



Government Operations Subcommittee

**Wednesday, December 2, 2015
9:00 a.m.
Webster Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Wednesday, December 02, 2015 09:00 am
End Date and Time: Wednesday, December 02, 2015 11:00 am
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 55 Trade Secrets by Criminal Justice Subcommittee, Pilon
CS/HB 57 Public Records and Meetings/Trade Secrets by Criminal Justice Subcommittee, Pilon
HB 273 Public Records by Beshears, Kerner
PCS for HB 305 -- Procurement Procedures for Educational Institutions
HB 361 Vote-by-mail Voting by Lee, Williams, A.
HB 541 Addresses of Legal Residence by Spano

Consideration of the following proposed committee bill(s):

PCB GVOPS 16-01 -- OGSR Emergency Notification
PCB GVOPS 16-02 -- OGSR Office of Financial Regulation
PCB GVOPS 16-03 -- OGSR Florida Center for Brain Tumor Research
PCB GVOPS 16-04 -- OGSR Local Government Audit and Investigative Reports

NOTICE FINALIZED on 11/24/2015 4:47PM by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: CS/HB 57 **IDEN./SIM. BILLS:** CS/SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Government Operations Subcommittee		Williamson	Williamson
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill amends the definition of "trade secret" to mean "any scientific, technical, or commercial information, *including financial information*," that otherwise qualifies as trade secret. The bill reenacts ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes to the definition of "trade secret."

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds). The bill also creates a new first degree misdemeanor; therefore, it may increase commitments to local jails.

This bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret which is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the Division of Plant Industry of the Department of Agriculture and Consumer Services or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081(1)(c), F.S., as:

[T]he whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

Effect of the Bill

The bill amends the definition of "trade secret" in s. 812.081(1)(c), F.S., to mean "any scientific, technical, or commercial information, *including financial information*, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof." As such, the criminal offenses described above will apply to a clarified list of trade secret information.

Florida law contains a variety of provisions that cross-reference the definition of "trade secret" in s. 812.081(1)(c), F.S. The bill reenacts the following provisions to incorporate the changes made by the bill to the definition of "trade secret":

- Section 581.199, F.S., prohibits any unauthorized representative from using trade secret information for personal gain or to reveal it to an unauthorized person.
- Section 721.071(1), F.S., provides requirements for filing trade secret information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.
- Section 812.035, F.S., provides civil remedies for violations of ss. 812.012-812.037, F.S., or s. 812.081, F.S.
- Section 815.04(4), F.S., prohibits a person from willfully, knowingly, and without authorization disclosing or taking specified data, programs, or supporting documentation that is trade secret or confidential.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Reenacts s. 581.199, F.S., relating to confidential business information.

Section 3. Reenacts s. 721.071(1), F.S., relating to trade secrets.

Section 4. Reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., relating to civil remedies; limitation on civil and criminal actions.

Section 5. Reenacts s. 815.04(4), F.S., relating to offenses against intellectual property; public records exemption.

Section 6. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways; therefore, it may increase the application of this offense, and increase commitments to local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added reenactments of ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes made by the bill to the definition of "trade secret" in s. 812.081, F.S.

1 A bill to be entitled
 2 An act relating to trade secrets; amending s. 812.081,
 3 F.S.; including financial information in provisions
 4 prohibiting the theft, embezzlement, or unlawful
 5 copying of trade secrets; providing criminal
 6 penalties; reenacting ss. 581.199, 721.071(1),
 7 812.035(1), (2), (5), (7), (8), (10), and (11), and
 8 815.04(4), F.S., relating to confidential business
 9 information, trade secret information filed with the
 10 Division of Florida Condominiums, Timeshares, and
 11 Mobile Homes within the Department of Business and
 12 Professional Regulation, civil remedies, and offenses
 13 against intellectual property, respectively, to
 14 incorporate changes made by this act to the definition
 15 of the term "trade secret" in s. 812.081, F.S., in
 16 references thereto; providing an effective date.

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

19
 20 Section 1. Section 812.081, Florida Statutes, is amended
 21 to read:

22 812.081 Trade secrets; theft, embezzlement; unlawful
 23 copying; definitions; penalty.—

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

25 (a) "Article" means any object, device, machine, material,
 26 substance, or composition of matter, or any mixture or copy

27 | thereof, whether in whole or in part, including any complete or
 28 | partial writing, record, recording, drawing, sample, specimen,
 29 | prototype model, photograph, microorganism, blueprint, map, or
 30 | copy thereof.

31 | (b) "Representing" means completely or partially
 32 | describing, depicting, embodying, containing, constituting,
 33 | reflecting, or recording.

34 | (c) "Trade secret" means the whole or any portion or phase
 35 | of any formula, pattern, device, combination of devices, or
 36 | compilation of information which is for use, or is used, in the
 37 | operation of a business and which provides the business an
 38 | advantage, or an opportunity to obtain an advantage, over those
 39 | who do not know or use it. The term ~~"Trade secret"~~ includes any
 40 | scientific, technical, or commercial information, including
 41 | financial information, and includes any design, process,
 42 | procedure, list of suppliers, list of customers, business code,
 43 | or improvement thereof. Irrespective of novelty, invention,
 44 | patentability, the state of the prior art, and the level of
 45 | skill in the business, art, or field to which the subject matter
 46 | pertains, a trade secret is considered to be:

- 47 | 1. Secret;
- 48 | 2. Of value;
- 49 | 3. For use or in use by the business; and
- 50 | 4. Of advantage to the business, or providing an
- 51 | opportunity to obtain an advantage, over those who do not know
- 52 | or use it

53
 54 when the owner thereof takes measures to prevent it from
 55 becoming available to persons other than those selected by the
 56 owner to have access thereto for limited purposes.

57 (d) "Copy" means any facsimile, replica, photograph, or
 58 other reproduction in whole or in part of an article and any
 59 note, drawing, or sketch made of or from an article or part or
 60 portion thereof.

61 (2) Any person who, with intent to deprive or withhold
 62 from the owner thereof the control of a trade secret, or with an
 63 intent to appropriate a trade secret to his or her own use or to
 64 the use of another, steals or embezzles an article representing
 65 a trade secret or without authority makes or causes to be made a
 66 copy of an article representing a trade secret commits ~~is guilty~~
 67 ~~of~~ a felony of the third degree, punishable as provided in s.
 68 775.082 or s. 775.083.

69 (3) In a prosecution for a violation of ~~the provisions of~~
 70 this section, the fact it is no defense that the person so
 71 charged returned or intended to return the article so stolen,
 72 embezzled, or copied is not a defense.

73 Section 2. For the purpose of incorporating the amendment
 74 made by this act to section 812.081, Florida Statutes, in a
 75 reference thereto, section 581.199, Florida Statutes, is
 76 reenacted to read:

77 581.199 Confidential business information.—It is unlawful
 78 for any authorized representative who in an official capacity

79 obtains under the provisions of this chapter any information
 80 entitled to protection as a trade secret, as defined in s.
 81 812.081, to use that information for personal gain or to reveal
 82 it to any unauthorized person.

83 Section 3. For the purpose of incorporating the amendment
 84 made by this act to section 812.081, Florida Statutes, in a
 85 reference thereto, subsection (1) of section 721.071, Florida
 86 Statutes, is reenacted to read:

87 721.071 Trade secrets.—

88 (1) If a developer or any other person filing material
 89 with the division pursuant to this chapter expects the division
 90 to keep the material confidential on grounds that the material
 91 constitutes a trade secret, as that term is defined in s.
 92 812.081, the developer or other person shall file the material
 93 together with an affidavit of confidentiality. "Filed material"
 94 for purposes of this section shall mean material that is filed
 95 with the division with the expectation that the material will be
 96 kept confidential and that is accompanied by an affidavit of
 97 confidentiality. Filed material that is trade secret information
 98 includes, but is not limited to, service contracts relating to
 99 the operation of reservation systems and those items and matters
 100 described in s. 815.04(3).

101 Section 4. For the purpose of incorporating the amendment
 102 made by this act to section 812.081, Florida Statutes, in
 103 references thereto, subsections (1), (2), (5), (7), (8), (10),
 104 and (11) of section 812.035, Florida Statutes, are reenacted to

105 read:

106 812.035 Civil remedies; limitation on civil and criminal
107 actions.-

108 (1) Any circuit court may, after making due provisions for
109 the rights of innocent persons, enjoin violations of the
110 provisions of ss. 812.012-812.037 or s. 812.081 by issuing

111 appropriate orders and judgments, including, but not limited to:

112 (a) Ordering any defendant to divest himself or herself of
113 any interest in any enterprise, including real estate.

114 (b) Imposing reasonable restrictions upon the future
115 activities or investments of any defendant, including, but not
116 limited to, prohibiting any defendant from engaging in the same
117 type of endeavor as the enterprise in which he or she was
118 engaged in violation of the provisions of ss. 812.012-812.037 or
119 s. 812.081.

120 (c) Ordering the dissolution or reorganization of any
121 enterprise.

122 (d) Ordering the suspension or revocation of any license,
123 permit, or prior approval granted to any enterprise by any
124 department or agency of the state.

125 (e) Ordering the forfeiture of the charter of a
126 corporation organized under the laws of the state or the
127 revocation of a certificate authorizing a foreign corporation to
128 conduct business within the state, upon finding that the board
129 of directors or a managerial agent acting on behalf of the
130 corporation, in conducting the affairs of the corporation, has

131 authorized or engaged in conduct in violation of ss. 812.012-
 132 812.037 or s. 812.081 and that, for the prevention of future
 133 criminal activity, the public interest requires the charter of
 134 the corporation forfeited and the corporation dissolved or the
 135 certificate revoked.

136 (2) All property, real or personal, including money, used
 137 in the course of, intended for use in the course of, derived
 138 from, or realized through conduct in violation of a provision of
 139 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture
 140 to the state. The state shall dispose of all forfeited property
 141 as soon as commercially feasible. If property is not exercisable
 142 or transferable for value by the state, it shall expire. All
 143 forfeitures or dispositions under this section shall be made
 144 with due provision for the rights of innocent persons.

145 (5) The Department of Legal Affairs, any state attorney,
 146 or any state agency having jurisdiction over conduct in
 147 violation of a provision of ss. 812.012-812.037 or s. 812.081
 148 may institute civil proceedings under this section. In any
 149 action brought under this section, the circuit court shall
 150 proceed as soon as practicable to the hearing and determination.
 151 Pending final determination, the circuit court may at any time
 152 enter such injunctions, prohibitions, or restraining orders, or
 153 take such actions, including the acceptance of satisfactory
 154 performance bonds, as the court may deem proper.

155 (7) The state, including any of its agencies,
 156 instrumentalities, subdivisions, or municipalities, if it proves

157 | by clear and convincing evidence that it has been injured in any
158 | fashion by reason of any violation of the provisions of ss.
159 | 812.012-812.037 or s. 812.081, has a cause of action for
160 | threefold the actual damages sustained and, in any such action,
161 | is entitled to minimum damages in the amount of \$200 and shall
162 | also recover court costs and reasonable attorney's fees in the
163 | trial and appellate courts. In no event shall punitive damages
164 | be awarded under this section. The defendant shall be entitled
165 | to recover reasonable attorney's fees and court costs in the
166 | trial and appellate courts upon a finding that the claimant
167 | raised a claim which was without substantial fact or legal
168 | support.

169 | (8) A final judgment or decree rendered in favor of the
170 | state in any criminal proceeding under ss. 812.012-812.037 or s.
171 | 812.081 shall estop the defendant in any subsequent civil action
172 | or proceeding as to all matters as to which such judgment or
173 | decree would be an estoppel as between the parties.

174 | (10) Notwithstanding any other provision of law, a
175 | criminal or civil action or proceeding under ss. 812.012-812.037
176 | or s. 812.081 may be commenced at any time within 5 years after
177 | the cause of action accrues; however, in a criminal proceeding
178 | under ss. 812.012-812.037 or s. 812.081, the period of
179 | limitation does not run during any time when the defendant is
180 | continuously absent from the state or is without a reasonably
181 | ascertainable place of abode or work within the state, but in no
182 | case shall this extend the period of limitation otherwise

183 applicable by more than 1 year. If a criminal prosecution or
 184 civil action or other proceeding is brought, or intervened in,
 185 to punish, prevent, or restrain any violation of the provisions
 186 of ss. 812.012-812.037 or s. 812.081, the running of the period
 187 of limitations prescribed by this section with respect to any
 188 cause of action arising under subsection (6) or subsection (7)
 189 which is based in whole or in part upon any matter complained of
 190 in any such prosecution, action, or proceeding shall be
 191 suspended during the pendency of such prosecution, action, or
 192 proceeding and for 2 years following its termination.

193 (11) The application of one civil remedy under any
 194 provision of ss. 812.012-812.037 or s. 812.081 shall not
 195 preclude the application of any other remedy, civil or criminal,
 196 under ss. 812.012-812.037 or s. 812.081 or any other section of
 197 the Florida Statutes.

198 Section 5. For the purpose of incorporating the amendment
 199 made by this act to section 812.081, Florida Statutes, in a
 200 reference thereto, subsection (4) of section 815.04, Florida
 201 Statutes, is reenacted to read:

202 815.04 Offenses against intellectual property; public
 203 records exemption.—

204 (4) A person who willfully, knowingly, and without
 205 authorization discloses or takes data, programs, or supporting
 206 documentation that is a trade secret as defined in s. 812.081 or
 207 is confidential as provided by law residing or existing internal
 208 or external to a computer, computer system, computer network, or

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209 | electronic device commits an offense against intellectual
210 | property.

211 | Section 6. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 57 Public Records and Meetings/Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: CS/HB 55 **IDEN./SIM. BILLS:** CS/SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Government Operations Subcommittee		Williamson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records. Many of these statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S.

HB 55, which is tied to this bill, expands the definition of the term "trade secret" contained in s. 812.081(1)(c), F.S., to include financial information.

This bill, which is linked to the passage of HB 55 or similar legislation, amends ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2) and (3)(b), 403.73, 499.012(8)(g) and (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(6), and reenacts 815.04(3), F.S., to incorporate the changes to the definition of "trade secret" made by CS/HB 55. The sections provide public record exemptions for trade secret information. Thus, the bill amends those public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This bill is tied to CS/HB 55, which clarifies the types of trade secret information that are exempt from public record disclosure. Together, the bills may have a positive fiscal impact on state and local government expenditures because they may require agencies to provide personnel training on the modified exemptions.

The bill will be effective on the same date CS/HB 55 or similar legislation takes effect.

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 public record exemptions for trade secret information; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida 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, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ 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 more broad than necessary to meet one of the following purposes:⁵

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.

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

Trade Secrets

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt⁸ from public record requirements. For example:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board, the Technology Program within the Department of Management Services, and the Department of Revenue, confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8), F.S., makes any information held by the Department of Citrus (DOC) that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to DOC confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to DOC confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3) and (6), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., which defines the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any *scientific, technical, or commercial information*, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Committee Substitute for House Bill 55

During the 2016 Legislative Session, CS/HB 55, which is tied to this bill, amends the definition of "trade secret" contained in s. 812.081(1)(c), F.S., to include *financial information* that is contained or included in scientific, technical, or commercial information.

Effect of the Bill

The bill, which is linked to the passage of CS/HB 55 or similar legislation, amends or reenacts all of the above-described public record exemptions to incorporate the changes to the definition of "trade secret" in s. 812.081(1)(c), F.S., made by CS/HB 55. Thus, the bill amends the public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 125.0104(9)(d), F.S., relating to tourist development tax; procedure for levying; authorized uses; referendum; enforcement.

Section 3. Amends s. 288.1226(8), F.S., relating to Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.

Section 4. Amends s. 331.326, F.S., relating to information relating to trade secrets confidential.

Section 5. Amends s. 365.174, F.S., relating to proprietary confidential business information.

Section 6. Amends s. 381.83, F.S., relating to trade secrets; confidentiality.

Section 7. Amends s. 403.7046(2) and (3)(b), F.S., relating to regulation of recovered materials.

Section 8. Amends s. 403.73, F.S., relating to trade secrets; confidentiality.

Section 9. Amends s. 499.012(8)(g) and (m), F.S., relating to permit application requirements.

Section 10. Amends s. 499.0121(7), F.S., relating to storage and handling of prescription drugs; recordkeeping.

Section 11. Amends s. 499.051(7), F.S., relating to inspections and investigations.

Section 12. Amends s. 499.931, F.S., relating to trade secret information.

Section 13. Amends s. 502.222, F.S., relating to information relating to trade secrets confidential.

Section 14. Amends s. 570.48(3), F.S., relating to Division of Fruit and Vegetables; powers and duties; records.

Section 15. Amends s. 573.123(2), F.S., relating to maintenance and production of records.

Section 16. Amends s. 601.10(8), F.S., relating to powers of the Department of Citrus.

Section 17. Amends s. 601.15(7)(d), F.S., relating to advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.

Section 18. Amends s. 601.152(8)(c), F.S., relating to special marketing orders.

Section 19. Amends s. 601.76, F.S., relating to manufacturer to furnish formula and other information.

Section 20. Reenacts s. 815.04(3), and amends subsection (6), F.S., relating to offenses against intellectual property; public records exemption.

Section 21. Provides a public necessity statement.

Section 22. Provides an effective date that is the same date as HB 55 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on state government expenditures because they may require agencies to provide personnel training on the amended exemptions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on local government expenditures because they may require agencies to provide personnel training on the expanded exemptions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida 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 for trade secret information; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida 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 for trade secret information; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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 amends the definition of trade secrets that qualify for specified public record exemptions. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no more broad than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments collectively:

- Restructured the public records Sunset Review Act language in s. 365.174, F.S., to correctly apply the language to the entire section;
- Amended and reenacted a cross-reference to s. 812.081, F.S.; and
- Removed the republication of a criminal prohibition.

1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending ss. 119.071, 125.0104, 288.1226, 331.326,
4 365.174, 381.83, 403.7046, 403.73, 499.012, 499.0121,
5 499.051, 499.931, 502.222, 570.48, 573.123, 601.10,
6 601.15, 601.152, and 601.76, F.S.; expanding public
7 records exemptions for certain data processing
8 software obtained by an agency, certain information
9 held by a county tourism promotion agency, information
10 related to trade secrets held by the Florida Tourism
11 Industry Marketing Corporation, information related to
12 trade secrets held by Space Florida, proprietary
13 confidential business information submitted to the
14 E911 Board, the Technology Program within the
15 Department of Management Services, and the Department
16 of Revenue, trade secret information held by the
17 Department of Health, trade secret information
18 reported or submitted to the Department of
19 Environmental Protection, trade secret information
20 contained in a complaint and any investigatory
21 documents held by the Department of Business and
22 Professional Regulation, trade secret information of a
23 dairy industry business held by the Department of
24 Agriculture and Consumer Services, trade secret
25 information held by the Division of Fruits and
26 Vegetables of the Department of Agriculture and

27 Consumer Services, trade secret information of a
 28 person subject to a marketing order held by the
 29 Department of Agriculture and Consumer Services, trade
 30 secret information provided to the Department of
 31 Citrus, trade secret information of noncommodity
 32 advertising and promotional program participants held
 33 by the Department of Citrus, trade secret information
 34 of a person subject to a marketing order held by the
 35 Department of Citrus, and a manufacturer's formula
 36 filed with the Department of Agriculture and Consumer
 37 Services, respectively, to incorporate changes made to
 38 the definition of the term "trade secret" in s.
 39 812.081, F.S., by CS/HB 55; expanding a public meeting
 40 exemption for any meeting or portion of a meeting of
 41 Space Florida's board at which trade secrets are
 42 discussed to incorporate changes made to the
 43 definition of the term "trade secret" in s. 812.081,
 44 F.S., by CS/HB 55; reenacting and amending s. 815.04,
 45 F.S., relating to specified data, programs, or
 46 supporting documentation held by an agency, to
 47 incorporate changes made to the definition of the term
 48 "trade secret" in s. 812.081, F.S., by CS/HB 55;
 49 providing for future legislative review and repeal of
 50 the exemptions; providing a statement of public
 51 necessity; providing a contingent effective date.

52

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

54

55 Section 1. Paragraph (f) of subsection (1) of section
56 119.071, Florida Statutes, is amended to read:

57 119.071 General exemptions from inspection or copying of
58 public records.—

59 (1) AGENCY ADMINISTRATION.—

60 (f) Data processing software obtained by an agency under a
61 licensing agreement that prohibits its disclosure and which
62 software is a trade secret, as defined in s. 812.081, and
63 agency-produced data processing software that is sensitive are
64 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
65 Constitution. The designation of agency-produced software as
66 sensitive does ~~shall~~ not prohibit an agency head from sharing or
67 exchanging such software with another public agency. This
68 paragraph is subject to the Open Government Sunset Review Act in
69 accordance with s. 119.15 and shall stand repealed on October 2,
70 2021, unless reviewed and saved from repeal through reenactment
71 by the Legislature.

72 Section 2. Paragraph (d) of subsection (9) of section
73 125.0104, Florida Statutes, is amended to read:

74 125.0104 Tourist development tax; procedure for levying;
75 authorized uses; referendum; enforcement.—

76 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any
77 other powers and duties provided for agencies created for the
78 purpose of tourism promotion by a county levying the tourist

79 development tax, such agencies are authorized and empowered to:
 80 (d) Undertake marketing research and advertising research
 81 studies and provide reservations services and convention and
 82 meetings booking services consistent with the authorized uses of
 83 revenue as set forth in subsection (5).

84 1. Information given to a county tourism promotion agency
 85 which, if released, would reveal the identity of persons or
 86 entities who provide data or other information as a response to
 87 a sales promotion effort, an advertisement, or a research
 88 project or whose names, addresses, meeting or convention plan
 89 information or accommodations or other visitation needs become
 90 booking or reservation list data, is exempt from s. 119.07(1)
 91 and ~~from~~ s. 24(a), Art. I of the State Constitution.

