data may be stored in an individual ALPR unit until it is either transferred to another server or discarded. Data files compiled in ALPR systems typically contain:

- Black and white plate image;
- Contextual color image;
- Electronically readable format of plate alphanumeric characters (optical character recognition of plate numbers);
- Location and GPS coordinates;
- Time and date of image capture; and
- Camera identification.<sup>6</sup>

The contextual image, sometimes referred to as an overview image, may capture additional identifying features of the vehicle such as make, model, color, bumper sticker, or damage. Also, it may capture the vehicle in context, including the surrounding area.<sup>7</sup>

A 2011 national survey found that nearly three-quarters (71 percent) of the 70 responding agencies reported using ALPRs, and 85 percent plan to acquire or increase their use of the technology over the next five years.<sup>8</sup>

#### ALPR Data Collection in Florida

Florida law enforcement officers currently use ALPR surveillance; however, data collection restrictions for law enforcement do not exist. As such, license plate data can be gathered through the use of an ALPR. In July 2012, the American Civil Liberties Union (ACLU) submitted public records requests to nine cities and counties in Florida to obtain information on how the local governments use ALPRs.<sup>9</sup>

The ACLU found that ALPRs capture information including the license plate number, date, time, and location of every scan. The information is collected and pooled into regional sharing systems (databases). The Florida Department of Law Enforcement (FDLE) currently has agreements with 111 police departments and sheriff's offices for access to ALPR data.<sup>10</sup>

#### **Proposed Changes**

The bill defines an "automated license plate recognition system" as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

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Person; United States Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains automated criminal history record information, is accessible through the same network as NCIC. More information on the NCIC can be found at <http://www.fbi.gov/about-us/cjis/ncic> (last viewed January 16, 2014).

<sup>6</sup> International Association of Chiefs of Police, Automated License Plate Recognition Systems; Policy and Operational Guidance for Law Enforcement, at [http://www.theiacp.org/Portals/0/pdfs/IACP\\_ALPR\\_Policy\\_Operational\\_Guidance.pdf](http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf), page 13 (last viewed November 20, 2013).

<sup>7</sup> *Id.*  
<sup>8</sup> Police Executive Research Forum, Critical Issues in Policing Series; How Are Innovations in Technology Transforming Policing? (January 2012), at [http://policeforum.org/library/critical-issues-in-policing-series/Technology\\_web.pdf](http://policeforum.org/library/critical-issues-in-policing-series/Technology_web.pdf), page two (last viewed November 20, 2013).

<sup>9</sup> American Civil Liberties Union Automatic License Plate Reader Documents: Interactive Map - <https://www.aclu.org/maps/automatic-license-plate-reader-documents-interactive-map> (last viewed November 20, 2013).

<sup>10</sup> Email received from FDLE on October 28, 2013 (on file with the Transportation and Highway Safety Subcommittee).

The bill creates a public record exemption for information collected through the use of an ALPR system. Specifically, the following information held by an agency<sup>11</sup> is confidential and exempt<sup>12</sup> from public record requirements:

- Images and data obtained through the use of an ALPR system; and
- Personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

Such information may be disclosed:

- By or to a criminal justice agency in the performance of a criminal justice agency's<sup>13</sup> official duties.
- To an individual to whom the license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.<sup>14</sup>

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<sup>11</sup> The exemption provides that the term "agency" has the same meaning as in s. 119.011, F.S. 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. It also includes, for the purposes of chapter 19, 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.

<sup>12</sup> 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).

<sup>13</sup> For purposes of the public record exemption, "criminal justice agency" has the same meaning as in s. 119.011(4), F.S. 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.

<sup>14</sup> For purposes of the public record exemption, "active criminal intelligence information" and "active criminal investigative information" have the same meaning as in s. 119.011(3), F.S. Section 119.011(3), F.S., provides the following definitions:

(a) "Criminal intelligence information" means 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.

(b) "Criminal investigative information" means 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.

(c) "Criminal intelligence information" and "criminal investigative information" do not include:

1. The time, date, location, and nature of a reported crime.
2. 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.
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. 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 s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:

- a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
- b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in s. 905.26, F.S.

(d) The word "active" has the following meaning:

1. Criminal intelligence information is considered "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.
2. 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.

The bill provides for retroactive application<sup>15</sup> of the public record exemption.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will be 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 certain information collected through the use of ALPR systems.

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:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on agencies that collect ALPR data. Staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, an agency could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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In addition, criminal intelligence and criminal investigative information is considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

<sup>15</sup> 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).

### 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 images, data, and personal identifying information, held by a public agency and obtained through the use of an automated license plate recognition system.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

###### Drafting Issues: Definitions

The bill defines certain terms associated with the public record exemption. Subsection (1) provides the definitional section; however, subsection (3) also provides defined terms. It is recommended that all definitions be co-located in one subsection of the public record exemption for better clarity.

###### Drafting Issues: Public Necessity Statement

On line 56 of the bill, the word "made" is missing. The sentence should read:

The Legislature finds that it is a public necessity that images and data obtained through the use of an automated license plate recognition system held by an agency and personal identifying information in data generated from such images be made confidential and exempt from public records requirements.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the Transportation & Highway Safety Subcommittee adopted one amendment to HB 599 before reporting it favorably as a committee substitute. The amendment revises the public record exemption so that it specifically addresses the images and data that an ALPR would capture and store.

The analysis is drafted to reflect the changes made by the committee substitute as approved by the Transportation & Highway Safety Subcommittee.

1 A bill to be entitled  
2 An act relating to public records; creating s.  
3 316.0777, F.S.; providing definitions; creating a  
4 public records exemption for images and data obtained  
5 through the use of an automated license plate  
6 recognition system and personal identifying  
7 information of an individual in data generated from  
8 such images; providing conditions for disclosure of  
9 such images and information; providing for retroactive  
10 application of the public records exemption; providing  
11 for future repeal and legislative review of the  
12 exemption under the Open Government Sunset Review Act;  
13 providing a statement of public necessity; providing  
14 an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 316.0777, Florida Statutes, is created  
19 to read:

20 316.0777 Automated license plate recognition systems;  
21 public records exemption.—

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

23 (a) "Agency" has the same meaning as in s. 119.011.

24 (b) "Automated license plate recognition system" means a  
25 system of one or more mobile or fixed high-speed cameras  
26 combined with computer algorithms to convert images of license

27 | plates into computer-readable data.

28 |       (2) The following information held by an agency is  
 29 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 30 | of the State Constitution:

31 |       (a) Images and data obtained through the use of an  
 32 | automated license plate recognition system.

33 |       (b) Personal identifying information of an individual in  
 34 | data generated or resulting from images obtained through the use  
 35 | of an automated license plate recognition system.

36 |       (3) Such information may be disclosed as follows:

37 |       (a) Any such information may be disclosed by or to a  
 38 | criminal justice agency, as defined in s. 119.011(4), in the  
 39 | performance of a criminal justice agency's official duties.

40 |       (b) Any such information relating to a license plate  
 41 | registered to an individual may be disclosed to the individual,  
 42 | unless such information constitutes active criminal intelligence  
 43 | information or active criminal investigative information, as  
 44 | defined in s. 119.011(3).

45 |       (4) This exemption applies to such information held by an  
 46 | agency before, on, or after the effective date of this  
 47 | exemption.

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

52 |       Section 2. The Legislature finds that it is a public

53 necessity that images and data obtained through the use of an  
54 automated license plate recognition system held by an agency and  
55 personal identifying information in data generated from such  
56 images be confidential and exempt from public records  
57 requirements. The release of such images and data gathered  
58 through automated license plate recognition systems could enable  
59 a third party to track a person's movements and compile a  
60 history on where a person has driven. This exemption is  
61 necessary because the public disclosure of such information  
62 constitutes an unwarranted invasion into the personal life and  
63 privacy of a person. The harm from disclosing such information  
64 outweighs any public benefit that can be derived from widespread  
65 and unregulated public access to such information.

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



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**

Remove lines 23-44 and insert:

7 (a) "Active," "criminal intelligence information," and  
 8 "criminal investigative information" have the same meaning as in  
 9 s. 119.011(3).

10 (b) "Agency" has the same meaning as in s. 119.011.