92 2. The following information, when held by a county
 93 tourism promotion agency, is exempt from s. 119.07(1) and ~~from~~
 94 s. 24(a), Art. I of the State Constitution:

95 ~~a. A trade secret, as defined in s. 812.081.~~

96 ~~a.b.~~ a. Booking business records, as defined in s. 255.047.

97 ~~b.e.~~ b. Trade secrets and commercial or financial information
 98 gathered from a person and privileged or confidential, as
 99 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any
 100 amendments thereto.

101 3. A trade secret, as defined in s. 812.081, held by a
 102 county tourism promotion agency is exempt from s. 119.07(1) and
 103 s. 24(a), Art. I of the State Constitution. This subparagraph is
 104 subject to the Open Government Sunset Review Act in accordance

105 with s. 119.15 and shall stand repealed on October 2, 2021,
 106 unless reviewed and saved from repeal through reenactment by the
 107 Legislature.

108 Section 3. Subsection (8) of section 288.1226, Florida
 109 Statutes, is amended to read:

110 288.1226 Florida Tourism Industry Marketing Corporation;
 111 use of property; board of directors; duties; audit.—

112 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
 113 who responds to a marketing project or advertising research
 114 project conducted by the corporation in the performance of its
 115 duties on behalf of Enterprise Florida, Inc., or trade secrets
 116 as defined by s. 812.081 obtained pursuant to such activities,
 117 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 118 Constitution. This subsection is subject to the Open Government
 119 Sunset Review Act in accordance with s. 119.15 and shall stand
 120 repealed on October 2, 2021, unless reviewed and saved from
 121 repeal through reenactment by the Legislature.

122 Section 4. Section 331.326, Florida Statutes, is amended
 123 to read:

124 331.326 Information relating to trade secrets
 125 confidential.—The records of Space Florida regarding matters
 126 encompassed by this act are public records subject to ~~the~~
 127 ~~provisions of~~ chapter 119. Any information held by Space Florida
 128 which is a trade secret, as defined in s. 812.081, including
 129 trade secrets of Space Florida, any spaceport user, or the space
 130 industry business, is confidential and exempt from ~~the~~

131 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 132 Constitution and may not be disclosed. If Space Florida
 133 determines that any information requested by the public will
 134 reveal a trade secret, it shall, in writing, inform the person
 135 making the request of that determination. The determination is a
 136 final order as defined in s. 120.52. Any meeting or portion of a
 137 meeting of Space Florida's board is exempt from ~~the provisions~~
 138 ~~of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution
 139 when the board is discussing trade secrets. Any public record
 140 generated during the closed portions of the meetings, such as
 141 minutes, tape recordings, and notes, is confidential and exempt
 142 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
 143 State Constitution. This section is subject to the Open
 144 Government Sunset Review Act in accordance with s. 119.15 and
 145 shall stand repealed on October 2, 2021, unless reviewed and
 146 saved from repeal through reenactment by the Legislature.

147 Section 5. Section 365.174, Florida Statutes, is amended
 148 to read:

149 365.174 Proprietary confidential business information.—

150 (1)(a) All proprietary confidential business information
 151 submitted by a provider to the board or the office is
 152 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 153 of the State Constitution.

154 (b) Statistical abstracts of information collected by the
 155 board or the office may be released or published, but only in a
 156 manner that does not identify or allow identification of

157 subscribers or their service numbers or of revenues attributable
 158 to any provider.

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

163 (b) The Department of Revenue may provide information
 164 relative to s. 365.172(9) to the Secretary of Management
 165 Services, or his or her authorized agent, or to the E911 Board
 166 established in s. 365.172(5) for use in the conduct of the
 167 official business of the Department of Management Services or
 168 the E911 Board.

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

173 (3) As used in this section, the term "proprietary
 174 confidential business information" means customer lists,
 175 customer numbers, individual or aggregate customer data by
 176 location, usage and capacity data, network facilities used to
 177 serve subscribers, technology descriptions, technical
 178 information, or trade secrets, including trade secrets as
 179 defined in s. 812.081, and the actual or developmental costs of
 180 E911 systems that are developed, produced, or received
 181 internally by a provider or by a provider's employees,
 182 directors, officers, or agents.

183 (4) This section is subject to the Open Government Sunset
 184 Review Act in accordance with s. 119.15 and shall stand repealed
 185 on October 2, 2021, unless reviewed and saved from repeal
 186 through reenactment by the Legislature.

187 Section 6. Section 381.83, Florida Statutes, is amended to
 188 read:

189 381.83 Trade secrets; confidentiality.—

190 (1) Records, reports, or information obtained from any
 191 person under this chapter, unless otherwise provided by law,
 192 shall be available to the public, except upon a showing
 193 satisfactory to the department by the person from whom the
 194 records, reports, or information is obtained that such records,
 195 reports, or information, or a particular part thereof, contains
 196 trade secrets as defined in s. 812.081 ~~812.081(1)(e)~~. Such trade
 197 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~
 198 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution. The person submitting such trade secret
 200 information to the department must request that it be kept
 201 confidential and must inform the department of the basis for the
 202 claim of trade secret. The department shall, subject to notice
 203 and opportunity for hearing, determine whether the information,
 204 or portions thereof, claimed to be a trade secret is or is not a
 205 trade secret. Such trade secrets may be disclosed, however, to
 206 authorized representatives of the department or, pursuant to
 207 request, to other governmental entities in order for them to
 208 properly perform their duties, or when relevant in any

209 proceeding under this chapter. Authorized representatives and
 210 other governmental entities receiving such trade secret
 211 information shall retain its confidentiality. Those involved in
 212 any proceeding under this chapter, including a hearing officer
 213 or judge or justice, shall retain the confidentiality of any
 214 trade secret information revealed at such proceeding.

215 (2) This section is subject to the Open Government Sunset
 216 Review Act in accordance with s. 119.15 and shall stand repealed
 217 on October 2, 2021, unless reviewed and saved from repeal
 218 through reenactment by the Legislature.

219 Section 7. Subsection (2) and paragraph (b) of subsection
 220 (3) of section 403.7046, Florida Statutes, are amended to read:

221 403.7046 Regulation of recovered materials.—

222 (2) Information reported pursuant to ~~the requirements of~~
 223 this section or any rule adopted pursuant to this section which,
 224 if disclosed, would reveal a trade secret, as defined in s.
 225 812.081 ~~812.081(1)(e)~~, is confidential and exempt from ~~the~~
 226 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 227 Constitution. For reporting or information purposes, however,
 228 the department may provide this information in such form that
 229 the names of the persons reporting such information and the
 230 specific information reported are not revealed. This subsection
 231 is subject to the Open Government Sunset Review Act in
 232 accordance with s. 119.15 and shall stand repealed on October 2,
 233 2021, unless reviewed and saved from repeal through reenactment
 234 by the Legislature.

235 (3) Except as otherwise provided in this section or
 236 pursuant to a special act in effect on or before January 1,
 237 1993, a local government may not require a commercial
 238 establishment that generates source-separated recovered
 239 materials to sell or otherwise convey its recovered materials to
 240 the local government or to a facility designated by the local
 241 government, nor may the local government restrict such a
 242 generator's right to sell or otherwise convey such recovered
 243 materials to any properly certified recovered materials dealer
 244 who has satisfied the requirements of this section. A local
 245 government may not enact any ordinance that prevents such a
 246 dealer from entering into a contract with a commercial
 247 establishment to purchase, collect, transport, process, or
 248 receive source-separated recovered materials.

249 (b)1. Before engaging in business within the jurisdiction
 250 of the local government, a recovered materials dealer must
 251 provide the local government with a copy of the certification
 252 provided for in this section. In addition, the local government
 253 may establish a registration process whereby a recovered
 254 materials dealer must register with the local government before
 255 engaging in business within the jurisdiction of the local
 256 government. Such registration process is limited to requiring
 257 the dealer to register its name, including the owner or operator
 258 of the dealer, and, if the dealer is a business entity, its
 259 general or limited partners, its corporate officers and
 260 directors, its permanent place of business, evidence of its

261 certification under this section, and a certification that the
 262 recovered materials will be processed at a recovered materials
 263 processing facility satisfying the requirements of this section.
 264 The local government may not use the information provided in the
 265 registration application to compete unfairly with the recovered
 266 materials dealer until 90 days after receipt of the application.
 267 All counties, and municipalities whose population exceeds 35,000
 268 according to the population estimates determined pursuant to s.
 269 186.901, may establish a reporting process that ~~which~~ shall be
 270 limited to the regulations, reporting format, and reporting
 271 frequency established by the department pursuant to this
 272 section, which shall, at a minimum, include requiring the dealer
 273 to identify the types and approximate amount of recovered
 274 materials collected, recycled, or reused during the reporting
 275 period; the approximate percentage of recovered materials
 276 reused, stored, or delivered to a recovered materials processing
 277 facility or disposed of in a solid waste disposal facility; and
 278 the locations where any recovered materials were disposed of as
 279 solid waste. ~~Information reported under this subsection which,
 280 if disclosed, would reveal a trade secret, as defined in s.
 281 812.081(1)(c), is confidential and exempt from the provisions of
 282 s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The
 283 local government may charge the dealer a registration fee
 284 commensurate with and no greater than the cost incurred by the
 285 local government in operating its registration program.
 286 Registration program costs are limited to those costs associated

287 with the activities described in this subparagraph ~~paragraph~~.
 288 Any reporting or registration process established by a local
 289 government with regard to recovered materials shall be governed
 290 by ~~the provisions of~~ this section and department rules adopted
 291 pursuant thereto.

292 2. Information reported under this subsection which, if
 293 disclosed, would reveal a trade secret, as defined in s.
 294 812.081, is confidential and exempt from s. 119.07(1) and s.
 295 24(a), Art. I of the State Constitution. This subparagraph is
 296 subject to the Open Government Sunset Review Act in accordance
 297 with s. 119.15 and shall stand repealed on October 2, 2021,
 298 unless reviewed and saved from repeal through reenactment by the
 299 Legislature.

300 Section 8. Section 403.73, Florida Statutes, is amended to
 301 read:

302 403.73 Trade secrets; confidentiality.—

303 (1) Records, reports, or information obtained from any
 304 person under this part, unless otherwise provided by law, shall
 305 be available to the public, except upon a showing satisfactory
 306 to the department by the person from whom the records, reports,
 307 or information is obtained that such records, reports, or
 308 information, or a particular part thereof, contains trade
 309 secrets as defined in s. 812.081 ~~812.081(1)(e)~~. Such trade
 310 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~
 311 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 312 Constitution. The person submitting such trade secret

313 information to the department must request that it be kept
 314 confidential and must inform the department of the basis for the
 315 claim of trade secret. The department shall, subject to notice
 316 and opportunity for hearing, determine whether the information,
 317 or portions thereof, claimed to be a trade secret is or is not a
 318 trade secret. Such trade secrets may be disclosed, however, to
 319 authorized representatives of the department or, pursuant to
 320 request, to other governmental entities in order for them to
 321 properly perform their duties, or when relevant in any
 322 proceeding under this part. Authorized representatives and other
 323 governmental entities receiving such trade secret information
 324 shall retain its confidentiality. Those involved in any
 325 proceeding under this part, including an administrative law
 326 judge, a hearing officer, or a judge or justice, shall retain
 327 the confidentiality of any trade secret information revealed at
 328 such proceeding.

329 (2) This section is subject to the Open Government Sunset
 330 Review Act in accordance with s. 119.15 and shall stand repealed
 331 on October 2, 2021, unless reviewed and saved from repeal
 332 through reenactment by the Legislature.

333 Section 9. Paragraphs (g) and (m) of subsection (8) of
 334 section 499.012, Florida Statutes, are amended to read:

335 499.012 Permit application requirements.—

336 (8) An application for a permit or to renew a permit for a
 337 prescription drug wholesale distributor or an out-of-state
 338 prescription drug wholesale distributor submitted to the

339 department must include:

340 (g)1. For an application for a new permit, the estimated
 341 annual dollar volume of prescription drug sales of the
 342 applicant, the estimated annual percentage of the applicant's
 343 total company sales that are prescription drugs, the applicant's
 344 estimated annual total dollar volume of purchases of
 345 prescription drugs, and the applicant's estimated annual total
 346 dollar volume of prescription drug purchases directly from
 347 manufacturers.

348 2. For an application to renew a permit, the total dollar
 349 volume of prescription drug sales in the previous year, the
 350 total dollar volume of prescription drug sales made in the
 351 previous 6 months, the percentage of total company sales that
 352 were prescription drugs in the previous year, the total dollar
 353 volume of purchases of prescription drugs in the previous year,
 354 and the total dollar volume of prescription drug purchases
 355 directly from manufacturers in the previous year.

356 3. Such portions of the information required pursuant to
 357 this paragraph which are a trade secret, as defined in s.
 358 812.081, shall be maintained by the department as trade secret
 359 information is required to be maintained under s. 499.051. This
 360 subparagraph is subject to the Open Government Sunset Review Act
 361 in accordance with s. 119.15 and shall stand repealed on October
 362 2, 2021, unless reviewed and saved from repeal through
 363 reenactment by the Legislature.

364 (m) For an applicant that is a secondary wholesale

365 distributor, each of the following:

366 1. A personal background information statement containing
 367 the background information and fingerprints required pursuant to
 368 subsection (9) for each person named in the applicant's response
 369 to paragraphs (k) and (l) and for each affiliated party of the
 370 applicant.

371 2. If any of the five largest shareholders of the
 372 corporation seeking the permit is a corporation, the name,
 373 address, and title of each corporate officer and director of
 374 each such corporation; the name and address of such corporation;
 375 the name of such corporation's resident agent, such
 376 corporation's resident agent's address, and such corporation's
 377 state of its incorporation; and the name and address of each
 378 shareholder of such corporation that owns 5 percent or more of
 379 the stock of such corporation.

380 3.a. The name and address of all financial institutions in
 381 which the applicant has an account that ~~which~~ is used to pay for
 382 the operation of the establishment or to pay for drugs purchased
 383 for the establishment, together with the names of all persons
 384 who ~~that~~ are authorized signatories on such accounts.

385 b. The portions of the information required pursuant to
 386 this subparagraph which are a trade secret, as defined in s.
 387 812.081, shall be maintained by the department as trade secret
 388 information is required to be maintained under s. 499.051. This
 389 sub-subparagraph is subject to the Open Government Sunset Review
 390 Act in accordance with s. 119.15 and shall stand repealed on

391 October 2, 2021, unless reviewed and saved from repeal through
 392 reenactment by the Legislature.

393 4. The sources of all funds and the amounts of such funds
 394 used to purchase or finance purchases of prescription drugs or
 395 to finance the premises on which the establishment is to be
 396 located.

397 5. If any of the funds identified in subparagraph 4. were
 398 borrowed, copies of all promissory notes or loans used to obtain
 399 such funds.

400 Section 10. Subsection (7) of section 499.0121, Florida
 401 Statutes, is amended to read:

402 499.0121 Storage and handling of prescription drugs;
 403 recordkeeping.—The department shall adopt rules to implement
 404 this section as necessary to protect the public health, safety,
 405 and welfare. Such rules shall include, but not be limited to,
 406 requirements for the storage and handling of prescription drugs
 407 and for the establishment and maintenance of prescription drug
 408 distribution records.

409 (7) PRESCRIPTION DRUG PURCHASE LIST.—

410 (a) Each wholesale distributor, except for a manufacturer,
 411 shall annually provide the department with a written list of all
 412 wholesale distributors and manufacturers from whom the wholesale
 413 distributor purchases prescription drugs. A wholesale
 414 distributor, except a manufacturer, shall notify the department
 415 not later than 10 days after any change to either list.

416 (b) Such portions of the information required pursuant to

417 this subsection which are a trade secret, as defined in s.
 418 812.081, shall be maintained by the department as trade secret
 419 information is required to be maintained under s. 499.051. This
 420 paragraph is subject to the Open Government Sunset Review Act in
 421 accordance with s. 119.15 and shall stand repealed on October 2,
 422 2021, unless reviewed and saved from repeal through reenactment
 423 by the Legislature.

424 Section 11. Subsection (7) of section 499.051, Florida
 425 Statutes, is amended to read:

426 499.051 Inspections and investigations.-

427 (7) (a) The complaint and all information obtained pursuant
 428 to the investigation by the department are confidential and
 429 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 430 Constitution until the investigation and the enforcement action
 431 are completed.

432 (b) Information that constitutes a ~~However,~~ trade secret,
 433 as defined in s. 812.081, information contained in the complaint
 434 and all information obtained by the department pursuant to the
 435 investigation therein as defined by s. 812.081(1)(c) shall
 436 remain confidential and exempt from the provisions of s.
 437 119.07(1) and s. 24(a), Art. I of the State Constitution, as
 438 long as the information is retained by the department. This
 439 paragraph is subject to the Open Government Sunset Review Act in
 440 accordance with s. 119.15 and shall stand repealed on October 2,
 441 2021, unless reviewed and saved from repeal through reenactment
 442 by the Legislature.

443 (c) This subsection does not prohibit the department from
 444 using such information for regulatory or enforcement proceedings
 445 under this chapter or from providing such information to any law
 446 enforcement agency or any other regulatory agency. However, the
 447 receiving agency shall keep such records confidential and exempt
 448 as provided in this subsection. In addition, this subsection is
 449 not intended to prevent compliance with ~~the provisions of s.~~
 450 499.01212, and the pedigree papers required in that section are
 451 ~~shall~~ not be deemed a trade secret.

452 Section 12. Section 499.931, Florida Statutes, is amended
 453 to read:

454 499.931 Trade secret information.—Information required to
 455 be submitted under this part which is a trade secret as defined
 456 in s. 812.081 ~~812.081(1)(e)~~ and designated as a trade secret by
 457 an applicant or permitholder must be maintained as required
 458 under s. 499.051. This section is subject to the Open Government
 459 Sunset Review Act in accordance with s. 119.15 and shall stand
 460 repealed on October 2, 2021, unless reviewed and saved from
 461 repeal through reenactment by the Legislature.

462 Section 13. Section 502.222, Florida Statutes, is amended
 463 to read:

464 502.222 Information relating to trade secrets
 465 confidential.—The records of the department regarding matters
 466 encompassed by this chapter are public records, subject to ~~the~~
 467 ~~provisions of~~ chapter 119, except that any information that
 468 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of

469 a dairy industry business is confidential and exempt from ~~the~~
 470 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
 471 Constitution. If the department determines that any information
 472 requested by the public will reveal a trade secret, it shall, in
 473 writing, inform the person making the request of that
 474 determination. The determination is a final order as defined in
 475 s. 120.52. This section is subject to the Open Government Sunset
 476 Review Act in accordance with s. 119.15 and shall stand repealed
 477 on October 2, 2021, unless reviewed and saved from repeal
 478 through reenactment by the Legislature.

479 Section 14. Subsection (3) of section 570.48, Florida
 480 Statutes, is amended to read:

481 570.48 Division of Fruit and Vegetables; powers and
 482 duties; records.—The duties of the Division of Fruit and
 483 Vegetables include, but are not limited to:

484 (3) Maintaining the records of the division. The records
 485 of the division are public records; however, trade secrets as
 486 defined in s. 812.081 are confidential and exempt from ~~the~~
 487 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
 488 Constitution. This subsection is subject to the Open Government
 489 Sunset Review Act in accordance with s. 119.15 and shall stand
 490 repealed on October 2, 2021, unless reviewed and saved from
 491 repeal through reenactment by the Legislature. This section may
 492 ~~shall~~ not be construed to prohibit:

- 493 (a) A disclosure necessary to enforcement procedures.
- 494 (b) The department from releasing information to other

495 governmental agencies. Other governmental agencies that receive
 496 confidential information from the department under this
 497 subsection shall maintain the confidentiality of that
 498 information.

499 (c) The department or other agencies from compiling and
 500 publishing appropriate data regarding procedures, yield,
 501 recovery, quality, and related matters, provided such released
 502 data do not reveal by whom the activity to which the data relate
 503 was conducted.

504 Section 15. Subsection (2) of section 573.123, Florida
 505 Statutes, is amended to read:

506 573.123 Maintenance and production of records.—

507 (2) Information that, if disclosed, would reveal a trade
 508 secret, as defined in s. 812.081, of any person subject to a
 509 marketing order is confidential and exempt from ~~the provisions~~
 510 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 511 and may ~~shall~~ not be disclosed except to an attorney who
 512 provides legal advice to the division about enforcing a
 513 marketing ~~market~~ order or by court order. A person who receives
 514 confidential information under this subsection shall maintain
 515 the confidentiality of that information. This subsection is
 516 subject to the Open Government Sunset Review Act in accordance
 517 with s. 119.15 and shall stand repealed on October 2, 2021,
 518 unless reviewed and saved from repeal through reenactment by the
 519 Legislature.

520 Section 16. Subsection (8) of section 601.10, Florida

521 Statutes, is amended to read:

522 601.10 Powers of the Department of Citrus.—The department
523 shall have and shall exercise such general and specific powers
524 as are delegated to it by this chapter and other statutes of the
525 state, which powers shall include, but are not limited to, the
526 following:

527 (8) (a) To prepare and disseminate information of
528 importance to citrus growers, handlers, shippers, processors,
529 and industry-related and interested persons and organizations
530 relating to department activities and the production, handling,
531 shipping, processing, and marketing of citrus fruit and
532 processed citrus products. ~~Any information that constitutes a~~
533 ~~trade secret as defined in s. 812.081(1)(c) is confidential and~~
534 ~~exempt from s. 119.07(1) and shall not be disclosed.~~ For
535 referendum and other notice and informational purposes, the
536 department may prepare and maintain, from the best available
537 sources, a citrus grower mailing list. Such list shall be a
538 public record available as other public records, but is it shall
539 not be subject to the purging provisions of s. 283.55.

540 (b) Any information provided to the department which
541 constitutes a trade secret as defined in s. 812.081 is
542 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
543 of the State Constitution. This paragraph is subject to the Open
544 Government Sunset Review Act in accordance with s. 119.15 and
545 shall stand repealed on October 2, 2021, unless reviewed and
546 saved from repeal through reenactment by the Legislature.

547 ~~(c)~~ Any nonpublished reports or data related to studies
 548 or research conducted, caused to be conducted, or funded by the
 549 department under s. 601.13 is confidential and exempt from s.
 550 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 551 paragraph is subject to the Open Government Sunset Review Act in
 552 accordance with s. 119.15 and shall stand repealed on October 2,
 553 2017, unless reviewed and saved from repeal through reenactment
 554 by the Legislature.

555 Section 17. Paragraph (d) of subsection (7) of section
 556 601.15, Florida Statutes, is amended to read:

557 601.15 Advertising campaign; methods of conducting;
 558 assessments; emergency reserve fund; citrus research.—

559 (7) All assessments levied and collected under this
 560 chapter shall be paid into the State Treasury on or before the
 561 15th day of each month. Such moneys shall be accounted for in a
 562 special fund to be designated as the Florida Citrus Advertising
 563 Trust Fund, and all moneys in such fund are appropriated to the
 564 department for the following purposes:

565 (d)1. The pro rata portion of moneys allocated to each
 566 type of citrus product in noncommodity programs shall be used by
 567 the department to encourage substantial increases in the
 568 effectiveness, frequency, and volume of noncommodity
 569 advertising, merchandising, publicity, and sales promotion of
 570 such citrus products through rebates and incentive payments to
 571 handlers and trade customers for these activities. The
 572 department shall adopt rules providing for the use of such

573 moneys. The rules shall establish alternate incentive programs,
 574 including at least one incentive program for product sold under
 575 advertised brands, one incentive program for product sold under
 576 private label brands, and one incentive program for product sold
 577 in bulk. For each incentive program, the rules shall establish
 578 eligibility and performance requirements and shall provide
 579 appropriate limitations on amounts payable to a handler or trade
 580 customer for a particular season. Such limitations may relate to
 581 the amount of citrus assessments levied and collected on the
 582 citrus product handled by such handler or trade customer during
 583 a 12-month representative period.

584 2. The department may require from participants in
 585 noncommodity advertising and promotional programs commercial
 586 information necessary to determine eligibility for and
 587 performance in such programs. Any information ~~se~~ required which
 588 ~~that~~ constitutes a "trade secret" as defined in s. 812.081 is
 589 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 590 of the State Constitution. This subparagraph is subject to the
 591 Open Government Sunset Review Act in accordance with s. 119.15
 592 and shall stand repealed on October 2, 2021, unless reviewed and
 593 saved from repeal through reenactment by the Legislature.

594 Section 18. Paragraph (c) of subsection (8) of section
 595 601.152, Florida Statutes, is amended to read:
 596 601.152 Special marketing orders.—
 597 (8)
 598 (c)1. Every handler shall, at such times as the department

599 may require, file with the department a return, not under oath,
 600 on forms to be prescribed and furnished by the department,
 601 certified as true and correct, stating the quantity of the type,
 602 variety, and form of citrus fruit or citrus product specified in
 603 the marketing order first handled in the primary channels of
 604 trade in the state by such handler during the period of time
 605 specified in the marketing order. Such returns shall contain any
 606 further information deemed by the department to be reasonably
 607 necessary to properly administer or enforce this section or any
 608 marketing order implemented under this section.

609 2. Information that, if disclosed, would reveal a trade
 610 secret, as defined in s. 812.081, of any person subject to a
 611 marketing order is confidential and exempt from s. 119.07(1) and
 612 s. 24(a), Art. I of the State Constitution. This subparagraph is
 613 subject to the Open Government Sunset Review Act in accordance
 614 with s. 119.15 and shall stand repealed on October 2, 2021,
 615 unless reviewed and saved from repeal through reenactment by the
 616 Legislature.

617 Section 19. Section 601.76, Florida Statutes, is amended
 618 to read:

619 601.76 Manufacturer to furnish formula and other
 620 information.—Any formula required to be filed with the
 621 Department of Agriculture shall be deemed a trade secret as
 622 defined in s. 812.081, is confidential and exempt from s.
 623 119.07(1) and s. 24(a), Art. I of the State Constitution, and
 624 shall only be divulged to the Department of Agriculture or to

625 its duly authorized representatives or upon court order ~~orders~~
 626 ~~of a court of competent jurisdiction~~ when necessary in the
 627 enforcement of this law. A person who receives such a formula
 628 from the Department of Agriculture under this section shall
 629 maintain the confidentiality of the formula. This section is
 630 subject to the Open Government Sunset Review Act in accordance
 631 with s. 119.15 and shall stand repealed on October 2, 2021,
 632 unless reviewed and saved from repeal through reenactment by the
 633 Legislature.

634 Section 20. For the purpose of incorporating the amendment
 635 made by CS/HB 55 to section 812.081, Florida Statutes, in a
 636 reference thereto, subsection (3) of section 815.04, Florida
 637 Statutes, is reenacted, and subsection (6) of that section is
 638 amended, to read:

639 815.04 Offenses against intellectual property; public
 640 records exemption.—

641 (3) Data, programs, or supporting documentation that is a
 642 trade secret as defined in s. 812.081, that is held by an agency
 643 as defined in chapter 119, and that resides or exists internal
 644 or external to a computer, computer system, computer network, or
 645 electronic device is confidential and exempt from the provisions
 646 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

647 (6) Subsection ~~Subsections~~ (3) is and ~~(4) are~~ subject to
 648 the Open Government Sunset Review Act in accordance with s.
 649 119.15~~7~~, and shall stand repealed on October 2, 2021 ~~2019~~, unless
 650 reviewed and saved from repeal through reenactment by the

651 Legislature.

652 Section 21. The Legislature finds that it is a public
 653 necessity that financial information comprising a trade secret
 654 as defined in s. 812.081, Florida Statutes, be made exempt or
 655 confidential and exempt from s. 119.07(1), Florida Statutes, and
 656 s. 24(a), Article I of the State Constitution. The Legislature
 657 also finds that it is a public necessity that any portion of a
 658 meeting in which a trade secret as defined in s. 812.081,
 659 Florida Statutes, is discussed be made exempt from s. 286.011,
 660 Florida Statutes, and s. 24(b), Article I of the State
 661 Constitution. The Legislature recognizes that in many instances,
 662 businesses are required to provide financial information for
 663 regulatory or other purposes to public entities and that
 664 disclosure of such information to competitors of those
 665 businesses would be detrimental to the businesses. The
 666 Legislature's intent is to protect trade secret information of a
 667 confidential nature that includes, but is not limited to, a
 668 formula, a pattern, a device, a combination of devices, or a
 669 compilation of information used to protect or further a business
 670 advantage over those who do not know or use the information, the
 671 disclosure of which would injure the affected business in the
 672 marketplace. Therefore, the Legislature finds that the need to
 673 protect trade secret financial information is sufficiently
 674 compelling to override this state's public policy of open
 675 government and that the protection of such information cannot be
 676 accomplished without these exemptions.

CS/HB 57

2016

677 Section 22. This act shall take effect on the same date
678 that CS/HB 55 or similar legislation relating to trade secrets
679 takes effect, if such legislation is adopted in the same
680 legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Public Records
SPONSOR(S): Beshears and Kerner
TIED BILLS: IDEN./SIM. **BILLS:** SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>AW</i>
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Constitution and Florida Statutes govern access to records of state and local agencies. Current law in part defines terms, provides for assessment of certain fees associated with responding to public record requests, requires certain contracts with public agencies to contain provisions regarding public records, and provides for the assessment of attorney fees for an agency found in violation of the public records law. Private contractors who act on behalf of a public agency are required to comply with public records laws in the same manner as a public agency.

The bill requires each agency head to designate a custodian of public records (records custodian). If the agency has a website, it must display the contact information for the records custodian on the home page of the website.

This bill requires a public agency contract for services with a contractor to include a statement in large, boldface font informing the contractor of the contact information of the public agency's records custodian and to contact the records custodian concerning any questions the contractor may have regarding the contractor's duties to provide public records relating to the contract.

The bill repeals the requirement that the contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon completion of the contract.

The bill requires a person making a public records request to make the request to specified persons in order to be eligible for attorney fees. Specifically, a request to inspect or copy public records must be made directly to the records custodian, a member of the agency's governing body, or the agency head. Similarly, the bill provides that a contractor is only liable for attorney fees if the public records request is made to the contractor's registered agent or an employee or agent of the contractor who acts, or purports to act, in a management or supervisory capacity.

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

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records and Private Contractors

Section 119.0701, F.S., Contracts and Public Records

Public agencies, which include local and statewide governmental entities, as well as municipal officers, are permitted to hire contractors to provide services or act on behalf of the public agency.³ Contractors can be individuals or business entities.⁴ Private contractors who act on behalf of a public agency are required by the law and the terms of their contracts to comply with public records laws in the same manner as a public agency.⁵

Current law does not provide a definition for "acting on behalf of a public agency." When determining whether a private entity is acting on behalf of a public agency, the courts have relied on a "totality of factors" analysis.⁶ The factors include, but are not limited to, the level of public funding, whether the services contracted for are an integral part of the public agency's decision-making process, whether the private entity is performing a governmental function or a function that the public agency otherwise would perform, and the extent of the public agency's involvement with, regulation of, or control over the private entity.⁷

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

- Keep and maintain public records that would be required by the agency to perform the service;
- Provide the public with access to public records on the same terms that the agency would;

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.0701(1)(b), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992); Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

⁴ Section 119.0701(1)(a), F.S.

⁵ Section 119.0701, F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁶ See, e.g., *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁷ *Id.*

- Ensure that public records that are exempt or confidential and exempt are not improperly disclosed; and
- Meet certain public records retention and transfer requirements.

Upon the completion of a contract, the contract for services must provide for the transfer of public records from the contractor to the public agency at no cost to the public agency.⁸ The contractor is not permitted to retain any public records that are confidential and exempt or exempt from public records disclosure.⁹ Records that are stored electronically must be transferred to the public agency in a format that is compatible with the public agency's information technology systems.¹⁰

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.¹¹

Section 287.058, F.S., Contract Document

For state agencies,¹² every procurement of contractual services in excess of \$35,000, except for specified procurements pertaining to health and human services, must be evidenced by a written agreement (contract) embodying all provisions and conditions of such services.¹³ The contract must be signed by the agency head or designee and the contractor before the rendering of any contractual service, except in the case of an emergency.¹⁴

Section 287.058(1), F.S., provides provisions that must be included in the contract document. With regard to public record requirements, the contract document must allow for unilateral cancellation by the state agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from public record requirements.¹⁵

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,¹⁶ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.¹⁷

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the

⁸ Section 119.0701(2)(d), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 119.0701(3), F.S.

¹² For purposes of chapter 287, F.S., agency does not include the university and college boards of trustees or the state universities and colleges.

¹³ Section 287.058(1), F.S.

¹⁴ Section 287.058(2), F.S.

¹⁵ Section 287.058(1)(c), F.S.

¹⁶ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

¹⁷ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

request.¹⁸ The term “labor cost” includes the entire labor cost, including benefits in addition to wages or salary.¹⁹ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.²⁰

Enforcing Public Records Laws and Attorney Fees

If a public agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.²¹ Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.²²

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.²³ Once an enforcement action has been filed, a public agency, or a contractor acting on behalf of a public agency, can be held liable for attorney fees even after the public agency has produced the requested records.²⁴ The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.²⁵ Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests.²⁶

If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay for the requestor’s reasonable costs of enforcement, including reasonable attorney fees.²⁷ If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records.²⁸ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor’s attorney fees in the same manner that a public agency would be liable.²⁹ Attorney fees for efforts expended to obtain attorney fees are not currently permitted.³⁰

A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept,³¹ and it is immaterial if a records custodian did not willfully refuse to provide a public record.³² In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.³³

¹⁸ Section 119.07(4)(d), F.S.

¹⁹ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

²⁰ Section 119.07(4), F.S.; *see also Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating if a requestor identifies a record with sufficient specificity to permit [an agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record).

²¹ Section 119.11, F.S.

²² *Id.*

²³ Section 119.12, F.S.

²⁴ *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

²⁵ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

²⁶ *Id.*

²⁷ Section 119.12, F.S.

²⁸ *See New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993).

²⁹ *See s. 119.12, F.S.; see also New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

³⁰ *Downs v. Austin*, 559 So. 2d 246, 248 (Fla. 1st DCA 1990).

³¹ *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

³² *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

³³ Section 284.30, F.S.

Recent Litigation

On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.³⁴ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”³⁵

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”³⁶ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”³⁷ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.³⁸

The case is currently on appeal.³⁹

Effect of Proposed Changes

The bill requires each agency head to designate a records custodian.⁴⁰ If the agency has a website, it must display the contact information for the records custodian on the home page.

This bill requires a public agency contract for services with a contractor to include a statement in large, boldface font informing the contractor of the contact information of the public agency’s records custodian and to contact the records custodian concerning any questions the contractor may have regarding the contractor’s duties to provide public records relating to the contract. The statement must include the telephone number, e-mail address, and mailing address for the records custodian.

The bill repeals the requirement that the contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon completion of the contract. If the contractor keeps and maintains public records upon completion

³⁴ *Jeffery Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ A Notice of Appeal was filed with the First District Court of Appeal on December 19, 2014, in *Jeff Gray vs. Lutheran Services of Social Services of Northeast Florida, Inc.*, Case Number 1D14-5793.

⁴⁰ Section 119.011(5), F.S., defines the term “custodian of public records” to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

of the contract, the contractor must meet all applicable requirements for retaining public records. If requested by the public agency, all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

The bill requires the additional contract requirements to be included in contracts entered into or amended on or after July 1, 2016.

The bill requires a person making a public records request to make the request to specified persons in order to be eligible for attorney fees. Specifically, a request to inspect or copy public records must be made directly to the records custodian, a member of the agency's governing body, or the agency head. Similarly, the bill provides that a contractor is only liable for attorney fees pursuant to s. 119.12, F.S., if the public records request is made to:

- The contractor's registered agent; or
- An employee or agent of the contractor who acts, or purports to act, in a management or supervisory capacity.

B. SECTION DIRECTORY:

Section 1 amends s. 119.07, F.S., relating to inspection and copying of records.

Section 2 amends s. 119.0701, F.S., relating to contracts and public records.

Sections 3, 4, and 5 amend ss. 497.140, 627.311, and 627.351, F.S., conforming cross references.

Section 6 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require an individual to make a public record request to a specified individual if the individual wishes to recover attorney fees in certain public records enforcement actions. As such, the bill may have an indeterminate fiscal impact on the private sector related to litigation costs.

In addition, it is unclear what costs might be associated with a contractor maintaining public records upon termination of the contract in lieu of transferring the public records to the records custodian.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on state and local governments as a result of agencies being required to place the records custodian's contact information on the agency website.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled
 An act relating to public records; amending s. 119.07,
 F.S.; requiring each agency head to designate a
 custodian of public records and to display the contact
 information for the custodian under certain
 circumstances; requiring a public records request to
 be made to certain persons in order for the requestor
 to be eligible for reimbursement of attorney fees;
 correcting a cross-reference; amending s. 119.0701,
 F.S.; revising required provisions in a public agency
 contract for services regarding a contractor's
 compliance with public records laws for contracts
 signed or amended on or after a specified date;
 specifying penalties for a contractor who fails to
 comply with certain provisions; amending ss. 497.140,
 627.311, and 627.351, F.S.; conforming cross-
 references; providing an effective date.

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

Section 1. Paragraphs (b) through (i) of subsection (1) of
 section 119.07, Florida Statutes, are redesignated as paragraphs
 (d) through (k), respectively, present paragraph (i) is amended,
 and new paragraphs (b) and (c) are added to that subsection, to
 read:

119.07 Inspection and copying of records; photographing

27 public records; fees; exemptions.-

28 (1)

29 (b) Each agency head shall designate a custodian of public
 30 records. If the agency has a website, it shall display the
 31 contact information for the custodian of public records on the
 32 home page of the agency's website.

33 (c) A request to inspect or copy public records must be
 34 made directly to the custodian of public records, a member of
 35 the agency's governing body, or the agency head in order for the
 36 requestor to be eligible for attorney fees under s. 119.12.

37 (k)~~(i)~~ The absence of a civil action instituted for the
 38 purpose stated in paragraph (i) ~~(g)~~ does not relieve the
 39 custodian of public records of the duty to maintain the record
 40 as a public record if the record is in fact a public record
 41 subject to public inspection and copying under this subsection
 42 and does not otherwise excuse or exonerate the custodian of
 43 public records from any unauthorized or unlawful disposition of
 44 such record.

45 Section 2. Section 119.0701, Florida Statutes, is amended
 46 to read:

47 119.0701 Contracts; public records.-

48 (1) For purposes of this section, the term:

49 (a) "Contractor" means an individual, partnership,
 50 corporation, or business entity that enters into a contract for
 51 services with a public agency and is acting on behalf of the
 52 public agency as provided under s. 119.011(2).

53 (b) "Public agency" means a state, county, district,
 54 authority, or municipal officer, or department, division, board,
 55 bureau, commission, or other separate unit of government created
 56 or established by law.

57 (2) In addition to other contract requirements provided by
 58 law, each public agency contract for services entered into or
 59 amended on or after July 1, 2016, must include:

60 (a) The following statement, in substantially the
 61 following form, identifying the contact information of the
 62 public agency's custodian of public records in at least 14-point
 63 boldfaced type:

64
 65 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY
 66 OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY
 67 TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,
 68 CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT ... (telephone
 69 number, e-mail address, and mailing address)....

70
 71 (b) A provision that requires the contractor to comply
 72 with public records laws, specifically to:

73 1. (a) Keep and maintain public records that ordinarily and
 74 necessarily would be required by the public agency in order to
 75 perform the service.

76 2. (b) Provide the public with access to public records on
 77 the same terms and conditions that the public agency would
 78 provide the records and at a cost that does not exceed the cost

79 provided in this chapter or as otherwise provided by law.

80 ~~3.(e)~~ Ensure that public records that are exempt or
 81 confidential and exempt from public records disclosure
 82 requirements are not disclosed except as authorized by law for
 83 the duration of the contract term and following completion of
 84 the contract if the contractor does not transfer the records to
 85 the public agency.

86 ~~4.(d)~~ Upon completion of the contract, Meet all
 87 ~~requirements for retaining public records and transfer, at no~~
 88 ~~cost, to the public agency all public records in possession of~~
 89 ~~the contractor~~ or keep and maintain public records that
 90 ordinarily and necessarily would be required by the public
 91 agency in order to perform the service. If the contractor
 92 transfers all public records to the public agency upon
 93 completion of the contract, the contractor shall ~~upon~~
 94 ~~termination of the contract and destroy any duplicate public~~
 95 ~~records that are exempt or confidential and exempt from public~~
 96 ~~records disclosure requirements.~~ If the contractor keeps and
 97 maintains public records upon completion of the contract, the
 98 contractor shall meet all applicable requirements for retaining
 99 public records and provide requested records to a public agency
 100 pursuant to the requirements of this section. Upon request from
 101 the public agency's custodian of public records, all records
 102 stored electronically must be provided to the public agency in a
 103 format that is compatible with the information technology
 104 systems of the public agency.

105 (3) If a contractor does not comply with a public records
 106 request, the public agency shall enforce the contract provisions
 107 in accordance with the contract.

108 (4) A contractor is only liable for attorney fees pursuant
 109 to s. 119.12 if the public records request is made to:

110 (a) The contractor's registered agent; or

111 (b) An employee or agent of the contractor who acts, or
 112 purports to act, in a management or supervisory capacity.

113 Section 3. Subsection (5) of section 497.140, Florida
 114 Statutes, is amended to read:

115 497.140 Fees.—

116 (5) The department shall charge a fee not to exceed \$25
 117 for the certification of a public record. The fee shall be
 118 determined by rule of the department. The department shall
 119 assess a fee for duplication of a public record as provided in
 120 s. 119.07(1) (a) and (g) ~~(e)~~.

121 Section 4. Paragraph (b) of subsection (4) of section
 122 627.311, Florida Statutes, is amended to read:

123 627.311 Joint underwriters and joint reinsurers; public
 124 records and public meetings exemptions.—

125 (4) The Florida Automobile Joint Underwriting Association:

126 (b) Shall keep portions of association meetings during
 127 which confidential and exempt underwriting files or confidential
 128 and exempt claims files are discussed exempt from the provisions
 129 of s. 286.011 and s. 24(b), Art. I of the State Constitution.

130 All closed portions of association meetings shall be recorded by

131 a court reporter. The court reporter shall record the times of
 132 commencement and termination of the meeting, all discussion and
 133 proceedings, the names of all persons present at any time, and
 134 the names of all persons speaking. No portion of any closed
 135 meeting shall be off the record. Subject to the provisions of
 136 this paragraph and s. 119.07(1)(f)-(h) ~~119.07(1)(d)-(f)~~, the
 137 court reporter's notes of any closed meeting shall be retained
 138 by the association for a minimum of 5 years. A copy of the
 139 transcript, less any confidential and exempt information, of any
 140 closed meeting during which confidential and exempt claims files
 141 are discussed shall become public as to individual claims files
 142 after settlement of that claim.