11 (c) "Automated license plate recognition system" means a  
 12 system of one or more mobile or fixed high-speed cameras  
 13 combined with computer algorithms to convert images of license  
 14 plates into computer-readable data.

15 (d) "Criminal justice agency" has the same meaning as in  
 16 s. 119.011.





Amendment No.

17 (2) The following information held by an agency is  
18 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
19 of the State Constitution:

20 (a) Images and data obtained through the use of an  
21 automated license plate recognition system.

22 (b) Personal identifying information of an individual in  
23 data generated or resulting from images obtained through the use  
24 of an automated license plate recognition system.

25 (3) Such information may be disclosed as follows:

26 (a) Any such information may be disclosed by or to a  
27 criminal justice agency in the performance of the criminal  
28 justice agency's official duties.

29 (b) Any such information relating to a license plate  
30 registered to an individual may be disclosed to the individual,  
31 unless such information constitutes active criminal intelligence  
32 information or active criminal investigative information.  
33



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**

6 Remove lines 56-60 and insert:  
7 images be made confidential and exempt from s. 119.07(1),  
8 Florida Statutes, and s. 24(a), Article I of the State  
9 Constitution. The exemption protects sensitive personal  
10 information that, if released, could be defamatory to an  
11 individual or jeopardize the safety of an individual by allowing  
12 a third party to track a person's movements and compile a  
13 history on where a person has driven. This exemption is



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GVOPS 14-04 OGSR Inventories of an Estate or Elective Estate  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

**SUMMARY ANALYSIS**

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

Current law provides a public record exemption for inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt from public record requirements. The confidential and exempt inventory or accounting may be disclosed for inspection or copying in certain instances.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.<sup>4</sup> A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.<sup>5</sup> A person who does not live in Florida may qualify as a personal representative if certain requirements are met.<sup>6</sup>

##### Inventory of Property of an Estate

A personal representative of an estate is required to file an inventory of the property in an estate within 60 days after issuance of letters of administration of the estate.<sup>7</sup> The inventory must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.<sup>8</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 733.302, F.S.

<sup>5</sup> Section 733.303(1), F.S.

<sup>6</sup> See s. 733.304, F.S.

<sup>7</sup> Section 733.604(1)(a), F.S.; Florida Probate Rule 5.340(1).

<sup>8</sup> *Id.*

The personal representative must file a verified amended or supplementary inventory if he or she learns that property was not included in the original inventory or learns that the estimated value or description was erroneous or misleading.<sup>9</sup>

A beneficiary may make a written request for:

- An explanation from the personal representative regarding how the inventory value was determined; or
- A copy of the appraisal if an appraisal was obtained.<sup>10</sup>

#### Accountings of an Estate

The Florida Probate Rules provide requirements for the contents of and accounting standards for a fiduciary accounting in a probate proceeding. The fiduciary accounting must include:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration; and
- A schedule of assets at the end of the accounting period.<sup>11</sup>

The accounting must be verified by the fiduciary filing the accounting.<sup>12</sup>

#### Elective Share

The surviving spouse of a decedent who lives in Florida has the right to a share of the elective estate of the decedent.<sup>13</sup> The elective share is an amount equal to 30 percent of the elective estate.<sup>14</sup>

#### Public Record Exemption under Review

Current law provides a public record exemption for inventories and accountings of an estate. Specifically, an inventory of an estate or elective estate, or an accounting filed in an estate proceeding, is confidential and exempt<sup>15</sup> from public record requirements.<sup>16</sup> Current law provides for retroactive application<sup>17</sup> of the public record exemption under review.<sup>18</sup>

Such inventory or accounting may be disclosed for inspection or copying:

- To the personal representative or the personal representative's attorney;
- To an interested person,<sup>19</sup> or

<sup>9</sup> Section 733.604(2), F.S.

<sup>10</sup> Section 733.604(3), F.S.

<sup>11</sup> Florida Probate Rule 5.346(a).

<sup>12</sup> Florida Probate Rule 5.346(d).

<sup>13</sup> Section 732.201, F.S.

<sup>14</sup> Section 732.2065, F.S.; *see s. 732.2035, F.S.*, for a discussion of property entering into the elective estate; *see also s. 732.2055, F.S.*, for a discussion of the valuation of the elective estate.

<sup>15</sup> 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).*

<sup>16</sup> Section 733.604(2)(b)1.-3., F.S.

<sup>17</sup> 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).

<sup>18</sup> Section 733.604(2)(b)5., F.S.

<sup>19</sup> Section 731.201(23), F.S., defines "interested person" to mean

[A]ny person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s.

- By court order upon a showing of good cause.<sup>20</sup>

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>21</sup>

During the 2013 interim, subcommittee staff met with representatives from the Office of the State Courts and the Real Property, Probate, and Trust Law Section of The Florida Bar as part of the Open Government Sunset Review process. The representatives recommended reenactment of the public record exemption due to the sensitive financial information that is contained in such inventories and accountings.<sup>22</sup>

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for an inventory of an estate or elective estate, or an accounting in an estate proceeding. It also clarifies that the public record exemption applies to such accounting when it is filed with the clerk of court.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 733.604, F.S., to save from repeal the public record exemption for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding.

Section 2 provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

<sup>20</sup> Section 733.604(2)(b)4., F.S.

<sup>21</sup> Section 733.604(2)(b)6. F.S.

<sup>22</sup> Meeting on October 15, 2013, with Eric Maclure, representing the Office of the State Courts, and Martha Edenfield, representing the Real Property, Probate, and Trust Section of The Florida Bar.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 733.604, F.S., relating  
 4           to an exemption from public record requirements for  
 5           the inventories of an estate or elective estate filed  
 6           with the clerk of court or the accountings filed in an  
 7           estate proceeding; making a clarifying change;  
 8           removing the scheduled repeal of the exemption;  
 9           providing an effective date.

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

12  
 13           Section 1. Paragraph (b) of subsection (1) of section  
 14           733.604, Florida Statutes, is amended to read:

15           733.604 Inventories and accountings; public records  
 16           exemptions.—

17           (1)

18           (b)1. Any inventory of an estate, whether initial,  
 19           amended, or supplementary, filed with the clerk of the court in  
 20           conjunction with the administration of an estate is confidential  
 21           and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 22           Constitution.

23           2. Any inventory of an elective estate, whether initial,  
 24           amended, or supplementary, filed with the clerk of the court in  
 25           conjunction with an election made in accordance with part II of  
 26           chapter 732 is confidential and exempt from s. 119.07(1) and s.

PCB GVOPS 14-04

ORIGINAL

2014

27 24(a), Art. I of the State Constitution.

28 3. Any accounting, whether interim, final, amended, or  
 29 supplementary, filed with the clerk of court in an estate  
 30 proceeding is confidential and exempt from s. 119.07(1) and s.  
 31 24(a), Art. I of the State Constitution.

32 4. Any inventory or accounting made confidential and  
 33 exempt by subparagraph 1., subparagraph 2., or subparagraph 3.  
 34 shall be disclosed by the custodian for inspection or copying:

- 35 a. To the personal representative;
- 36 b. To the personal representative's attorney;
- 37 c. To an interested person as defined in s. 731.201; or
- 38 d. By court order upon a showing of good cause.

39 5. These exemptions apply to any inventory or accounting  
 40 filed before, on, or after July 1, 2009.

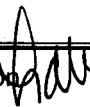

41 ~~6. This paragraph is subject to the Open Government Sunset~~  
 42 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 43 ~~on October 2, 2014, unless reviewed and saved from repeal~~  
 44 ~~through reenactment by the Legislature.~~

45 Section 2. This act shall take effect October 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 14-05 OGSR Florida Defense Support Task Force  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 858

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

### SUMMARY ANALYSIS

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

The base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed. The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state. Currently, the Florida Defense Support Task Force (task force) is tasked with the mission to preserve and protect military installations in Florida.