143 Section 5. Paragraph (x) of subsection (6) of section
 144 627.351, Florida Statutes, is amended to read:

145 627.351 Insurance risk apportionment plans.—

146 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

147 (x)1. The following records of the corporation are
 148 confidential and exempt from the provisions of s. 119.07(1) and
 149 s. 24(a), Art. I of the State Constitution:

150 a. Underwriting files, except that a policyholder or an
 151 applicant shall have access to his or her own underwriting
 152 files. Confidential and exempt underwriting file records may
 153 also be released to other governmental agencies upon written
 154 request and demonstration of need; such records held by the
 155 receiving agency remain confidential and exempt as provided
 156 herein.

157 b. Claims files, until termination of all litigation and
 158 settlement of all claims arising out of the same incident,
 159 although portions of the claims files may remain exempt, as
 160 otherwise provided by law. Confidential and exempt claims file
 161 records may be released to other governmental agencies upon
 162 written request and demonstration of need; such records held by
 163 the receiving agency remain confidential and exempt as provided
 164 herein.

165 c. Records obtained or generated by an internal auditor
 166 pursuant to a routine audit, until the audit is completed, or if
 167 the audit is conducted as part of an investigation, until the
 168 investigation is closed or ceases to be active. An investigation
 169 is considered "active" while the investigation is being
 170 conducted with a reasonable, good faith belief that it could
 171 lead to the filing of administrative, civil, or criminal
 172 proceedings.

173 d. Matters reasonably encompassed in privileged attorney-
 174 client communications.

175 e. Proprietary information licensed to the corporation
 176 under contract and the contract provides for the confidentiality
 177 of such proprietary information.

178 f. All information relating to the medical condition or
 179 medical status of a corporation employee which is not relevant
 180 to the employee's capacity to perform his or her duties, except
 181 as otherwise provided in this paragraph. Information that is
 182 exempt shall include, but is not limited to, information

183 relating to workers' compensation, insurance benefits, and
 184 retirement or disability benefits.

185 g. Upon an employee's entrance into the employee
 186 assistance program, a program to assist any employee who has a
 187 behavioral or medical disorder, substance abuse problem, or
 188 emotional difficulty which affects the employee's job
 189 performance, all records relative to that participation shall be
 190 confidential and exempt from the provisions of s. 119.07(1) and
 191 s. 24(a), Art. I of the State Constitution, except as otherwise
 192 provided in s. 112.0455(11).

193 h. Information relating to negotiations for financing,
 194 reinsurance, depopulation, or contractual services, until the
 195 conclusion of the negotiations.

196 i. Minutes of closed meetings regarding underwriting
 197 files, and minutes of closed meetings regarding an open claims
 198 file until termination of all litigation and settlement of all
 199 claims with regard to that claim, except that information
 200 otherwise confidential or exempt by law shall be redacted.

201 2. If an authorized insurer is considering underwriting a
 202 risk insured by the corporation, relevant underwriting files and
 203 confidential claims files may be released to the insurer
 204 provided the insurer agrees in writing, notarized and under
 205 oath, to maintain the confidentiality of such files. If a file
 206 is transferred to an insurer, that file is no longer a public
 207 record because it is not held by an agency subject to the
 208 provisions of the public records law. Underwriting files and

209 confidential claims files may also be released to staff and the
 210 board of governors of the market assistance plan established
 211 pursuant to s. 627.3515, who must retain the confidentiality of
 212 such files, except such files may be released to authorized
 213 insurers that are considering assuming the risks to which the
 214 files apply, provided the insurer agrees in writing, notarized
 215 and under oath, to maintain the confidentiality of such files.
 216 Finally, the corporation or the board or staff of the market
 217 assistance plan may make the following information obtained from
 218 underwriting files and confidential claims files available to
 219 licensed general lines insurance agents: name, address, and
 220 telephone number of the residential property owner or insured;
 221 location of the risk; rating information; loss history; and
 222 policy type. The receiving licensed general lines insurance
 223 agent must retain the confidentiality of the information
 224 received.

225 3. A policyholder who has filed suit against the
 226 corporation has the right to discover the contents of his or her
 227 own claims file to the same extent that discovery of such
 228 contents would be available from a private insurer in litigation
 229 as provided by the Florida Rules of Civil Procedure, the Florida
 230 Evidence Code, and other applicable law. Pursuant to subpoena, a
 231 third party has the right to discover the contents of an
 232 insured's or applicant's underwriting or claims file to the same
 233 extent that discovery of such contents would be available from a
 234 private insurer by subpoena as provided by the Florida Rules of

235 Civil Procedure, the Florida Evidence Code, and other applicable
 236 law, and subject to any confidentiality protections requested by
 237 the corporation and agreed to by the seeking party or ordered by
 238 the court. The corporation may release confidential underwriting
 239 and claims file contents and information as it deems necessary
 240 and appropriate to underwrite or service insurance policies and
 241 claims, subject to any confidentiality protections deemed
 242 necessary and appropriate by the corporation.

243 4. Portions of meetings of the corporation are exempt from
 244 the provisions of s. 286.011 and s. 24(b), Art. I of the State
 245 Constitution wherein confidential underwriting files or
 246 confidential open claims files are discussed. All portions of
 247 corporation meetings which are closed to the public shall be
 248 recorded by a court reporter. The court reporter shall record
 249 the times of commencement and termination of the meeting, all
 250 discussion and proceedings, the names of all persons present at
 251 any time, and the names of all persons speaking. No portion of
 252 any closed meeting shall be off the record. Subject to the
 253 provisions hereof and s. 119.07(1)(f)-(h) ~~119.07(1)(d)-(f)~~, the
 254 court reporter's notes of any closed meeting shall be retained
 255 by the corporation for a minimum of 5 years. A copy of the
 256 transcript, less any exempt matters, of any closed meeting
 257 wherein claims are discussed shall become public as to
 258 individual claims after settlement of the claim.

259 Section 6. This act shall take effect July 1, 2016.

260



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 Beshears offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 119.0701, Florida Statutes, is amended
 8 to read:

9 119.0701 Contracts; public records; request for contractor
 10 records; civil action.—

11 (1) DEFINITIONS.—For purposes of this section, the term:

12 (a) "Contractor" means an individual, partnership,
 13 corporation, or business entity that enters into a contract for
 14 services with a public agency and is acting on behalf of the
 15 public agency as provided under s. 119.011(2).

16 (b) "Public agency" means a state, county, district,
 17 authority, or municipal officer, or department, division, board,



Amendment No.

18 bureau, commission, or other separate unit of government created
19 or established by law.

20 (2) CONTRACT REQUIREMENTS.—In addition to other contract
21 requirements provided by law, each public agency contract for
22 services entered into or amended on or after July 1, 2016, must
23 include:

24 (a) The following statement, in substantially the
25 following form, identifying the contact information of the
26 public agency's custodian of public records in at least 14-point
27 boldfaced type:

28
29 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
30 CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
31 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
32 CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-mail
33 address, and mailing address)....

34
35 (b) A provision that requires the contractor to comply
36 with public records laws, specifically to:

37 1. (a) Keep and maintain public records ~~that ordinarily and~~
38 ~~necessarily would be~~ required by the public agency ~~in order to~~
39 perform the service.

40 2. (b) Upon request from the public agency's custodian of
41 public records, provide the public agency with a copy of the
42 requested records or allow the ~~access to public records to be~~
43 ~~inspected or copied within a reasonable time on the same terms~~



Amendment No.

44 ~~and conditions that the public agency would provide the records~~
45 ~~and~~ at a cost that does not exceed the cost provided in this
46 chapter or as otherwise provided by law.

47 3.(e) Ensure that public records that are exempt or
48 confidential and exempt from public records disclosure
49 requirements are not disclosed except as authorized by law for
50 the duration of the contract term and following completion of
51 the contract if the contractor does not transfer the records to
52 the public agency.

53 4.(d) Upon completion of the contract, Meet all
54 ~~requirements for retaining public records and transfer, at no~~
55 cost, to the public agency all public records in possession of
56 the contractor or keep and maintain public records required by
57 the public agency to perform the service. If the contractor
58 transfers all public records to the public agency upon
59 completion of the contract, the contractor shall upon
60 ~~termination of the contract and destroy any duplicate public~~
61 records that are exempt or confidential and exempt from public
62 records disclosure requirements. If the contractor keeps and
63 maintains public records upon completion of the contract, the
64 contractor shall meet all applicable requirements for retaining
65 public records. All records stored electronically must be
66 provided to the public agency, upon request from the public
67 agency's custodian of public records, in a format that is
68 compatible with the information technology systems of the public
69 agency.



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70 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.-

71 (a) A request to inspect or copy public records relating
72 to a public agency's contract for services must be made directly
73 to the public agency. If the public agency does not possess the
74 requested records, the public agency shall immediately notify
75 the contractor of the request, and the contractor must provide
76 the records to the public agency or allow the records to be
77 inspected or copied within a reasonable time.

78 (b) If a contractor does not comply with the public
79 agency's ~~a public records~~ request for records, the public agency
80 shall enforce the contract provisions in accordance with the
81 contract.

82 (c) A contractor who fails to provide the public records
83 to the public agency within a reasonable time may be subject to
84 penalties under s. 119.10.

85 (4) CIVIL ACTION.-

86 (a) If a civil action is filed against a contractor to
87 compel production of public records relating to a public
88 agency's contract for services, the court shall assess and award
89 against the contractor the reasonable costs of enforcement,
90 including reasonable attorney fees, if:

91 1. The court determines that the contractor unlawfully
92 refused to comply with the public records request within a
93 reasonable time; and

94 2. At least 8 business days before filing the action, the
95 plaintiff provided written notice of the public records request,



Amendment No.

96 including a statement that the contractor has not complied with
97 the request, to the public agency and to the contractor.

98 (b) A notice complies with subparagraph (a)2. if it is
99 sent to the public agency's custodian of public records and to
100 the contractor at the contractor's address listed on its
101 contract with the public agency or to the contractor's
102 registered agent. Such notices must be sent by common carrier
103 delivery service or by registered, Global Express Guaranteed, or
104 certified mail, with postage or shipping paid by the sender and
105 with evidence of delivery, which may be in an electronic format.

106 (c) A contractor who complies with a public records
107 request within 8 business days after the notice is sent is not
108 liable for the reasonable costs of enforcement.

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

111 -----
112 **T I T L E A M E N D M E N T**

113 Remove everything before the enacting clause and insert:
114 An act relating to public records; amending s. 119.0701,
115 F.S.; requiring that a public agency contract for services
116 include a statement providing the contact information of
117 the public agency's custodian of public records;
118 prescribing the form of the statement; revising required
119 provisions in a public agency contract for services
120 regarding a contractor's compliance with public records
121 laws; requiring that a public records request relating to

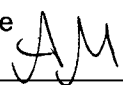
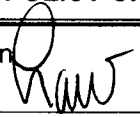


Amendment No.

122 records for a public agency's contract for services be made
123 directly to the public agency; requiring a contractor to
124 provide requested records to the public agency or allow
125 inspection or copying of requested records under specified
126 circumstances; providing penalties; specifying
127 circumstances under which a court must assess the
128 reasonable costs of enforcement against a contractor;
129 specifying what constitutes sufficient notice; providing
130 that a contractor who takes certain actions is not liable
131 for the reasonable costs of enforcement; providing an
132 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 305 Procurement Procedures for Educational Institutions
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 350

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

SUMMARY ANALYSIS

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.

As part of their duties, district school boards, Florida College System institution boards of trustees, and university boards of trustees are required to adopt rules or regulations to be followed when making purchases.

The bill authorizes district school boards, Florida College System institutions, and universities to make purchases through an online procurement system, an electronic auction service, or other efficient procurement tool.

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

Agency Procurements

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.⁴

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁵ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁶

Section 287.056, F.S., requires agencies to purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, F.S., by DMS. Each agreement must include:

- A provision specifying a scope of work that clearly establishes all tasks that the contractor must perform.
- A provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.⁷

¹ Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² See ss. 287.032 and 287.042, F.S.

³ *Id.*

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two threshold amount (\$35,000) contained in s. 287.017, F.S., to be competitively procured.

⁶ See s. 287.057(3)(e), F.S.

⁷ Section 287.056(1), F.S.

State Universities Purchasing Procurements

Section 1001.706, F.S., provides powers and duties of the Board of Governors of the State University System. The Board of Governors must adopt regulations requiring universities to use purchasing agreements or state term contracts pursuant to s. 287.056, F.S., or enter into consortia and cooperative agreements to maximize the purchasing power for goods and services.⁸ The Board of Governors also may, by regulation, provide for alternative procedures for state universities for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.⁹ Each university board of trustees is required to adopt regulations to be followed in making purchases.¹⁰

Florida College System Institutions Purchasing Procurements

Section 1001.64, F.S., outlines the powers and duties of Florida College System institution boards of trustees. Each board of trustees is required to use purchasing agreements and state term contracts pursuant to s. 287.056, F.S., or enter into consortia and cooperative agreements to maximize the purchasing power for goods and services.¹¹ The board must also adopt rules to be followed when making purchases.¹²

District School Boards Purchasing Procurements

Section 1001.42, F.S., provides powers and duties of the district school boards. As part of its duties, the school board must secure purchasing regulations and amendments thereto from DMS. Prior to any purchase, the district school board's staff must determine the lowest price available to the school board under such regulations, and the school board must give consideration to such price, provided a regulation applicable to the item or items being purchased has been adopted by the Department of Education.¹³ District school boards may also use prices established by the Division of Purchasing within DMS through its state purchasing agreement price schedule.¹⁴

Each district school board must adopt rules to be followed when making purchases.¹⁵ In some counties, the county purchasing agent has authority to make purchases for the benefit of other governmental agencies within the county. In such a case, the district school board may purchase from the current county contracts.¹⁶ The State Board of Education may, by rule, provide for alternative procedures for school districts for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.¹⁷

Effect of Proposed Changes

The bill authorizes district school boards, Florida College System institutions, and universities to make purchases through an online procurement system, an electronic auction service, or other efficient procurement tool.

B. SECTION DIRECTORY:

Section 1 amends s. 1010.04, F.S., relating to purchasing by school districts, Florida College System institutions, and universities.

Section 2 provides an effective date of July 1, 2016.

⁸ Section 1001.706(3)(i), F.S.

⁹ Section 1010.04(4)(b), F.S.

¹⁰ Section 1010.04(2), F.S.

¹¹ Section 1001.64(48), F.S.

¹² Section 1010.04(2), F.S.

¹³ Section 1001.42(12)(j), F.S.

¹⁴ Chapter 6A-1.012(5), F.A.C.

¹⁵ Section 1010.04(2), F.S.

¹⁶ Section 1010.04(3), F.S.

¹⁷ Section 1010.04(4), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 Vote-by-mail Voting
SPONSOR(S): Lee, Jr., Williams and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>ET</i>	Williamson <i>RAW</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot. In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot. Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.

According to the National Conference of State Legislatures, 27 states have some form of "no-excuse absentee voting." However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida supervisors of elections websites use the terms "vote-by-mail" and "absentee" interchangeably.

The bill amends the Florida Statutes to replace the phrase "absentee ballot" with the phrase "vote-by-mail ballot."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Prior to 2001, a voter was required to show cause in order to vote using an absentee ballot.¹ To vote by absentee ballot, a voter had to attest that one of the following reasons prevented him or her from voting in person at a polling place:

- The voter is unable to vote without another's assistance;
- The voter may not be in the precinct of residence during the hours the polls are open for voting on election day;
- The voter is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor of elections who is assigned to a different precinct than the one in which he or she is registered;
- The voter cannot attend the polls on election day because of the tenets of his or her religion;
- The voter changed his or her residency to another county in Florida within the time period during which the registration books are closed for the election;
- The voter changed his or her permanent residency to another state and he or she is unable under the laws of that state to vote in the general election; or
- The voter is unable to attend the polls on election day and is voting in person at the office of the supervisor of elections.²

In 2001, the Legislature adopted the Florida Election Reform Act of 2001, which eliminated the requirement that a voter show cause to vote using an absentee ballot.³ Now, a voter using an absentee ballot is only required to affirm that he or she:

- Is a qualified and registered voter of the county;
- Has not and will not vote more than one ballot in the election; and
- Understands that committing or attempting to commit fraud in connection with voting is a felony of the third degree.⁴

Numerous states have amended their absentee voting laws to allow for greater absentee ballot participation by voters by removing the reasons that voters traditionally had to give in order to vote an absentee ballot.⁵ According to the National Conference of State Legislatures, 27 states have some form of "no-excuse absentee voting."⁶ However, there seems to be a lack of uniformity regarding what to call the current concepts of absentee voting. For instance, several Florida supervisors of elections websites use the terms "vote-by-mail" and "absentee" interchangeably.⁷

¹ Section 101.64, F.S. (2000).

² *Id.*

³ Chapter 2001-40, s. 1, L.O.F.

⁴ Section 101.64(1), F.S.

⁵ Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L.REV. 1015, 1021 (2007), reprinted at <http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji.authcheckdam.pdf> (last accessed Nov. 18, 2015); see Enrijeta Shino, *Absentee Voting: A Cross State Analysis* at pp. 3-5 (University of Florida Mar. 8, 2014) (2000 general election signaled the turning point in easing legal requirements for absentee voting), available at The Florida Political Science Association website at http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf (last accessed Nov. 18, 2015).

⁶ National Conference of State Legislatures, *Absentee and Early Voting* (Feb. 11, 2015), available at <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed Nov. 18, 2015).

⁷ See e.g., Escambia County Supervisor of Elections website at <http://www.escambiavotes.com/vote-by-mail> and <http://www.escambiavotes.com/absentee-voting-and-registration> (generally, using the term "absentee ballot" to refer to military and overseas ballots and the phrase "vote-by-mail" to refer to other ballots)(last accessed Nov. 18, 2015); Pasco County Supervisor of Elections website at <http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil> (referring to most ballots, including military, as vote-by mail ballots)(last accessed Nov. 18, 2015); Leon County Supervisor of Elections website at

Effect of the Bill

The bill amends the Florida Statutes to replace the phrase “absentee ballot” with the phrase “vote-by-mail ballot.”

B. SECTION DIRECTORY:

Sections 1 through 40 amend ss. 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 101.051, 101.151, 101.5612, 101.5614, 101.572, 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, 102.031, 102.141, 102.168, 104.047, 104.0616, 104.17, 117.05, 394.459, 741.406, and 916.107, F.S., replacing the phrase “absentee ballot” with “vote-by-mail ballot.”

Section 41 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of State, the change in terminology will require the Division of Elections to revise various documentation and may require coding changes to the Florida Voter Registration System. The department indicates the changes will likely be absorbed into the division’s current operating budget.⁸

Additionally, supervisors of elections will need to make changes to documentation, forms, procedures, and websites to conform to the change in terminology. The cost of these changes is indeterminate since the level of changes required will differ from county to county.

<http://www.leonvotes.org/Request-an-Absentee-Ballot> and Sarasota County Supervisor of Elections website at <http://www.sarasotavotes.com/content.aspx?id=19> (using both terms, “vote-by-mail” and “absentee” interchangeably and simultaneously)(last accessed Nov. 18, 2015).

⁸ Department of State 2016 Agency Legislative Bill Analysis for HB 361, Oct. 27, 2015, at pg. 3 (on file with the Government Operations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the past, some have expressed concern that changing the term “absentee ballot” to “vote-by-mail ballot” could result in a delay in the United States Postal Service’s processing, transmitting, and delivering of ballots. However, U.S. Postal Service Regulation 703 Nonprofit Standard Mail and Other Unique Eligibility provides the following:

8.2.5 Envelope

The envelope used to send balloting material and the envelope supplied for return of the ballots must have printed across the face the words “Official Absentee Balloting Material—First-Class Mail” (or similar language required by state law)...⁹

Therefore, using different terms with similar meanings, such as “vote-by-mail ballot,” would appear to be contemplated by the U.S. Postal Service’s regulations.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁹ U.S Postal Service Regulation 703.8.2.5, available at <http://pe.usps.com/text/dmm300/703.htm#1174014> (last accessed Nov. 18, 2015).

1 A bill to be entitled
 2 An act relating to vote-by-mail voting; amending ss.
 3 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981,
 4 98.255, 101.051, 101.151, 101.5612, 101.5614, 101.572,
 5 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655,
 6 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921,
 7 101.6923, 101.6925, 101.694, 101.6951, 101.6952,
 8 101.697, 102.031, 102.141, 102.168, 104.047, 104.0616,
 9 104.17, 117.05, 394.459, 741.406, and 916.107, F.S.;
 10 revising references of "absentee ballot" to "vote-by-
 11 mail ballot"; conforming terminology to changes made
 12 by the act; providing an effective date.

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

15
 16 Section 1. Subsection (13) of section 97.012, Florida
 17 Statutes, is amended to read:

18 97.012 Secretary of State as chief election officer.—The
 19 Secretary of State is the chief election officer of the state,
 20 and it is his or her responsibility to:

21 (13) Designate an office within the department to be
 22 responsible for providing information regarding voter
 23 registration procedures and vote-by-mail ~~absentee~~ ballot
 24 procedures to absent uniformed services voters and overseas
 25 voters.

26 Section 2. Subsections (1) and (13) of section 97.021,

27 Florida Statutes, are amended to read:

28 97.021 Definitions.—For the purposes of this code, except
29 where the context clearly indicates otherwise, the term:

30 (1) "Absent elector" means any registered and qualified
31 voter who casts a vote-by-mail ~~an absentee~~ ballot.

32 (13) "Election costs" shall include, but not be limited
33 to, expenditures for all paper supplies such as envelopes,
34 instructions to voters, affidavits, reports, ballot cards,
35 ballot booklets for vote-by-mail ~~absentee~~ voters, postage,
36 notices to voters; advertisements for registration book
37 closings, testing of voting equipment, sample ballots, and
38 polling places; forms used to qualify candidates; polling site
39 rental and equipment delivery and pickup; data processing time
40 and supplies; election records retention; and labor costs,
41 including those costs uniquely associated with vote-by-mail
42 ~~absentee~~ ballot preparation, poll workers, and election night
43 canvass.

44 Section 3. Section 97.026, Florida Statutes, is amended to
45 read:

46 97.026 Forms to be available in alternative formats and
47 via the Internet.—It is the intent of the Legislature that all
48 forms required to be used in chapters 97-106 shall be made
49 available upon request, in alternative formats. Such forms shall
50 include vote-by-mail ~~absentee~~ ballots as alternative formats for
51 such ballots become available and the Division of Elections is
52 able to certify systems that provide them. Whenever possible,

53 such forms, with the exception of vote-by-mail ~~absentee~~ ballots,
 54 shall be made available by the Department of State via the
 55 Internet. Sections that contain such forms include, but are not
 56 limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058, 97.0583,
 57 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361, 100.371,
 58 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64, 101.65,
 59 101.657, 105.031, 106.023, and 106.087.

60 Section 4. Paragraph (c) of subsection (4) of section
 61 98.065, Florida Statutes, is amended to read:

62 98.065 Registration list maintenance programs.—

63 (4)

64 (c) The supervisor must designate as inactive all voters
 65 who have been sent an address confirmation final notice and who
 66 have not returned the postage prepaid, preaddressed return form
 67 within 30 days or for which the final notice has been returned
 68 as undeliverable. Names on the inactive list may not be used to
 69 calculate the number of signatures needed on any petition. A
 70 voter on the inactive list may be restored to the active list of
 71 voters upon the voter updating his or her registration,
 72 requesting a vote-by-mail ~~an absentee~~ ballot, or appearing to
 73 vote. However, if the voter does not update his or her voter
 74 registration information, request a vote-by-mail ~~an absentee~~
 75 ballot, or vote by the second general election after being
 76 placed on the inactive list, the voter's name shall be removed
 77 from the statewide voter registration system and the voter shall
 78 be required to reregister to have his or her name restored to

79 the statewide voter registration system.

80 Section 5. Subsection (4) of section 98.077, Florida
81 Statutes, is amended to read:

82 98.077 Update of voter signature.—

83 (4) All signature updates for use in verifying vote-by-
84 mail ~~absentee~~ and provisional ballots must be received by the
85 appropriate supervisor of elections no later than the start of
86 the canvassing of vote-by-mail ~~absentee~~ ballots by the
87 canvassing board. The signature on file at the start of the
88 canvass of the vote-by-mail ~~absentee~~ ballots is the signature
89 that shall be used in verifying the signature on the vote-by-
90 mail ~~absentee~~ and provisional ballot certificates.

91 Section 6. Paragraphs (b) and (d) of subsection (1) and
92 paragraph (a) of subsection (2) of section 98.0981, Florida
93 Statutes, are amended to read:

94 98.0981 Reports; voting history; statewide voter
95 registration system information; precinct-level election
96 results; book closing statistics.—

97 (1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM
98 INFORMATION.—

99 (b) After receipt of the information in paragraph (a), the
100 department shall prepare a report in electronic format which
101 contains the following information, separately compiled for the
102 primary and general election for all voters qualified to vote in
103 either election:

104 1. The unique identifier assigned to each qualified voter

105 within the statewide voter registration system;

106 2. All information provided by each qualified voter on his
 107 or her voter registration application pursuant to s. 97.052(2),
 108 except that which is confidential or exempt from public records
 109 requirements;

110 3. Each qualified voter's date of registration;

111 4. Each qualified voter's current state representative
 112 district, state senatorial district, and congressional district,
 113 assigned by the supervisor of elections;

114 5. Each qualified voter's current precinct; and

115 6. Voting history as transmitted under paragraph (a) to
 116 include whether the qualified voter voted at a precinct
 117 location, voted during the early voting period, voted by vote-
 118 by-mail ~~absentee~~ ballot, attempted to vote by vote-by-mail
 119 ~~absentee~~ ballot that was not counted, attempted to vote by
 120 provisional ballot that was not counted, or did not vote.

121 (d) File specifications are as follows:

122 1. The file shall contain records designated by the
 123 categories below for all qualified voters who, regardless of the
 124 voter's county of residence or active or inactive registration
 125 status at the book closing for the corresponding election that
 126 the file is being created for:

127 a. Voted a regular ballot at a precinct location.

128 b. Voted at a precinct location using a provisional ballot
 129 that was subsequently counted.

130 c. Voted a regular ballot during the early voting period.

- 131 d. Voted during the early voting period using a
 132 provisional ballot that was subsequently counted.
- 133 e. Voted by vote-by-mail ~~absentee~~ ballot.
- 134 f. Attempted to vote by vote-by-mail ~~absentee~~ ballot, but
 135 the ballot was not counted.
- 136 g. Attempted to vote by provisional ballot, but the ballot
 137 was not counted in that election.
- 138 2. Each file shall be created or converted into a tab-
 139 delimited format.
- 140 3. File names shall adhere to the following convention:
- 141 a. Three-character county identifier as established by the
 142 department followed by an underscore.
- 143 b. Followed by four-character file type identifier of
 144 'VH03' followed by an underscore.
- 145 c. Followed by FVRS election ID followed by an underscore.
- 146 d. Followed by Date Created followed by an underscore.
- 147 e. Date format is YYYYMMDD.
- 148 f. Followed by Time Created - HHMMSS.
- 149 g. Followed by ".txt".
- 150 4. Each record shall contain the following columns: Record
 151 Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote
 152 Date, Vote History Code, Precinct, Congressional District, House
 153 District, Senate District, County Commission District, and
 154 School Board District.
- 155 (2) PRECINCT-LEVEL ELECTION RESULTS.—
- 156 (a) Within 30 days after certification by the Elections

157 Canvassing Commission of a presidential preference primary
 158 election, special election, primary election, or general
 159 election, the supervisors of elections shall collect and submit
 160 to the department precinct-level election results for the
 161 election in a uniform electronic format specified by paragraph
 162 (c). The precinct-level election results shall be compiled
 163 separately for the primary or special primary election that
 164 preceded the general or special general election, respectively.
 165 The results shall specifically include for each precinct the
 166 total of all ballots cast for each candidate or nominee to fill
 167 a national, state, county, or district office or proposed
 168 constitutional amendment, with subtotals for each candidate and
 169 ballot type, unless fewer than 10 voters voted a ballot type.
 170 "All ballots cast" means ballots cast by voters who cast a
 171 ballot whether at a precinct location, by vote-by-mail ~~absentee~~
 172 ballot including overseas vote-by-mail ~~absentee~~ ballots, during
 173 the early voting period, or by provisional ballot.

174 Section 7. Paragraph (b) of subsection (1) of section
 175 98.255, Florida Statutes, is amended to read:

176 98.255 Voter education programs.—

177 (1) The Department of State shall adopt rules prescribing
 178 minimum standards for nonpartisan voter education. The standards
 179 shall, at a minimum, address:

180 (a) Voter registration;

181 (b) Balloting procedures, by mail ~~absentee~~ and polling
 182 place;

- 183 (c) Voter rights and responsibilities;
- 184 (d) Distribution of sample ballots; and
- 185 (e) Public service announcements.

186 Section 8. Subsection (3) of section 101.051, Florida
 187 Statutes, is amended to read:

188 101.051 Electors seeking assistance in casting ballots;
 189 oath to be executed; forms to be furnished.-

190 (3) Any elector applying to cast a vote-by-mail an
 191 absentee ballot in the office of the supervisor, in any
 192 election, who requires assistance to vote by reason of
 193 blindness, disability, or inability to read or write may request
 194 the assistance of some person of his or her own choice, other
 195 than the elector's employer, an agent of the employer, or an
 196 officer or agent of his or her union, in casting his or her
 197 vote-by-mail absentee ballot.

198 Section 9. Paragraph (b) of subsection (1) of section
 199 101.151, Florida Statutes, is amended to read:

200 101.151 Specifications for ballots.-

201 (1)

202 (b) Early voting sites may employ a ballot-on-demand
 203 production system to print individual marksense ballots,
 204 including provisional ballots, for eligible electors pursuant to
 205 s. 101.657. Ballot-on-demand technology may be used to produce
 206 marksense vote-by-mail absentee and election-day ballots.

207 Section 10. Subsection (3) of section 101.5612, Florida
 208 Statutes, is amended to read:

209 101.5612 Testing of tabulating equipment.—

210 (3) For electronic or electromechanical voting systems
 211 configured to tabulate vote-by-mail ~~absentee~~ ballots at a
 212 central or regional site, the public testing shall be conducted
 213 by processing a preaudited group of ballots so produced as to
 214 record a predetermined number of valid votes for each candidate
 215 and on each measure and to include one or more ballots for each
 216 office which have activated voting positions in excess of the
 217 number allowed by law in order to test the ability of the
 218 automatic tabulating equipment to reject such votes. If any
 219 error is detected, the cause therefor shall be corrected and an
 220 errorless count shall be made before the automatic tabulating
 221 equipment is approved. The test shall be repeated and errorless
 222 results achieved immediately before the start of the official
 223 count of the ballots and again after the completion of the
 224 official count. The programs and ballots used for testing shall
 225 be sealed and retained under the custody of the county
 226 canvassing board.

227 Section 11. Paragraph (a) of subsection (5) and
 228 subsections (7) and (8) of section 101.5614, Florida Statutes,
 229 are amended to read:

230 101.5614 Canvass of returns.—

231 (5)(a) If any vote-by-mail ~~absentee~~ ballot is physically
 232 damaged so that it cannot properly be counted by the automatic
 233 tabulating equipment, a true duplicate copy shall be made of the
 234 damaged ballot in the presence of witnesses and substituted for

235 the damaged ballot. Likewise, a duplicate ballot shall be made
 236 of a vote-by-mail ~~an absentee~~ ballot containing an overvoted
 237 race or a marked vote-by-mail ~~absentee~~ ballot in which every
 238 race is undervoted which shall include all valid votes as
 239 determined by the canvassing board based on rules adopted by the
 240 division pursuant to s. 102.166(4). All duplicate ballots shall
 241 be clearly labeled "duplicate," bear a serial number which shall
 242 be recorded on the defective ballot, and be counted in lieu of
 243 the defective ballot. After a ballot has been duplicated, the
 244 defective ballot shall be placed in an envelope provided for
 245 that purpose, and the duplicate ballot shall be tallied with the
 246 other ballots for that precinct.

247 (7) Vote-by-mail ~~Absentee~~ ballots may be counted by
 248 automatic tabulating equipment if they have been marked in a
 249 manner which will enable them to be properly counted by such
 250 equipment.

251 (8) The return printed by the automatic tabulating
 252 equipment, to which has been added the return of write-in, vote-
 253 by-mail ~~absentee~~, and manually counted votes and votes from
 254 provisional ballots, shall constitute the official return of the
 255 election upon certification by the canvassing board. Upon
 256 completion of the count, the returns shall be open to the
 257 public. A copy of the returns may be posted at the central
 258 counting place or at the office of the supervisor of elections
 259 in lieu of the posting of returns at individual precincts.

260 Section 12. Section 101.572, Florida Statutes, is amended

261 to read:

262 101.572 Public inspection of ballots.—The official ballots
 263 and ballot cards received from election boards and removed from
 264 vote-by-mail ~~absentee~~ ballot mailing envelopes shall be open for
 265 public inspection or examination while in the custody of the
 266 supervisor of elections or the county canvassing board at any
 267 reasonable time, under reasonable conditions; however, no
 268 persons other than the supervisor of elections or his or her
 269 employees or the county canvassing board shall handle any
 270 official ballot or ballot card. If the ballots are being
 271 examined prior to the end of the contest period in s. 102.168,
 272 the supervisor of elections shall make a reasonable effort to
 273 notify all candidates whose names appear on such ballots or
 274 ballot cards by telephone or otherwise of the time and place of
 275 the inspection or examination. All such candidates, or their
 276 representatives, shall be allowed to be present during the
 277 inspection or examination.

278 Section 13. Paragraphs (a) and (b) of subsection (2) of
 279 section 101.591, Florida Statutes, are amended to read:

280 101.591 Voting system audit.—

281 (2)(a) A manual audit shall consist of a public manual
 282 tally of the votes cast in one randomly selected race that
 283 appears on the ballot. The tally sheet shall include election-
 284 day, vote-by-mail ~~absentee~~, early voting, provisional, and
 285 overseas ballots, in at least 1 percent but no more than 2
 286 percent of the precincts chosen at random by the county

287 canvassing board or the local board responsible for certifying
 288 the election. If 1 percent of the precincts is less than one
 289 entire precinct, the audit shall be conducted using at least one
 290 precinct chosen at random by the county canvassing board or the
 291 local board responsible for certifying the election. Such
 292 precincts shall be selected at a publicly noticed canvassing
 293 board meeting.

294 (b) An automated audit shall consist of a public automated
 295 tally of the votes cast across every race that appears on the
 296 ballot. The tally sheet shall include election day, vote-by-mail
 297 ~~absentee~~, early voting, provisional, and overseas ballots in at
 298 least 20 percent of the precincts chosen at random by the county
 299 canvassing board or the local board responsible for certifying
 300 the election. Such precincts shall be selected at a publicly
 301 noticed canvassing board meeting.

302 Section 14. Section 101.6105, Florida Statutes, is amended
 303 to read:

304 101.6105 Vote-by-mail ~~Absentee~~ voting.—The provisions of
 305 the election code relating to vote-by-mail ~~absentee~~ voting and
 306 vote-by-mail ~~absentee~~ ballots shall apply to elections under ss.
 307 101.6101-101.6107 only insofar as they do not conflict with the
 308 provisions of ss. 101.6101-101.6107.

309 Section 15. Section 101.62, Florida Statutes, is amended
 310 to read:

311 101.62 Request for vote-by-mail ~~absentee~~ ballots.—

312 (1) (a) The supervisor shall accept a request for a vote-

313 by-mail ~~an absentee~~ ballot from an elector in person or in
 314 writing. One request shall be deemed sufficient to receive a a
 315 vote-by-mail ~~an absentee~~ ballot for all elections through the
 316 end of the calendar year of the second ensuing regularly
 317 scheduled general election, unless the elector or the elector's
 318 designee indicates at the time the request is made the elections
 319 for which the elector desires to receive a vote-by-mail ~~an~~
 320 ~~absentee~~ ballot. Such request may be considered canceled when
 321 any first-class mail sent by the supervisor to the elector is
 322 returned as undeliverable.

323 (b) The supervisor may accept a written or telephonic
 324 request for a vote-by-mail ~~an absentee~~ ballot to be mailed to an
 325 elector's address on file in the Florida Voter Registration
 326 System from the elector, or, if directly instructed by the
 327 elector, a member of the elector's immediate family, or the
 328 elector's legal guardian; if the ballot is requested to be
 329 mailed to an address other than the elector's address on file in
 330 the Florida Voter Registration System, the request must be made
 331 in writing and signed by the elector. However, an absent
 332 uniformed service voter or an overseas voter seeking a vote-by-
 333 mail ~~an absentee~~ ballot is not required to submit a signed,
 334 written request for a vote-by-mail ~~an absentee~~ ballot that is
 335 being mailed to an address other than the elector's address on
 336 file in the Florida Voter Registration System. For purposes of
 337 this section, the term "immediate family" has the same meaning
 338 as specified in paragraph (4) (c). The person making the request

339 must disclose:

- 340 1. The name of the elector for whom the ballot is
- 341 requested.
- 342 2. The elector's address.
- 343 3. The elector's date of birth.
- 344 4. The requester's name.
- 345 5. The requester's address.
- 346 6. The requester's driver license number, if available.
- 347 7. The requester's relationship to the elector.
- 348 8. The requester's signature (written requests only).

349 (c) Upon receiving a request for a vote-by-mail ~~an~~
 350 ~~absentee~~ ballot from an absent voter, the supervisor of
 351 elections shall notify the voter of the free access system that
 352 has been designated by the department for determining the status
 353 of his or her vote-by-mail ~~absentee~~ ballot.

354 (2) A request for a vote-by-mail ~~an absentee~~ ballot to be
 355 mailed to a voter must be received no later than 5 p.m. on the
 356 sixth day before the election by the supervisor of elections.
 357 The supervisor of elections shall mail vote-by-mail ~~absentee~~
 358 ballots to voters requesting ballots by such deadline no later
 359 than 4 days before the election.

360 (3) For each request for a vote-by-mail ~~an absentee~~ ballot
 361 received, the supervisor shall record the date the request was
 362 made, the date the vote-by-mail ~~absentee~~ ballot was delivered to
 363 the voter or the voter's designee or the date the vote-by-mail
 364 ~~absentee~~ ballot was delivered to the post office or other

365 carrier, the date the ballot was received by the supervisor, the
 366 absence of the voter's signature on the voter's certificate, if
 367 applicable, and such other information he or she may deem
 368 necessary. This information shall be provided in electronic
 369 format as provided by rule adopted by the division. The
 370 information shall be updated and made available no later than 8
 371 a.m. of each day, including weekends, beginning 60 days before
 372 the primary until 15 days after the general election and shall
 373 be contemporaneously provided to the division. This information
 374 shall be confidential and exempt from s. 119.07(1) and shall be
 375 made available to or reproduced only for the voter requesting
 376 the ballot, a canvassing board, an election official, a
 377 political party or official thereof, a candidate who has filed
 378 qualification papers and is opposed in an upcoming election, and
 379 registered political committees for political purposes only.

380 (4) (a) No later than 45 days before each presidential
 381 preference primary election, primary election, and general
 382 election, the supervisor of elections shall send a vote-by-mail
 383 ~~an absentee~~ ballot as provided in subparagraph (c)2. to each
 384 absent uniformed services voter and to each overseas voter who
 385 has requested a vote-by-mail ~~an absentee~~ ballot.

386 (b) The supervisor of elections shall mail a vote-by-mail
 387 ~~an absentee~~ ballot to each absent qualified voter, other than
 388 those listed in paragraph (a), who has requested such a ballot,
 389 between the 35th and 28th days before the presidential
 390 preference primary election, primary election, and general

391 election. Except as otherwise provided in subsection (2) and
 392 after the period described in this paragraph, the supervisor
 393 shall mail vote-by-mail ~~absentee~~ ballots within 2 business days
 394 after receiving a request for such a ballot.

395 (c) The supervisor shall provide a vote-by-mail ~~an~~
 396 ~~absentee~~ ballot to each elector by whom a request for that
 397 ballot has been made by one of the following means:

398 1. By nonforwardable, return-if-undeliverable mail to the
 399 elector's current mailing address on file with the supervisor or
 400 any other address the elector specifies in the request.

401 2. By forwardable mail, e-mail, or facsimile machine
 402 transmission to absent uniformed services voters and overseas
 403 voters. The absent uniformed services voter or overseas voter
 404 may designate in the vote-by-mail ~~absentee~~ ballot request the
 405 preferred method of transmission. If the voter does not
 406 designate the method of transmission, the vote-by-mail ~~absentee~~
 407 ballot shall be mailed.

408 3. By personal delivery before 7 p.m. on election day to
 409 the elector, upon presentation of the identification required in
 410 s. 101.043.

411 4. By delivery to a designee on election day or up to 5
 412 days prior to the day of an election. Any elector may designate
 413 in writing a person to pick up the ballot for the elector;
 414 however, the person designated may not pick up more than two
 415 vote-by-mail ~~absentee~~ ballots per election, other than the
 416 designee's own ballot, except that additional ballots may be

417 | picked up for members of the designee's immediate family. For
 418 | purposes of this section, "immediate family" means the
 419 | designee's spouse or the parent, child, grandparent, or sibling
 420 | of the designee or of the designee's spouse. The designee shall
 421 | provide to the supervisor the written authorization by the
 422 | elector and a picture identification of the designee and must
 423 | complete an affidavit. The designee shall state in the affidavit
 424 | that the designee is authorized by the elector to pick up that
 425 | ballot and shall indicate if the elector is a member of the
 426 | designee's immediate family and, if so, the relationship. The
 427 | department shall prescribe the form of the affidavit. If the
 428 | supervisor is satisfied that the designee is authorized to pick
 429 | up the ballot and that the signature of the elector on the
 430 | written authorization matches the signature of the elector on
 431 | file, the supervisor shall give the ballot to that designee for
 432 | delivery to the elector.

433 | 5. Except as provided in s. 101.655, the supervisor may
 434 | not deliver a vote-by-mail ~~an absentee~~ ballot to an elector or
 435 | an elector's immediate family member on the day of the election
 436 | unless there is an emergency, to the extent that the elector
 437 | will be unable to go to his or her assigned polling place. If a
 438 | vote-by-mail ~~an absentee~~ ballot is delivered, the elector or his
 439 | or her designee shall execute an affidavit affirming to the
 440 | facts which allow for delivery of the vote-by-mail ~~absentee~~
 441 | ballot. The department shall adopt a rule providing for the form
 442 | of the affidavit.

443 (5) If the department is unable to certify candidates for
 444 an election in time to comply with paragraph (4)(a), the
 445 Department of State is authorized to prescribe rules for a
 446 ballot to be sent to absent uniformed services voters and
 447 overseas voters.

448 (6) Nothing other than the materials necessary to vote by
 449 mail absentee shall be mailed or delivered with any vote-by-mail
 450 absentee ballot.