Current law provides a public record and public meeting exemption for the task force. Portions of records held by the task force that relate to strengths and weaknesses of military installations or military missions in Florida and other states and territories, and to Florida's strategy to retain its military bases during any United States BRAC process, are exempt from public record requirements. Any portion of a task force meeting wherein such information is discussed is exempt from public meeting requirements. In addition, records generated during those closed meetings are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2014, if this bill does not become law.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### United States Department of Defense Base Realignment and Closure Process

The base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed.<sup>4</sup> The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Under a BRAC process, the Secretary of Defense makes recommendations to the Defense Base Closure and Realignment Commission (commission).<sup>5</sup> After receiving recommendations from the Secretary, the commission conducts public hearings on the recommendations. By July 1 of each year in which the Secretary submits recommendations, the commission must transmit to the President a report containing the commission's findings and conclusions regarding the Secretary's recommendations, along with the commission's recommendations for closures and realignments of military installations inside the United States.<sup>6</sup> By July 15 of each year in which the commission makes recommendations, the President must transmit to the commission and to Congress a report containing the President's approval or disapproval of the commission's recommendations.<sup>7</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> See Public Law 101-510, as amended through the Authorization Act of Fiscal Year 2005.

<sup>5</sup> The commission is nominated by the President and confirmed by the Senate. Public Law 101-510, s. 2902.

<sup>6</sup> *Id.* at s. 2903.

<sup>7</sup> *Id.*

Since 1988, Congress has approved five BRAC rounds, which occurred in 1988, 1991, 1993, 1995, and 2005. During the BRAC rounds that occurred from 1988 to 1995, 501 military bases, military commands, and military housing developments were recommended closed, realigned, or a previous BRAC's decision was recommended changed. Twenty-seven of those decisions were related to military bases or military commands located in Florida.<sup>8</sup>

#### Florida Defense Support Task Force

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state.<sup>9</sup>

In 2011, the Legislature created the Florida Defense Support Task Force (task force)<sup>10</sup> with the mission to:

[M]ake recommendations to preserve and protect military installations to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.<sup>11</sup>

The task force is comprised of the Governor, or his or her designee, and 12 members representing defense-related industries or communities that host military bases and installations. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint four members to serve on the task force.<sup>12</sup>

#### Public Record and Public Meeting Exemption under Review

In 2009, the Legislature established the Florida Council on Military Base and Mission Support (council)<sup>13</sup> and created a public record and public meeting exemption specific to BRAC preparations by the council.<sup>14</sup> In 2012, the council was repealed and the public record and public meeting exemptions were transferred to the newly created Florida Defense Support Task Force.<sup>15</sup>

Current law provides a public record exemption for certain records held by the task force. Specifically, the following records are exempt<sup>16</sup> from public record requirements:

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions under the United States BRAC process.<sup>17</sup>

---

<sup>8</sup> 2005 Defense Base Closure and Realignment Commission Report, Appendix F: Base Closures and Realignments by State: 1995, 1993, 1991, and 1988; available at <http://www.brac.gov/Finalreport.html> (last visited March 2, 2014).

<sup>9</sup> Such entities include the Governor's Advisory Council on Base Realignment and Closure, which was created in 2003; Florida Council on Military Base and Mission support, which was created in 2009; and Florida Defense Support Task Force, which was created in 2011.

<sup>10</sup> Section 38, chapter 2011-76, L.O.F.; codified as s. 288.987, F.S.

<sup>11</sup> Section 288.987(2), F.S.

<sup>12</sup> Section 288.987(3), F.S.

<sup>13</sup> See chapter 2009-155, L.O.F.

<sup>14</sup> Chapter 2009-156, L.O.F.; codified as s. 288.985, F.S.

<sup>15</sup> See chapter 2012-98, L.O.F.

<sup>16</sup> 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).

<sup>17</sup> Section 288.985(1)(a), F.S.

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in other state or territories and the vulnerability of such installations or missions to base realignment or closure under the United States BRAC process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.<sup>18</sup>
- That portion of a record that relates to Florida's strategy to retain its military bases during any United States BRAC process and any agreements or proposals to relocate or realign military units and missions.<sup>19</sup>

Current law also provides a public meeting exemption for any portion of a meeting of the task force, or a workgroup of the task force, wherein such exempt records are presented or discussed.<sup>20</sup> In addition, any records generated during the closed portion of the meeting are exempt from public record requirements.<sup>21</sup>

Any person who willfully and knowingly violates the exemptions commits a misdemeanor of the first degree.<sup>22,23</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>24</sup>