451 Section 16. Subsections (1) and (4) of section 101.64,
 452 Florida Statutes, are amended to read:

453 101.64 Delivery of vote-by-mail ~~absentee~~ ballots;
 454 envelopes; form.-

455 (1) The supervisor shall enclose with each vote-by-mail
 456 ~~absentee~~ ballot two envelopes: a secrecy envelope, into which
 457 the absent elector shall enclose his or her marked ballot; and a
 458 mailing envelope, into which the absent elector shall then place
 459 the secrecy envelope, which shall be addressed to the supervisor
 460 and also bear on the back side a certificate in substantially
 461 the following form:

462
 463 Note: Please Read Instructions Carefully Before
 464 Marking Ballot and Completing Voter's Certificate.

465
 466 VOTER'S CERTIFICATE

467 I,, do solemnly swear or affirm that I am a qualified
 468 and registered voter of County, Florida, and that I have

495 are an overseas voter casting a ballot in a presidential
 496 preference primary or general election, your vote-by-mail
 497 ~~absentee~~ ballot must be postmarked or dated no later than the
 498 date of the election and received by the supervisor of elections
 499 of the county in which you are registered to vote no later than
 500 10 days after the date of the election.

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

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

508 4. Place your marked ballot in the enclosed secrecy
 509 envelope.

510 5. Insert the secrecy envelope into the enclosed mailing
 511 envelope which is addressed to the supervisor.

512 6. Seal the mailing envelope and completely fill out the
 513 Voter's Certificate on the back of the mailing envelope.

514 7. VERY IMPORTANT. In order for your vote-by-mail ~~absentee~~
 515 ballot to be counted, you must sign your name on the line above
 516 (Voter's Signature). A vote-by-mail ~~An absentee~~ ballot will be
 517 considered illegal and not be counted if the signature on the
 518 voter's certificate does not match the signature on record. The
 519 signature on file at the start of the canvass of the vote-by-
 520 mail ~~absentee~~ ballots is the signature that will be used to

521 verify your signature on the voter's certificate. If you need to
 522 update your signature for this election, send your signature
 523 update on a voter registration application to your supervisor of
 524 elections so that it is received no later than the start of the
 525 canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no
 526 earlier than the 15th day before election day.

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

530 9. Mail, deliver, or have delivered the completed mailing
 531 envelope. Be sure there is sufficient postage if mailed.

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

537 Section 18. Subsections (1) and (2) of section 101.655,
 538 Florida Statutes, are amended to read:

539 101.655 Supervised voting by absent electors in certain
 540 facilities.—

541 (1) The supervisor of elections of a county shall provide
 542 supervised voting for absent electors residing in any assisted
 543 living facility, as defined in s. 429.02, or nursing home
 544 facility, as defined in s. 400.021, within that county at the
 545 request of any administrator of such a facility. Such request
 546 for supervised voting in the facility shall be made by

547 submitting a written request to the supervisor of elections no
 548 later than 21 days prior to the election for which that request
 549 is submitted. The request shall specify the name and address of
 550 the facility and the name of the electors who wish to vote by
 551 mail ~~absentee~~ in that election. If the request contains the
 552 names of fewer than five voters, the supervisor of elections is
 553 not required to provide supervised voting.

554 (2) The supervisor of elections may, in the absence of a
 555 request from the administrator of a facility, provide for
 556 supervised voting in the facility for those persons who have
 557 requested vote-by-mail ~~absentee~~ ballots. The supervisor of
 558 elections shall notify the administrator of the facility that
 559 supervised voting will occur.

560 Section 19. Section 101.661, Florida Statutes, is amended
 561 to read:

562 101.661 Voting vote-by-mail ~~absentee~~ ballots.—All electors
 563 must personally mark or designate their choices on the vote-by-
 564 mail ~~absentee~~ ballot, except:

565 (1) Electors who require assistance to vote because of
 566 blindness, disability, or inability to read or write, who may
 567 have some person of the elector's choice, other than the
 568 elector's employer, an agent of the employer, or an officer or
 569 agent of the elector's union, mark the elector's choices or
 570 assist the elector in marking his or her choices on the ballot.

571 (2) As otherwise provided in s. 101.051 or s. 101.655.

572 Section 20. Section 101.662, Florida Statutes, is amended

573 to read:

574 101.662 Accessibility of vote-by-mail ~~absentee~~ ballots.—It
 575 is the intent of the Legislature that voting by vote-by-mail
 576 ~~absentee~~ ballot be by methods that are fully accessible to all
 577 voters, including voters having a disability. The Department of
 578 State shall work with the supervisors of elections and the
 579 disability community to develop and implement procedures and
 580 technologies, as possible, which will include procedures for
 581 providing vote-by-mail ~~absentee~~ ballots, upon request, in
 582 alternative formats that will allow all voters to cast a secret,
 583 independent, and verifiable vote-by-mail ~~absentee~~ ballot without
 584 the assistance of another person.

585 Section 21. Section 101.67, Florida Statutes, is amended
 586 to read:

587 101.67 Safekeeping of mailed ballots; deadline for
 588 receiving vote-by-mail ~~absentee~~ ballots.—

589 (1) The supervisor of elections shall safely keep in his
 590 or her office any envelopes received containing marked ballots
 591 of absent electors, and he or she shall, before the canvassing
 592 of the election returns, deliver the envelopes to the county
 593 canvassing board along with his or her file or list kept
 594 regarding said ballots.

595 (2) Except as provided in s. 101.6952(5), all marked
 596 absent electors' ballots to be counted must be received by the
 597 supervisor by 7 p.m. the day of the election. All ballots
 598 received thereafter shall be marked with the time and date of

599 receipt and filed in the supervisor's office.

600 Section 22. Section 101.68, Florida Statutes, is amended
601 to read:

602 101.68 Canvassing of vote-by-mail ~~absentee~~ ballot.-

603 (1) The supervisor of the county where the absent elector
604 resides shall receive the voted ballot, at which time the
605 supervisor shall compare the signature of the elector on the
606 voter's certificate with the signature of the elector in the
607 registration books or the precinct register to determine whether
608 the elector is duly registered in the county and may record on
609 the elector's registration certificate that the elector has
610 voted. However, effective July 1, 2005, an elector who dies
611 after casting a vote-by-mail ~~an absentee~~ ballot but on or before
612 election day shall remain listed in the registration books until
613 the results have been certified for the election in which the
614 ballot was cast. The supervisor shall safely keep the ballot
615 unopened in his or her office until the county canvassing board
616 canvasses the vote. Except as provided in subsection (4), after
617 a vote-by-mail ~~an absentee~~ ballot is received by the supervisor,
618 the ballot is deemed to have been cast, and changes or additions
619 may not be made to the voter's certificate.

620 (2)(a) The county canvassing board may begin the
621 canvassing of vote-by-mail ~~absentee~~ ballots at 7 a.m. on the
622 15th day before the election, but not later than noon on the day
623 following the election. In addition, for any county using
624 electronic tabulating equipment, the processing of vote-by-mail

625 ~~absentee~~ ballots through such tabulating equipment may begin at
 626 7 a.m. on the 15th day before the election. However,
 627 notwithstanding any such authorization to begin canvassing or
 628 otherwise processing vote-by-mail ~~absentee~~ ballots early, no
 629 result shall be released until after the closing of the polls in
 630 that county on election day. Any supervisor of elections, deputy
 631 supervisor of elections, canvassing board member, election board
 632 member, or election employee who releases the results of a
 633 canvassing or processing of vote-by-mail ~~absentee~~ ballots prior
 634 to the closing of the polls in that county on election day
 635 commits a felony of the third degree, punishable as provided in
 636 s. 775.082, s. 775.083, or s. 775.084.

637 (b) To ensure that all vote-by-mail ~~absentee~~ ballots to be
 638 counted by the canvassing board are accounted for, the
 639 canvassing board shall compare the number of ballots in its
 640 possession with the number of requests for ballots received to
 641 be counted according to the supervisor's file or list.

642 (c)1. The canvassing board shall, if the supervisor has
 643 not already done so, compare the signature of the elector on the
 644 voter's certificate or on the vote-by-mail ~~absentee~~ ballot
 645 affidavit as provided in subsection (4) with the signature of
 646 the elector in the registration books or the precinct register
 647 to see that the elector is duly registered in the county and to
 648 determine the legality of that vote-by-mail ~~absentee~~ ballot. The
 649 ballot of an elector who casts a vote-by-mail ~~an absentee~~ ballot
 650 shall be counted even if the elector dies on or before election

651 day, as long as, prior to the death of the voter, the ballot was
 652 postmarked by the United States Postal Service, date-stamped
 653 with a verifiable tracking number by a common carrier, or
 654 already in the possession of the supervisor of elections. A
 655 vote-by-mail ~~An absentee~~ ballot shall be considered illegal if
 656 the voter's certificate or vote-by-mail ~~absentee~~ ballot
 657 affidavit does not include the signature of the elector, as
 658 shown by the registration records or the precinct register.
 659 However, a vote-by-mail ~~an absentee~~ ballot is not considered
 660 illegal if the signature of the elector does not cross the seal
 661 of the mailing envelope. If the canvassing board determines that
 662 any ballot is illegal, a member of the board shall, without
 663 opening the envelope, mark across the face of the envelope:
 664 "rejected as illegal." The vote-by-mail ~~absentee~~ ballot
 665 affidavit, if applicable, the envelope, and the ballot contained
 666 therein shall be preserved in the manner that official ballots
 667 voted are preserved.

668 2. If any elector or candidate present believes that a
 669 vote-by-mail ~~an absentee~~ ballot is illegal due to a defect
 670 apparent on the voter's certificate or the vote-by-mail ~~absentee~~
 671 ballot affidavit, he or she may, at any time before the ballot
 672 is removed from the envelope, file with the canvassing board a
 673 protest against the canvass of that ballot, specifying the
 674 precinct, the ballot, and the reason he or she believes the
 675 ballot to be illegal. A challenge based upon a defect in the
 676 voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit

677 | may not be accepted after the ballot has been removed from the
 678 | mailing envelope.

679 | (d) The canvassing board shall record the ballot upon the
 680 | proper record, unless the ballot has been previously recorded by
 681 | the supervisor. The mailing envelopes shall be opened and the
 682 | secrecy envelopes shall be mixed so as to make it impossible to
 683 | determine which secrecy envelope came out of which signed
 684 | mailing envelope; however, in any county in which an electronic
 685 | or electromechanical voting system is used, the ballots may be
 686 | sorted by ballot styles and the mailing envelopes may be opened
 687 | and the secrecy envelopes mixed separately for each ballot
 688 | style. The votes on vote-by-mail ~~absentee~~ ballots shall be
 689 | included in the total vote of the county.

690 | (3) The supervisor or the chair of the county canvassing
 691 | board shall, after the board convenes, have custody of the vote-
 692 | by-mail ~~absentee~~ ballots until a final proclamation is made as
 693 | to the total vote received by each candidate.

694 | (4) (a) The supervisor of elections shall, on behalf of the
 695 | county canvassing board, notify each elector whose ballot was
 696 | rejected as illegal and provide the specific reason the ballot
 697 | was rejected. The supervisor shall mail a voter registration
 698 | application to the elector to be completed indicating the
 699 | elector's current signature if the elector's ballot was rejected
 700 | due to a difference between the elector's signature on the
 701 | voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit
 702 | and the elector's signature in the registration books or

703 precinct register. This section does not prohibit the supervisor
 704 from providing additional methods for updating an elector's
 705 signature.

706 (b) Until 5 p.m. on the day before an election, the
 707 supervisor shall allow an elector who has returned a vote-by-
 708 mail ~~an absentee~~ ballot that does not include the elector's
 709 signature to complete and submit an affidavit in order to cure
 710 the unsigned vote-by-mail ~~absentee~~ ballot.

711 (c) The elector shall provide identification to the
 712 supervisor and must complete a vote-by-mail ~~an absentee~~ ballot
 713 affidavit in substantially the following form:

714
 715 VOTE-BY-MAIL ~~ABSENTEE~~ BALLOT AFFIDAVIT

716 I,, am a qualified voter in this election and
 717 registered voter of County, Florida. I do solemnly swear or
 718 affirm that I requested and returned the vote-by-mail ~~absentee~~
 719 ballot and that I have not and will not vote more than one
 720 ballot in this election. I understand that if I commit or
 721 attempt any fraud in connection with voting, vote a fraudulent
 722 ballot, or vote more than once in an election, I may be
 723 convicted of a felony of the third degree and fined up to \$5,000
 724 and imprisoned for up to 5 years. I understand that my failure
 725 to sign this affidavit means that my vote-by-mail ~~absentee~~
 726 ballot will be invalidated.

727
 728 ... (Voter's Signature) ...

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... (Address) ...

(d) Instructions must accompany the vote-by-mail ~~absentee~~ ballot affidavit in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 2nd day before the election.

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

3. You must make a copy of one of the following forms of identification:

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

b. Identification that shows your name and current residence address: current utility bill, bank statement,

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

755 government check, paycheck, or government document (excluding
756 voter identification card).

757 4. Place the envelope bearing the affidavit into a mailing
758 envelope addressed to the supervisor. Insert a copy of your
759 identification in the mailing envelope. Mail, deliver, or have
760 delivered the completed affidavit along with the copy of your
761 identification to your county supervisor of elections. Be sure
762 there is sufficient postage if mailed and that the supervisor's
763 address is correct.

764 5. Alternatively, you may fax or e-mail your completed
765 affidavit and a copy of your identification to the supervisor of
766 elections. If e-mailing, please provide these documents as
767 attachments.

768 (e) The department and each supervisor shall include the
769 affidavit and instructions on their respective websites. The
770 supervisor must include his or her office's mailing address, e-
771 mail address, and fax number on the page containing the
772 affidavit instructions; the department's instruction page must
773 include the office mailing addresses, e-mail addresses, and fax
774 numbers of all supervisors of elections or provide a conspicuous
775 link to such addresses.

776 (f) The supervisor shall attach each affidavit received to
777 the appropriate vote-by-mail ~~absentee~~ ballot mailing envelope.

778 Section 23. Section 101.69, Florida Statutes, is amended
779 to read:

780 101.69 Voting in person; return of vote-by-mail ~~absentee~~

781 ballot.—The provisions of this code shall not be construed to
 782 prohibit any elector from voting in person at the elector's
 783 precinct on the day of an election or at an early voting site,
 784 notwithstanding that the elector has requested a vote-by-mail ~~an~~
 785 ~~absentee~~ ballot for that election. An elector who has returned a
 786 voted vote-by-mail ~~absentee~~ ballot to the supervisor, however,
 787 is deemed to have cast his or her ballot and is not entitled to
 788 vote another ballot or to have a provisional ballot counted by
 789 the county canvassing board. An elector who has received a vote-
 790 by-mail ~~an absentee~~ ballot and has not returned the voted ballot
 791 to the supervisor, but desires to vote in person, shall return
 792 the ballot, whether voted or not, to the election board in the
 793 elector's precinct or to an early voting site. The returned
 794 ballot shall be marked "canceled" by the board and placed with
 795 other canceled ballots. However, if the elector does not return
 796 the ballot and the election official:

797 (1) Confirms that the supervisor has received the
 798 elector's vote-by-mail ~~absentee~~ ballot, the elector shall not be
 799 allowed to vote in person. If the elector maintains that he or
 800 she has not returned the vote-by-mail ~~absentee~~ ballot or remains
 801 eligible to vote, the elector shall be provided a provisional
 802 ballot as provided in s. 101.048.

803 (2) Confirms that the supervisor has not received the
 804 elector's vote-by-mail ~~absentee~~ ballot, the elector shall be
 805 allowed to vote in person as provided in this code. The
 806 elector's vote-by-mail ~~absentee~~ ballot, if subsequently

807 received, shall not be counted and shall remain in the mailing
 808 envelope, and the envelope shall be marked "Rejected as
 809 Illegal."

810 (3) Cannot determine whether the supervisor has received
 811 the elector's vote-by-mail ~~absentee~~ ballot, the elector may vote
 812 a provisional ballot as provided in s. 101.048.

813 Section 24. Subsections (1) and (2) of section 101.6921,
 814 Florida Statutes, are amended to read:

815 101.6921 Delivery of special vote-by-mail ~~absentee~~ ballot
 816 to certain first-time voters.-

817 (1) The provisions of this section apply to voters who are
 818 subject to the provisions of s. 97.0535 and who have not
 819 provided the identification or certification required by s.
 820 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

821 (2) The supervisor shall enclose with each vote-by-mail
 822 ~~absentee~~ ballot three envelopes: a secrecy envelope, into which
 823 the absent elector will enclose his or her marked ballot; an
 824 envelope containing the Voter's Certificate, into which the
 825 absent elector shall place the secrecy envelope; and a mailing
 826 envelope, which shall be addressed to the supervisor and into
 827 which the absent elector will place the envelope containing the
 828 Voter's Certificate and a copy of the required identification.

829 Section 25. Section 101.6923, Florida Statutes, is amended
 830 to read:

831 101.6923 Special vote-by-mail ~~absentee~~ ballot instructions
 832 for certain first-time voters.-

833 (1) The provisions of this section apply to voters who are
834 subject to the provisions of s. 97.0535 and who have not
835 provided the identification or information required by s.
836 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

837 (2) A voter covered by this section shall be provided with
838 printed instructions with his or her vote-by-mail ~~absentee~~
839 ballot in substantially the following form:

840

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

844

845 1. In order to ensure that your vote-by-mail ~~absentee~~
846 ballot will be counted, it should be completed and returned as
847 soon as possible so that it can reach the supervisor of
848 elections of the county in which your precinct is located no
849 later than 7 p.m. on the date of the election. However, if you
850 are an overseas voter casting a ballot in a presidential
851 preference primary or general election, your vote-by-mail
852 ~~absentee~~ ballot must be postmarked or dated no later than the
853 date of the election and received by the supervisor of elections
854 of the county in which you are registered to vote no later than
855 10 days after the date of the election.

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

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

863 4. Place your marked ballot in the enclosed secrecy
864 envelope and seal the envelope.

865 5. Insert the secrecy envelope into the enclosed envelope
866 bearing the Voter's Certificate. Seal the envelope and
867 completely fill out the Voter's Certificate on the back of the
868 envelope.

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

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

874 c. A vote-by-mail ~~An absentee~~ ballot will be considered
875 illegal and will not be counted if the signature on the Voter's
876 Certificate does not match the signature on record. The
877 signature on file at the start of the canvass of the vote-by-
878 mail ~~absentee~~ ballots is the signature that will be used to
879 verify your signature on the Voter's Certificate. If you need to
880 update your signature for this election, send your signature
881 update on a voter registration application to your supervisor of
882 elections so that it is received no later than the start of
883 canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no
884 earlier than the 15th day before election day.

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

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

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

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

899 | a. You are 65 years of age or older.

900 | b. You have a temporary or permanent physical disability.

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

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

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

911 f. You are currently residing outside the United States.
 912 8. Place the envelope bearing the Voter's Certificate into
 913 the mailing envelope addressed to the supervisor. Insert a copy
 914 of your identification in the mailing envelope. DO NOT PUT YOUR
 915 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR
 916 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR
 917 BALLOT WILL NOT COUNT.

918 9. Mail, deliver, or have delivered the completed mailing
 919 envelope. Be sure there is sufficient postage if mailed.

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

925 Section 26. Subsections (1) and (2) of section 101.6925,
 926 Florida Statutes, are amended to read:

927 101.6925 Canvassing special vote-by-mail ~~absentee~~
 928 ballots.-

929 (1) The supervisor of the county where the absent elector
 930 resides shall receive the voted special vote-by-mail ~~absentee~~
 931 ballot, at which time the mailing envelope shall be opened to
 932 determine if the voter has enclosed the identification required
 933 or has indicated on the Voter's Certificate that he or she is
 934 exempt from the identification requirements.

935 (2) If the identification is enclosed or the voter has
 936 indicated that he or she is exempt from the identification

937 requirements, the supervisor shall make the note on the
 938 registration records of the voter and proceed to canvass the
 939 vote-by-mail ~~absentee~~ ballot as provided in s. 101.68.

940 Section 27. Section 101.694, Florida Statutes, is amended
 941 to read:

942 101.694 Mailing of ballots upon receipt of federal
 943 postcard application.—

944 (1) Upon receipt of a federal postcard application for a
 945 vote-by-mail ~~an absentee~~ ballot executed by a person whose
 946 registration is in order or whose application is sufficient to
 947 register or update the registration of that person, the
 948 supervisor shall send the ballot in accordance with s.
 949 101.62(4).

950 (2) Upon receipt of a federal postcard application for a
 951 vote-by-mail ~~an absentee~~ ballot executed by a person whose
 952 registration is not in order and whose application is
 953 insufficient to register or update the registration of that
 954 person, the supervisor shall follow the procedure set forth in
 955 s. 97.073.

956 (3) Vote-by-mail ~~Absentee~~ envelopes printed for voters
 957 entitled to vote by mail ~~absentee~~ under the Uniformed and
 958 Overseas Citizens Absentee Voting Act shall meet the
 959 specifications as determined by the Federal Voting Assistance
 960 Program of the United States Department of Defense and the
 961 United States Postal Service.

962 (4) Cognizance shall be taken of the fact that vote-by-

963 mail ~~absentee~~ ballots and other materials such as instructions
 964 and envelopes are to be carried via air mail, and, to the
 965 maximum extent possible, such ballots and materials shall be
 966 reduced in size and weight of paper. The same ballot shall be
 967 used, however, as is used by other vote-by-mail ~~absentee~~ voters.

968 Section 28. Subsections (1) and (4) of section 101.6951,
 969 Florida Statutes, are amended to read:

970 101.6951 State write-in vote-by-mail ballot.-

971 (1) An overseas voter may request, not earlier than 180
 972 days before a general election, a state write-in vote-by-mail
 973 ~~absentee~~ ballot from the supervisor of elections in the county
 974 of registration. In order to receive a state write-in ballot,
 975 the voter shall state that due to military or other
 976 contingencies that preclude normal mail delivery, the voter
 977 cannot vote a vote-by-mail ~~an absentee~~ ballot during the normal
 978 vote-by-mail ~~absentee~~ voting period. State write-in vote-by-mail
 979 ~~absentee~~ ballots shall be made available to voters 90 to 180
 980 days prior to a general election. The Department of State shall
 981 prescribe by rule the form of the state write-in vote-by-mail
 982 ballot.

983 (4) The state write-in vote-by-mail ballot shall contain
 984 all offices, federal, state, and local, for which the voter
 985 would otherwise be entitled to vote.

986 Section 29. Section 101.6952, Florida Statutes, is amended
 987 to read:

988 101.6952 Vote-by-mail ~~Absentee~~ ballots for absent

989 uniformed services and overseas voters.—

990 (1) If an absent uniformed services voter's or an overseas
 991 voter's request for an official vote-by-mail ~~absentee~~ ballot
 992 pursuant to s. 101.62 includes an e-mail address, the supervisor
 993 of elections shall:

994 (a) Record the voter's e-mail address in the vote-by-mail
 995 ~~absentee~~ ballot record;

996 (b) Confirm by e-mail that the vote-by-mail ~~absentee~~
 997 ballot request was received and include in that e-mail the
 998 estimated date the vote-by-mail ~~absentee~~ ballot will be sent to
 999 the voter; and

1000 (c) Notify the voter by e-mail when the voted vote-by-mail
 1001 ~~absentee~~ ballot is received by the supervisor of elections.

1002 (2)(a) An absent uniformed services voter or an overseas
 1003 voter who makes timely application for but does not receive an
 1004 official vote-by-mail ~~absentee~~ ballot may use the federal write-
 1005 in absentee ballot to vote in any federal, state, or local
 1006 election.

1007 (b)1. In an election for federal office, an elector may
 1008 designate a candidate by writing the name of a candidate on the
 1009 ballot. Except for a primary or special primary election, the
 1010 elector may alternatively designate a candidate by writing the
 1011 name of a political party on the ballot. A written designation
 1012 of the political party shall be counted as a vote for the
 1013 candidate of that party if there is such a party candidate in
 1014 the race.

1015 2. In a state or local election, an elector may vote in
 1016 the section of the federal write-in absentee ballot designated
 1017 for nonfederal races by writing on the ballot the title of each
 1018 office and by writing on the ballot the name of the candidate
 1019 for whom the elector is voting. Except for a primary, special
 1020 primary, or nonpartisan election, the elector may alternatively
 1021 designate a candidate by writing the name of a political party
 1022 on the ballot. A written designation of the political party
 1023 shall be counted as a vote for the candidate of that party if
 1024 there is such a party candidate in the race. In addition, the
 1025 elector may vote on any ballot measure presented in such
 1026 election by identifying the ballot measure on which he or she
 1027 desires to vote and specifying his or her vote on the measure.
 1028 For purposes of this section, a vote cast in a judicial merit
 1029 retention election shall be treated in the same manner as a
 1030 ballot measure in which the only allowable responses are "Yes"
 1031 or "No."

1032 (c) In the case of a joint candidacy, such as for the
 1033 offices of President/Vice President or Governor/Lieutenant
 1034 Governor, a valid vote for one or both qualified candidates on
 1035 the same ticket shall constitute a vote for the joint candidacy.

1036 (d) For purposes of this subsection and except when the
 1037 context clearly indicates otherwise, such as when a candidate in
 1038 the election is affiliated with a political party whose name
 1039 includes the word "Independent," "Independence," or a similar
 1040 term, a voter designation of "No Party Affiliation" or

1041 "Independent," or any minor variation, misspelling, or
 1042 abbreviation thereof, shall be considered a designation for the
 1043 candidate, other than a write-in candidate, who qualified to run
 1044 in the race with no party affiliation. If more than one
 1045 candidate qualifies to run as a candidate with no party
 1046 affiliation, the designation may not count for any candidate
 1047 unless there is a valid, additional designation of the
 1048 candidate's name.

1049 (e) Any abbreviation, misspelling, or other minor
 1050 variation in the form of the name of an office, the name of a
 1051 candidate, the ballot measure, or the name of a political party
 1052 must be disregarded in determining the validity of the ballot.

1053 (3)(a) An absent uniformed services voter or an overseas
 1054 voter who submits a federal write-in absentee ballot and later
 1055 receives an official vote-by-mail ~~absentee~~ ballot may submit the
 1056 official vote-by-mail ~~absentee~~ ballot. An elector who submits a
 1057 federal write-in absentee ballot and later receives and submits
 1058 an official vote-by-mail ~~absentee~~ ballot should make every
 1059 reasonable effort to inform the appropriate supervisor of
 1060 elections that the elector has submitted more than one ballot.

1061 (b) A federal write-in absentee ballot may not be
 1062 canvassed until 7 p.m. on the day of the election. A federal
 1063 write-in absentee ballot from an overseas voter in a
 1064 presidential preference primary or general election may not be
 1065 canvassed until the conclusion of the 10-day period specified in
 1066 subsection (5). Each federal write-in absentee ballot received

1067 by 7 p.m. on the day of the election shall be canvassed pursuant
 1068 to ss. 101.5614(5) and 101.68, unless the elector's official
 1069 vote-by-mail ~~absentee~~ ballot is received by 7 p.m. on election
 1070 day. Each federal write-in absentee ballot from an overseas
 1071 voter in a presidential preference primary or general election
 1072 received by 10 days after the date of the election shall be
 1073 canvassed pursuant to ss. 101.5614(5) and 101.68, unless the
 1074 overseas voter's official vote-by-mail ~~absentee~~ ballot is
 1075 received by 10 days after the date of the election. If the
 1076 elector's official vote-by-mail ~~absentee~~ ballot is received by 7
 1077 p.m. on election day, or, for an overseas voter in a
 1078 presidential preference primary or general election, no later
 1079 than 10 days after the date of the election, the federal write-
 1080 in absentee ballot is invalid and the official vote-by-mail
 1081 ~~absentee~~ ballot shall be canvassed. The time shall be regulated
 1082 by the customary time in standard use in the county seat of the
 1083 locality.

1084 (4) For vote-by-mail ~~absentee~~ ballots received from absent
 1085 uniformed services voters or overseas voters, there is a
 1086 presumption that the envelope was mailed on the date stated on
 1087 the outside of the return envelope, regardless of the absence of
 1088 a postmark on the mailed envelope or the existence of a postmark
 1089 date that is later than the date of the election.

1090 (5) A vote-by-mail ~~An absentee~~ ballot from an overseas
 1091 voter in any presidential preference primary or general election
 1092 which is postmarked or dated no later than the date of the

1093 election and is received by the supervisor of elections of the
 1094 county in which the overseas voter is registered no later than
 1095 10 days after the date of the election shall be counted as long
 1096 as the vote-by-mail ~~absentee~~ ballot is otherwise proper.

1097 Section 30. Section 101.697, Florida Statutes, is amended
 1098 to read:

1099 101.697 Electronic transmission of election materials.—The
 1100 Department of State shall determine whether secure electronic
 1101 means can be established for receiving ballots from overseas
 1102 voters. If such security can be established, the department
 1103 shall adopt rules to authorize a supervisor of elections to
 1104 accept from an overseas voter a request for a vote-by-mail ~~an~~
 1105 ~~absentee~~ ballot or a voted vote-by-mail ~~absentee~~ ballot by
 1106 secure facsimile machine transmission or other secure electronic
 1107 means. The rules must provide that in order to accept a voted
 1108 ballot, the verification of the voter must be established, the
 1109 security of the transmission must be established, and each
 1110 ballot received must be recorded.

1111 Section 31. Paragraph (a) of subsection (4) of section
 1112 102.031, Florida Statutes, is amended to read:

1113 102.031 Maintenance of good order at polls; authorities;
 1114 persons allowed in polling rooms and early voting areas;
 1115 unlawful solicitation of voters.—

1116 (4)(a) No person, political committee, or other group or
 1117 organization may solicit voters inside the polling place or
 1118 within 100 feet of the entrance to any polling place, a polling

1119 room where the polling place is also a polling room, an early
 1120 voting site, or an office of the supervisor of elections where
 1121 vote-by-mail ~~absentee~~ ballots are requested and printed on
 1122 demand for the convenience of electors who appear in person to
 1123 request them. Before the opening of the polling place or early
 1124 voting site, the clerk or supervisor shall designate the no-
 1125 solicitation zone and mark the boundaries.

1126 Section 32. Subsections (2), (3), and (4) of section
 1127 102.141, Florida Statutes, are amended to read:

1128 102.141 County canvassing board; duties.—

1129 (2) The county canvassing board shall meet in a building
 1130 accessible to the public in the county where the election
 1131 occurred at a time and place to be designated by the supervisor
 1132 of elections to publicly canvass the absent ~~absentee~~ electors'
 1133 ballots as provided for in s. 101.68 and provisional ballots as
 1134 provided by ss. 101.048, 101.049, and 101.6925. Provisional
 1135 ballots cast pursuant to s. 101.049 shall be canvassed in a
 1136 manner that votes for candidates and issues on those ballots can
 1137 be segregated from other votes. Public notice of the time and
 1138 place at which the county canvassing board shall meet to canvass
 1139 the absent ~~absentee~~ electors' ballots and provisional ballots
 1140 shall be given at least 48 hours prior thereto by publication on
 1141 the supervisor of elections' website and once in one or more
 1142 newspapers of general circulation in the county or, if there is
 1143 no newspaper of general circulation in the county, by posting
 1144 such notice in at least four conspicuous places in the county.

1145 As soon as the absent ~~absentee~~ electors' ballots and the
1146 provisional ballots are canvassed, the board shall proceed to
1147 publicly canvass the vote given each candidate, nominee,
1148 constitutional amendment, or other measure submitted to the
1149 electorate of the county, as shown by the returns then on file
1150 in the office of the supervisor of elections.

1151 (3) The canvass, except the canvass of absent ~~absentee~~
1152 electors' returns and the canvass of provisional ballots, shall
1153 be made from the returns and certificates of the inspectors as
1154 signed and filed by them with the supervisor, and the county
1155 canvassing board shall not change the number of votes cast for a
1156 candidate, nominee, constitutional amendment, or other measure
1157 submitted to the electorate of the county, respectively, in any
1158 polling place, as shown by the returns. All returns shall be
1159 made to the board on or before 2 a.m. of the day following any
1160 primary, general, or other election. If the returns from any
1161 precinct are missing, if there are any omissions on the returns
1162 from any precinct, or if there is an obvious error on any such
1163 returns, the canvassing board shall order a retabulation of the
1164 returns from such precinct. Before canvassing such returns, the
1165 canvassing board shall examine the tabulation of the ballots
1166 cast in such precinct and determine whether the returns
1167 correctly reflect the votes cast. If there is a discrepancy
1168 between the returns and the tabulation of the ballots cast, the
1169 tabulation of the ballots cast shall be presumed correct and
1170 such votes shall be canvassed accordingly.

1171 (4) (a) The supervisor of elections shall upload into the
 1172 county's election management system by 7 p.m. on the day before
 1173 the election the results of all early voting and vote-by-mail
 1174 ~~absentee~~ ballots that have been canvassed and tabulated by the
 1175 end of the early voting period. Pursuant to ss. 101.5614(9),
 1176 101.657, and 101.68(2), the tabulation of votes cast or the
 1177 results of such uploads may not be made public before the close
 1178 of the polls on election day.

1179 (b) The canvassing board shall report all early voting and
 1180 all tabulated vote-by-mail ~~absentee~~ results to the Department of
 1181 State within 30 minutes after the polls close. Thereafter, the
 1182 canvassing board shall report, with the exception of provisional
 1183 ballot results, updated precinct election results to the
 1184 department at least every 45 minutes until all results are
 1185 completely reported. The supervisor of elections shall notify
 1186 the department immediately of any circumstances that do not
 1187 permit periodic updates as required. Results shall be submitted
 1188 in a format prescribed by the department.

1189 Section 33. Subsection (8) of section 102.168, Florida
 1190 Statutes, is amended to read:

1191 102.168 Contest of election.—

1192 (8) In any contest that requires a review of the
 1193 canvassing board's decision on the legality of a vote-by-mail ~~an~~
 1194 ~~absentee~~ ballot pursuant to s. 101.68 based upon a comparison of
 1195 the signature on the voter's certificate and the signature of
 1196 the elector in the registration records, the circuit court may

1197 not review or consider any evidence other than the signature on
 1198 the voter's certificate and the signature of the elector in the
 1199 registration records. The court's review of such issue shall be
 1200 to determine only if the canvassing board abused its discretion
 1201 in making its decision.

1202 Section 34. Subsection (1) of section 104.047, Florida
 1203 Statutes, is amended to read:

1204 104.047 Vote-by-mail ~~Absentee~~ ballots and voting;
 1205 violations.-

1206 (1) Except as provided in s. 101.62 or s. 101.655, any
 1207 person who requests a vote-by-mail ~~an absentee~~ ballot on behalf
 1208 of an elector is guilty of a felony of the third degree,
 1209 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1210 Section 35. Section 104.0616, Florida Statutes, is amended
 1211 to read:

1212 104.0616 Vote-by-mail ~~Absentee~~ ballots and voting;
 1213 violations.-

1214 (1) For purposes of this section, the term "immediate
 1215 family" means a person's spouse or the parent, child,
 1216 grandparent, or sibling of the person or the person's spouse.

1217 (2) Any person who provides or offers to provide, and any
 1218 person who accepts, a pecuniary or other benefit in exchange for
 1219 distributing, ordering, requesting, collecting, delivering, or
 1220 otherwise physically possessing more than two vote-by-mail
 1221 ~~absentee~~ ballots per election in addition to his or her own
 1222 ballot or a ballot belonging to an immediate family member,

1223 except as provided in ss. 101.6105-101.694, commits a
 1224 misdemeanor of the first degree, punishable as provided in s.
 1225 775.082, s. 775.083, or s. 775.084.

1226 Section 36. Section 104.17, Florida Statutes, is amended
 1227 to read:

1228 104.17 Voting in person after casting vote-by-mail
 1229 ~~absentee~~ ballot.—Any person who willfully votes or attempts to
 1230 vote both in person and by vote-by-mail ~~absentee~~ ballot at any
 1231 election is guilty of a felony of the third degree, punishable
 1232 as provided in s. 775.082, s. 775.083, or s. 775.084.

1233 Section 37. Paragraph (b) of subsection (2) of section
 1234 117.05, Florida Statutes, is amended to read:

1235 117.05 Use of notary commission; unlawful use; notary fee;
 1236 seal; duties; employer liability; name change; advertising;
 1237 photocopies; penalties.—

1238 (2)

1239 (b) A notary public may not charge a fee for witnessing a
 1240 vote-by-mail ~~an absentee~~ ballot in an election, and must witness
 1241 such a ballot upon the request of an elector, provided the
 1242 notarial act is in accordance with the provisions of this
 1243 chapter.

1244 Section 38. Subsection (7) of section 394.459, Florida
 1245 Statutes, is amended to read:

1246 394.459 Rights of patients.—

1247 (7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible
 1248 to vote according to the laws of the state has the right to vote

1249 in the primary and general elections. The department shall
 1250 establish rules to enable patients to obtain voter registration
 1251 forms, applications for vote-by-mail ~~absentee~~ ballots, and vote-
 1252 by-mail ~~absentee~~ ballots.

1253 Section 39. Section 741.406, Florida Statutes, is amended
 1254 to read:

1255 741.406 Voting by program participant; use of designated
 1256 address by supervisor of elections.—A program participant who is
 1257 otherwise qualified to vote may request a vote-by-mail ~~an~~
 1258 ~~absentee~~ ballot pursuant to s. 101.62. The program participant
 1259 shall automatically receive vote-by-mail ~~absentee~~ ballots for
 1260 all elections in the jurisdictions in which that individual
 1261 resides in the same manner as vote-by-mail ~~absentee~~ voters. The
 1262 supervisor of elections shall transmit the vote-by-mail ~~absentee~~
 1263 ballot to the program participant at the address designated by
 1264 the participant in his or her application as a vote-by-mail ~~an~~
 1265 ~~absentee~~ voter. The name, address, and telephone number of a
 1266 program participant may not be included in any list of
 1267 registered voters available to the public.

1268 Section 40. Subsection (7) of section 916.107, Florida
 1269 Statutes, is amended to read:

1270 916.107 Rights of forensic clients.—

1271 (7) VOTING IN PUBLIC ELECTIONS.—A forensic client who is
 1272 eligible to vote according to the laws of the state has the
 1273 right to vote in the primary and general elections. The
 1274 department and agency shall establish rules to enable clients to

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1275 | obtain voter registration forms, applications for vote-by-mail
1276 | ~~absentee~~ ballots, and vote-by-mail ~~absentee~~ ballots.

1277 | Section 41. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 541 Addresses of Legal Residence
SPONSOR(S): Spano
TIED BILLS: IDEN./SIM. BILLS: SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>Raw</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application. The application must be designed to elicit certain information from an applicant. A voter registration application must contain a person’s legal residence in order to be considered complete; however, the term legal residence is not defined within The Florida Election Code.

Supervisors of elections (supervisors) act as the receiver and custodian of voter registrations within their county. Supervisors must maintain a list of valid residential street addresses for the purpose of verifying the legal addresses of voters residing within their county.

The bill defines the term “address of legal residence” to mean the legal residence of an elector and includes all information necessary to distinguish one residence from another, such as apartment numbers, lot numbers, room numbers, or dormitory room numbers. The bill requires the voter registration application to include the applicant’s address of legal residence in order to be considered complete. Finally, the bill requires supervisors to include within their list of valid residential street addresses all information necessary to differentiate one residence from another.

The bill does not appear to have a fiscal impact on state government, but may have an insignificant fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Voter Registration Act¹ delineates the qualifications and requirements necessary for a person to register to vote in Florida.² In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code³ and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered.⁴

The Department of State must prescribe by rule a uniform statewide voter registration application,⁵ which must be designed to elicit certain information from the applicant.⁶ A voter registration application is considered complete if it contains the following information necessary to establish the applicant's eligibility:

- The applicant's name, legal residence address,⁷ and date of birth.
- A mark in the checkbox affirming the applicant is a citizen of the United States.
- The applicant's current and valid Florida driver license number or identification number from a Florida identification card, or if the applicant does not have a Florida driver license or identification card, the last four numbers of his or her social security number.⁸
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, the applicant has had his or her civil rights restored.
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, the applicant has had his or her right to vote restored.
- The applicant's signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles.⁹

The term "legal residence" is not defined in The Florida Election Code;¹⁰ however, the term has been defined in case law.¹¹ A legal residence "is the place where a person has fixed an abode with the present intention of making it their permanent home."¹² According to the Florida Supreme Court, a "legal residence consists of the concurrence of both fact and intention."¹³

¹ Part II, ch. 97, F.S.

² See ss. 97.041-97.105, F.S.

³ Chapters 97-106, F.S. are cited as The Florida Election Code.

⁴ Section 97.041(1)(a), F.S.

⁵ Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

⁶ Section 97.052(2), F.S.

⁷ The Florida Voter Registration Application, incorporated by the Division of Elections into rule, has distinct sections for an applicant's street address, apt/lot/unit number, city, county, and zip code. Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

⁸ If an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application. Section 97.053(5)(a)5.b., F.S.

⁹ Section 97.053(5)(a), F.S.

¹⁰ "No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary." Op. Div. of Elections, DE 93-05.

¹¹ *Minick v. Minick*, 149 So. 483 (Fla. 1933).

¹² *Id.*

¹³ *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955).

Supervisors of elections (supervisors) act as the receiver and custodian of new voter registrations, as well as the receiver and custodian of any changes in the voter registration status of electors within their county.¹⁴ Supervisors must maintain a list of valid residential street addresses for the purpose of verifying the legal addresses of voters residing within their county.¹⁵

Effect of the Bill

The bill defines the term “address of legal residence” for purposes of The Florida Election Code. It defines “address of legal residence” to mean the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.

The bill requires the voter registration application to include the applicant’s address of legal residence in order to be considered complete.

Lastly, the bill requires supervisors to include within their list of valid residential street addresses, to the maximum extent practicable, information necessary to differentiate one address from another, such as an apartment, suite, lot, room, or dormitory room number.

B. SECTION DIRECTORY:

Section 1 amends s. 97.021, F.S., defining the term “address of legal residence.”

Section 2 amends s. 97.053, F.S., requiring a voter registration application to include the applicant’s address of legal residence.

Section 3 amends s. 97.057, F.S., conforming a cross-reference.

Section 4 amends s. 98.015, F.S., requiring supervisors to include any information necessary to distinguish one address from another within their list of valid street addresses.

Section 5 provides an effective date of July 1, 2016.

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.

¹⁴ Section 98.015(3), F.S.

¹⁵ Section 98.015(12), F.S.

2. Expenditures:

Supervisors may experience a cost associated with revising their list of valid residential street addresses to include information such as an apartment, suite, lot, room, or dormitory room number; however, it is likely the cost will be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Art. VII, S. 18 of the State Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of State may be required to revise its rule codifying the Florida voter registration application. The bill does not appear to require any additional rulemaking authority for the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 97.053, Florida Statutes, is amended to read:

28 97.053 Acceptance of voter registration applications.—

29 (5) (a) A voter registration application is complete if it
 30 contains the following information necessary to establish the
 31 applicant's eligibility pursuant to s. 97.041, including:

- 32 1. The applicant's name.
- 33 2. The applicant's address of legal residence ~~address~~.
- 34 3. The applicant's date of birth.
- 35 4. A mark in the checkbox affirming that the applicant is
 36 a citizen of the United States.