During the 2013 interim, subcommittee staff met with staff of the task force as part of the Open Government Sunset Review process.<sup>25</sup> According to staff of the task force, the public record and public meeting exemptions are used by the task force and are necessary in allowing the task force to accomplish its mission. The exemptions are necessary as long as the task force is in existence.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the task force. It also removes the misdemeanor penalty as penalties typically are not provided for exemptions wherein records are made exempt only, because the records custodian has the discretion to release exempt records when necessary.<sup>26</sup> The bill also removes superfluous language.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 288.985, F.S., to save from repeal the public record and public meeting exemptions for the Florida Defense Support Task Force.

Section 2 provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

<sup>18</sup> Section 288.985(1)(b), F.S.

<sup>19</sup> Section 288.985(1)(c), F.S.

<sup>20</sup> Section 288.985(2), F.S.

<sup>21</sup> Section 288.985(3), F.S.

<sup>22</sup> Section 288.985(4), F.S.

<sup>23</sup> A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. See ss. 775.082 and 775.083, F.S.

<sup>24</sup> Section 288.985(5), F.S.

<sup>25</sup> Meeting with Rocky McPherson and Bruce Grant, staff for the task force, on August 21, 2013.

<sup>26</sup> See footnote 16 for a discussion of the differences between exempt records and confidential and exempt records.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



PCB GVOPS 14-05

ORIGINAL

2014

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 288.985, F.S., relating  
 4           to an exemption from public record and public meeting  
 5           requirements for the Florida Defense Support Task  
 6           Force; removing the penalty; removing superfluous  
 7           language; removing the scheduled repeal of the  
 8           exemption; providing an effective date.

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

11  
 12           Section 1. Section 288.985, Florida Statutes, is amended  
 13 to read:

14           288.985 Exemptions from public records and public meetings  
 15 requirements.—

16           (1) The following records held by the Florida Defense  
 17 Support Task Force are exempt from s. 119.07(1) and s. 24(a),  
 18 Art. I of the State Constitution:

19           (a) That portion of a record which relates to strengths  
 20 and weaknesses of military installations or military missions in  
 21 this state relative to the selection criteria for the  
 22 realignment and closure of military bases and missions under any  
 23 United States Department of Defense base realignment and closure  
 24 process.

25           (b) That portion of a record which relates to strengths  
 26 and weaknesses of military installations or military missions in

27 other states or territories and the vulnerability of such  
 28 installations or missions to base realignment or closure under  
 29 the United States Department of Defense base realignment and  
 30 closure process, and any agreements or proposals to relocate or  
 31 realign military units and missions from other states or  
 32 territories.

33 (c) That portion of a record which relates to the state's  
 34 strategy to retain its military bases during any United States  
 35 Department of Defense base realignment and closure process and  
 36 any agreements or proposals to relocate or realign military  
 37 units and missions.

38 (2) (a) Meetings or portions of meetings of the Florida  
 39 Defense Support Task Force, or a workgroup of the task force, at  
 40 which records are presented or discussed that ~~which~~ are exempt  
 41 under subsection (1) are exempt from s. 286.011 and s. 24(b),  
 42 Art. I of the State Constitution.

43 ~~(b)(3)~~ Any records generated during those portions of  
 44 meetings that ~~which~~ are exempt ~~closed to the public~~ under  
 45 paragraph (a) subsection (2), ~~including, but not limited to,~~  
 46 ~~minutes, tape recordings, videotapes, digital recordings,~~  
 47 ~~transcriptions, or notes,~~ are exempt from s. 119.07(1) and s.  
 48 24(a), Art. I of the State Constitution.

49 ~~(4) Any person who willfully and knowingly violates this~~  
 50 ~~section commits a misdemeanor of the first degree, punishable as~~  
 51 ~~provided in s. 775.082 or s. 775.083.~~

52 ~~(5) This section is subject to the Open Government Sunset~~

PCB GVOPS 14-05

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53 | ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
54 | ~~on October 2, 2014, unless reviewed and saved from repeal~~  
55 | ~~through reenactment by the Legislature.~~

56 |       Section 2. This act shall take effect October 1, 2014.