37 5.a. The applicant's current and valid Florida driver
 38 license number or the identification number from a Florida
 39 identification card issued under s. 322.051, or

40 b. If the applicant has not been issued a current and
 41 valid Florida driver license or a Florida identification card,
 42 the last four digits of the applicant's social security number.

43
 44 In case an applicant has not been issued a current and valid
 45 Florida driver license, Florida identification card, or social
 46 security number, the applicant shall affirm this fact in the
 47 manner prescribed in the uniform statewide voter registration
 48 application.

49 6. A mark in the checkbox affirming that the applicant has
 50 not been convicted of a felony or that, if convicted, has had
 51 his or her civil rights restored.

52 7. A mark in the checkbox affirming that the applicant has

53 | not been adjudicated mentally incapacitated with respect to
 54 | voting or that, if so adjudicated, has had his or her right to
 55 | vote restored.

56 | 8. The original signature or a digital signature
 57 | transmitted by the Department of Highway Safety and Motor
 58 | Vehicles of the applicant swearing or affirming under the
 59 | penalty for false swearing pursuant to s. 104.011 that the
 60 | information contained in the registration application is true
 61 | and subscribing to the oath required by s. 3, Art. VI of the
 62 | State Constitution and s. 97.051.

63 | Section 3. Subsection (10) of section 97.057, Florida
 64 | Statutes, is amended to read:

65 | 97.057 Voter registration by the Department of Highway
 66 | Safety and Motor Vehicles.—

67 | (10) The department shall provide the Department of
 68 | Highway Safety and Motor Vehicles with an electronic database of
 69 | street addresses valid for use as the address of legal residence
 70 | ~~address~~ as required in s. 97.053(5). The Department of Highway
 71 | Safety and Motor Vehicles shall compare the address provided by
 72 | the applicant against the database of valid street addresses. If
 73 | the address provided by the applicant does not match a valid
 74 | street address in the database, the applicant will be asked to
 75 | verify the address provided. The Department of Highway Safety
 76 | and Motor Vehicles shall not reject any application for voter
 77 | registration for which a valid match cannot be made.

78 | Section 4. Subsection (12) of section 98.015, Florida

79 Statutes, is amended to read:

80 98.015 Supervisor of elections; election, tenure of
 81 office, compensation, custody of registration-related documents,
 82 office hours, successor, seal; appointment of deputy
 83 supervisors; duties.—

84 (12) Each supervisor shall maintain a list of valid
 85 residential street addresses for purposes of verifying the legal
 86 addresses of voters residing in the supervisor's county. To the
 87 maximum extent practicable, the list shall include information
 88 necessary to differentiate one residence from another,
 89 including, but not limited to, a distinguishing apartment,
 90 suite, lot, room, or dormitory room number or other identifier.

91 The supervisor shall make all reasonable efforts to coordinate
 92 with county 911 service providers, property appraisers, the
 93 United States Postal Service, or other agencies as necessary to
 94 ensure the continued accuracy of such list. The supervisor shall
 95 provide the list of valid residential addresses to the statewide
 96 voter registration system in the manner and frequency specified
 97 by rule of the department.

98 Section 5. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-01 OGSR Emergency Notification
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>WAW</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 any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law. Additionally, the bill removes superfluous language.

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 (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Emergency Notification Systems

The Division of Emergency Management (division) within the Executive Office of the Governor is responsible for maintaining a comprehensive statewide program of emergency management.⁶ As part of the statewide program, the division must establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and to communicate emergency response decisions.⁷ To that end, the division has issued a request for proposals for a Florida Statewide Emergency Alert and Notification System, which will be a mass notification system that will provide statewide alerts for imminent or sudden hazards through various methods.

State agencies are also required to have emergency plans in place in case of a natural disaster.⁸ The emergency plans, called continuity of operations plans, are not required to have any sort of associated notification system.⁹ However, many agencies have developed emergency notification methods or systems that allow their employees and others to receive a notification in the event of an emergency.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 252.35(1), F.S.

⁷ Section 252.35(2)(a)6., F.S.

⁸ Section 252.365(3), F.S.

⁹ *Id.*

Some universities have an emergency notification system to provide alerts to their students and faculty. For example, Florida State University has an emergency notification system called FSU Alert.¹⁰ It utilizes over 30 different delivery methods ranging from voice calls to social media posts in order to alert students and faculty to any situation that poses an immediate threat to their health or safety.¹¹

Many local governments have in place emergency notification systems to alert their residents of weather conditions or other dangers. For example, many counties and municipalities use the CodeRED Emergency Notification System, a third party high-speed telephone communication service that provides emergency alerts to persons who voluntarily sign up for the service.¹²

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for any information furnished by a person to an agency¹³ for the purpose of receiving emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.¹⁴ The exemption applies retroactively¹⁵ to such exempt¹⁶ information held by an agency.

The 2011 public necessity statement for the public record exemption provides that:

Public safety is significantly enhanced through the use of...emergency notification programs, and expansion of such programs further increases public safety. A public records exemption for information furnished to an agency for this purpose will encourage greater participation in emergency notification programs by alleviating concerns about disclosure of information that could be used for criminal purposes...the public records exemption...is necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.¹⁷

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹⁸

During the 2015 interim, subcommittee staff sent questionnaires to state agencies, counties, and municipalities as part of the Open Government Sunset Review process.¹⁹ The respondents recommended reenactment of the public record exemption and indicated that without the exemption

¹⁰ See FSU Alert, available at <https://emergency.fsu.edu/services/FSUAlert> (last accessed Nov. 23, 2015).

¹¹ *Id.*

¹² See Broward County Emergency Management, available at <http://www.browardcounty.us/EmergencyManagement/AlertSignUp> (last accessed Nov. 23, 2015); see also St. Petersburg CodeRED Emergency Notification System, available at <http://police.stpete.org/community/code-red.html> (last accessed Nov. 23, 2015).

¹³ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of the Public Records Act, 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.

¹⁴ Chapter 2011-85, L.O.F.; codified as s. 119.071(5)(j)1., F.S.

¹⁵ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁶ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty.*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

¹⁷ Section 2, ch. 2011-85, L.O.F.

¹⁸ Section 119.071(5)(j)2., F.S.

¹⁹ Open Government Sunset Review of s. 119.071(5)(j), F.S., relating to emergency notification, questionnaire by House and Senate staff. Responses are on file with the Government Operations Subcommittee.

people would be less likely to join an emergency notification system if their information were made publicly available.²⁰

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Additionally, the bill removes the list of specified information included in the public record exemption because it is redundant. The public record exemption already provides that *all information* furnished by a person is exempt from public record requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for any information furnished by a person to an agency for the purpose of receiving emergency notification.

Section 2 provides an effective date of October 1, 2016.

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.

²⁰ *Id.* at question 10.

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.

PCB GVOPS 16-01

ORIGINAL

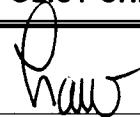
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27 | ~~Review Act in accordance with s. 119.15, and shall stand~~
28 | ~~repealed on October 2, 2016, unless reviewed and saved from~~
29 | ~~repeal through reenactment by the Legislature.~~

30 | Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-02 OGSR Office of Financial Regulation
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Toliver LT	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 Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.

Current law provides a public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, 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 (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation

The Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight. According to the office, it interacts frequently with the following federal agencies:

- Financial Crimes Enforcement Network;
- Federal Trade Commission;
- Florida Fusion Center;⁶
- Commodities Futures Trading Commission;
- Federal Deposit Insurance Corporation;
- National Credit Union Association; and

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, Fla. Const.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ The Florida Fusion Center is a collaboration of state and federal agencies led by the Florida Department of Law Enforcement.

- Securities Exchange Commission.⁷

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for certain information held by the office before, on, or after July 1, 2011.⁸ Specifically, the following information held by the office is confidential and exempt⁹ from public record requirements:

- Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Any information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.¹⁰

The office may obtain and use the information received or developed as part of a joint or multiagency examination or investigation in accordance with the conditions imposed by the joint or multiagency agreement. However, the exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation.¹¹

Section 2 of chapter 2011-88, L.O.F., which is the public necessity statement for the exemption, provides that:

...Without the exemption, the office will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired...The exemption is necessary to enable the office to participate in joint or multiagency investigations and examinations. Without the exemption, the office will be unable to participate in these activities, which impairs its ability to leverage its limited resources.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹²

During the 2015 interim, subcommittee staff met with office staff as part of the Open Government Sunset Review process. Office staff indicated it is critical for the office to have this exemption, and its ability to obtain information from state and federal agencies is predicated on the office's ability to keep the information confidential.¹³ According to the office, repeal of the exemption would negatively affect

⁷ Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

⁸ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

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

¹⁰ Chapter 2011-88, L.O.F.; codified as s. 119.0712(3), F.S.

¹¹ Section 119.0712(3)(a)2., F.S.

¹² Section 119.0712(3)(b), F.S.

¹³ Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

the office's ability to coordinate with other state or federal agencies. As such, the office recommended reenactment of the exemption without changes.

Effect of the Bill

The bill removes the repeal date thereby reenacting the public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law; and
- Information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to save from repeal the public record exemption for certain information held by the Office of Financial Regulation.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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. 119.0712, F.S.,
 4 relating to an exemption from public records
 5 requirements for confidential or exempt information
 6 received by the Office of Financial Regulation from
 7 certain state or federal agencies and information
 8 received or developed by the office in a joint or
 9 multiagency examination or investigation; removing the
 10 scheduled repeal of the exemption; providing an
 11 effective date.

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

14
 15 Section 1. Subsection (3) of section 119.0712, Florida
 16 Statutes, is amended to read:

17 119.0712 Executive branch agency-specific exemptions from
 18 inspection or copying of public records.—

19 (3) OFFICE OF FINANCIAL REGULATION.—

20 ~~(a)~~ The following information held by the Office of
 21 Financial Regulation before, on, or after July 1, 2011, is
 22 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 23 of the State Constitution:

24 (a)~~1.~~ Any information received from another state or
 25 federal regulatory, administrative, or criminal justice agency
 26 that is otherwise confidential or exempt pursuant to the laws of

27 that state or pursuant to federal law.

28 (b)2- Any information that is received or developed by the
 29 office as part of a joint or multiagency examination or
 30 investigation with another state or federal regulatory,
 31 administrative, or criminal justice agency. The office may
 32 obtain and use the information in accordance with the conditions
 33 imposed by the joint or multiagency agreement. This exemption
 34 does not apply to information obtained or developed by the
 35 office that would otherwise be available for public inspection
 36 if the office had conducted an independent examination or
 37 investigation under Florida law.

38 ~~(b) This subsection is subject to the Open Government~~
 39 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 40 ~~repealed on October 2, 2016, unless reviewed and saved from~~
 41 ~~repeal through reenactment by the Legislature.~~

42 Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-03 OGSR Florida Center for Brain Tumor Research
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7024

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

The Florida Center for Brain Tumor Research (center) is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida. The goal of the center is to find cures for brain tumors and its purpose is to:

- Foster collaboration with brain cancer research organizations and institutions;
- Provide a central repository for brain tumor biopsies;
- Improve and monitor brain tumor biomedical research programs;
- Facilitate funding opportunities; and
- Foster improved technology transfer of brain tumor research findings into clinical trials and widespread public use.

Current law provides a public record exemption for the following information held by the center before, on, or after July 1, 2011:

- Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry; and
- Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, 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 (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Florida Center for Brain Tumor Research

The Florida Center for Brain Tumor Research (center) is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida.⁶ The goal of the center is to find cures for brain tumors⁷ and its purpose is to:

- Foster collaboration with brain cancer research organizations and other institutions;
- Provide a central repository for brain tumor biopsies from individuals throughout the state;
- Improve and monitor brain tumor biomedical research programs within the state;
- Facilitate funding opportunities; and
- Foster improved technology transfer of brain tumor research findings into clinical trials and widespread public use.⁸

Current law requires the center to be funded through private, state, and federal sources.⁹ According to the center, 100 percent of its funding is provided by the state when funds are appropriated, and an additional 20 percent above its working budget is provided by Accelerate Brain Cancer Cure, which is a

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 381.853(3), F.S.

⁷ Section 381.853(3)(b), F.S.

⁸ Section 381.853(3)(a), F.S.

⁹ Section 381.853(3)(g), F.S.

private foundation.¹⁰ However, during years when funding is not provided, the University of Florida Department of Neurosurgery provides funding.¹¹

Current law establishes a scientific advisory council (council) within the center.¹² The council, which must meet at least annually,¹³ consists of members from the University of Florida, Scripps Research Institute Florida, University of Miami, Mayo Clinic in Jacksonville, Cleveland Clinic Florida, H. Lee Moffitt Cancer Center and Research Institute, University of Florida Health Cancer Center at Orlando Health, and a neurosurgeon in private practice.¹⁴

Public Record Exemption under Review

In 2006, the Legislature created a public record exemption for the following information held by the center:

- An individual's medical record; and
- Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.¹⁵

Pursuant to the Open Government Sunset Review Act, the public record exemption was scheduled to repeal on October 2, 2011; however, the Legislature reenacted the exemption with changes. In 2011, the public record exemption for medical records was replaced with a public record exemption for personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry.¹⁶ The public record exemption was also made retroactive.¹⁷

As such, the following information is currently confidential and exempt¹⁸ from public record requirements:

- Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry.
- Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.¹⁹

The confidential and exempt information may be disclosed to a person engaged in bona fide research if that person agrees to:

- Submit a research plan to the center that has been approved by an institutional review board. The plan must specify the exact nature of the information requested, the intended use of the requested information, and the reason the research could not practicably be conducted without the information;

¹⁰ Open Government Sunset Review of s. 381.8531, F.S., relating to the Florida Center for Brain Tumor Research, questionnaire by House and Senate staff, August 12, 2015, at question 1. (hereinafter referred to as OGSR Questionnaire)(on file with the Government Operations Subcommittee).

¹¹ *Id.*

¹² Section 381.853(4), F.S.

¹³ *Id.*

¹⁴ OGSR Questionnaire at question 2.

¹⁵ Chapter 2006-259, L.O.F.; codified as s. 381.8531, F.S.

¹⁶ Chapter 2011-203, L.O.F.

¹⁷ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁸ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

¹⁹ Section 381.8531(1), F.S.

- Sign a confidentiality agreement with the center;
- Maintain the confidentiality of the information received; and
- Destroy any confidential information to the extent permitted by law and upon conclusion of the research.²⁰

The 2011 public necessity statement for the public record exemption provides that:

Brain tumors are a leading cause of death, and there is a significant need to discover cures and develop treatment modalities for brain tumors, which can be facilitated by a registry and repository of specimens from persons diagnosed with brain tumors. The disclosure of such information could hinder the availability of specimens for research. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider...For these reasons, the donor's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption.²¹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2016, unless reenacted by the Legislature.²²

During the 2015 interim, subcommittee staff sent the center a questionnaire as part of the Open Government Sunset Review process. The center recommended reenactment of the public record exemption and provided that "[i]f the information is not exempt, the researchers will have to inform potential donors that their data is a public record, thus risking the loss of those potential donors."²³

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the following information held by center before, on, or after July 1, 2011:

- Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry; and
- Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

B. SECTION DIRECTORY:

Section 1 amends s. 381.8531, F.S., to save from repeal the public record exemption for certain information held by the Florida Center for Brain Tumor Research.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁰ Section 381.8531(2), F.S.

²¹ Section 2, ch. 2011-203, L.O.F.

²² Section 381.8531(3), F.S.

²³ OGSR questionnaire at question 9.

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.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 381.8531, F.S.,
 4 relating to an exemption from public records
 5 requirements for information held by the Florida
 6 Center for Brain Tumor Research; removing the
 7 scheduled repeal of the exemption; providing an
 8 effective date.

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

11
 12 Section 1. Section 381.8531, Florida Statutes, is amended
 13 to read:

14 381.8531 Florida Center for Brain Tumor Research; public
 15 records exemption.—

16 (1) The following information held by the Florida Center
 17 for Brain Tumor Research before, on, or after July 1, 2011, is
 18 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 19 of the State Constitution:

20 (a) Personal identifying information of a donor to the
 21 central repository for brain tumor biopsies or the brain tumor
 22 registry.

23 (b) Any information received from an individual from
 24 another state or nation or the Federal Government that is
 25 otherwise confidential or exempt pursuant to the laws of that
 26 state or nation or pursuant to federal law.

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27 (2) Such information may be disclosed to a person engaged
 28 in bona fide research if that person agrees to:

29 (a) Submit to the Florida Center for Brain Tumor Research
 30 a research plan that has been approved by an institutional
 31 review board and that specifies the exact nature of the
 32 information requested, the intended use of the information, and
 33 the reason that the research could not practicably be conducted
 34 without the information;

35 (b) Sign a confidentiality agreement with the Florida
 36 Center for Brain Tumor Research;

37 (c) Maintain the confidentiality of the information
 38 received; and

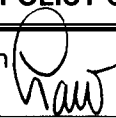
39 (d) To the extent permitted by law and after the research
 40 has concluded, destroy any confidential information obtained.

41 ~~(3) This section is subject to the Open Government Sunset~~
 42 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 43 ~~on October 2, 2016, unless reviewed and saved from repeal~~
 44 ~~through reenactment by the Legislature.~~

45 Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-04 OGSR Local Government Audit and Investigative Reports
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7002

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

Current law provides a public record exemption for audit or investigative reports prepared for or on behalf of a unit of local government. The exemption also applies to audit workpapers and notes and information received, produced, or derived from an investigation. The exemption expires when the audit or investigation is final or the investigation is no longer active.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, 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 (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Local Government Auditing

Current law requires local governments to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the previous fiscal year.⁶ DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database.

Current law provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within nine months after the end of the fiscal year.⁷ The audit must be conducted by an independent certified public accountant retained by the local government and paid for from public funds.⁸

Public Record Exemption under Review

Prior to 2011, the public record exemption under review only provided an exemption for the audit report of an internal auditor prepared for or on behalf of a unit of local government and for the audit

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 218.32(1), F.S.

⁷ Section 218.39(1), F.S.

⁸ *Id.*

workpapers and notes, until such time as the audit report became final.⁹ In 2011, the Legislature expanded the public record exemption to include investigative reports of the inspector general, as well as any information received, produced, or derived from an investigation. The public record exemption expires once the investigation is complete or is no longer active.¹⁰

An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government. In addition, an investigation is considered active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.¹¹

The term “unit of local government” is defined to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.¹²

The 2011 public necessity statement for the public record exemption under review finds that the exemption is necessary “because the release of such information could potentially be defamatory to an individual or entity under audit or investigation, causing unwarranted damage to the good name or reputation of an individual or company, or could significantly impair an administrative or criminal investigation.”¹³

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹⁴

During the 2015 interim, subcommittee staff sent questionnaires to counties and municipalities as part of the Open Government Sunset Review process. The respondents recommended reenactment of the exemption and provided that if the exemption were to expire, incomplete information might be released that could be defamatory to the party being audited or investigated. In addition, entities being investigated might be less likely to be forthcoming with information regarding the audit or investigation.¹⁵

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government, until the audit or investigation is final or the investigation is no longer active.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., to save from repeal the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government.

Section 2 provides an effective date of October 1, 2016.

⁹ Section 119.0713(2), F.S. (2010).

¹⁰ Chapter 2011-87, L.O.F.; codified as s. 119.0713(2)(a), F.S.

¹¹ Section 119.0713(2)(a), F.S.

¹² *Id.*

¹³ Section 2, ch. 2011-87, L.O.F.

¹⁴ Section 119.0713(2)(b), F.S.

¹⁵ Open Government Sunset Review of s. 119.0713, F.S., relating to local government audits and investigations, questionnaire by House and Senate staff. Questionnaire responses are on file with the Government Operations Subcommittee.

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 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.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.0713, F.S., which
 4 provides a public records exemption for certain
 5 information related to the audit report of an internal
 6 auditor or an investigative report of an inspector
 7 general prepared for or on behalf of a unit of local
 8 government; removing the scheduled repeal of the
 9 exemption; reorganizing the exemption; providing an
 10 effective date.

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

13
 14 Section 1. Subsection (2) of section 119.0713, Florida
 15 Statutes, is amended to read:

16 119.0713 Local government agency exemptions from
 17 inspection or copying of public records.—

18 (2) (a) As used in this subsection, the term "unit of local
 19 government" means a county, municipality, special district,
 20 local agency, authority, consolidated city-county government, or
 21 any other local governmental body or public body corporate or
 22 politic authorized or created by general or special law.

23 (b) The audit report of an internal auditor and the
 24 investigative report of the inspector general prepared for or on
 25 behalf of a unit of local government becomes a public record
 26 when the audit or investigation becomes final. ~~As used in this~~

27 ~~subsection, the term "unit of local government" means a county,~~
 28 ~~municipality, special district, local agency, authority,~~
 29 ~~consolidated city county government, or any other local~~
 30 ~~governmental body or public body corporate or politic authorized~~
 31 ~~or created by general or special law. An audit or investigation~~
 32 becomes final when the audit report or investigative report is
 33 presented to the unit of local government. Audit workpapers and
 34 notes related to such audit and information received, produced,
 35 or derived from an investigation are confidential and exempt
 36 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 37 until the audit or investigation is complete and the audit
 38 report becomes final or when the investigation is no longer
 39 active. An investigation is active if it is continuing with a
 40 reasonable, good faith anticipation of resolution and with
 41 reasonable dispatch.

42 ~~(b) Paragraph (a) is subject to the Open Government Sunset~~
 43 ~~Review Act in accordance with s. 119.15, and shall stand~~
 44 ~~repealed on October 2, 2016, unless reviewed and saved from~~
 45 ~~repeal through reenactment by the Legislature.~~

46 Section 2. This act shall take effect October 1, 2016.