



Oversight, Transparency & Administration Subcommittee

January 10, 2018
8:30 AM – 11:00 AM
Morris Hall (17 HOB)

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time: Wednesday, January 10, 2018 08:30 am
End Date and Time: Wednesday, January 10, 2018 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.50 hrs

Consideration of the following proposed committee bill(s):

PCB OTA 18-03 -- OGSR/Criminal Justice Commission
PCB OTA 18-04 -- OGSR/Human Trafficking Expunction

Consideration of the following bill(s):

HB 417 Pub. Rec./Child Advocacy Center Personnel and Child Protection Team Members by Jenne
HB 609 Vote-by-Mail Ballots by Davis
HB 651 State Employment by Yarborough
HB 661 Business Filings by Miller, M.
CS/HB 705 Pub. Rec./Water Management District Surplus Lands by Natural Resources & Public Lands Subcommittee, Burgess

NOTICE FINALIZED on 01/08/2018 4:06PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 417 Pub. Rec./Child Advocacy Center Personnel and Child Protection Team Members
SPONSOR(S): Jenne
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N	Langston	McElroy
2) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>HA</i>
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts in cases of child abuse and neglect. CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment.

Child advocacy centers (CACs) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed, and may receive medical exams, therapy, and other critical services.

HB 417 exempts from public records requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of:

- Certain current or former directors, managers, supervisors, and clinical employees of a CAC;
- CPT employees whose duties are related to certain types of CPT investigations or that provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

The bill also exempts the places of employment of spouses and children of these personnel as well as the names and locations of schools and day care facilities attended by these children.

The bill further requires the agency to maintain the exempt status of the information only if the named personnel submits a written request for the maintenance of the exemption.

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

The bill also provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have a minimal fiscal impact on state or local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2018.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

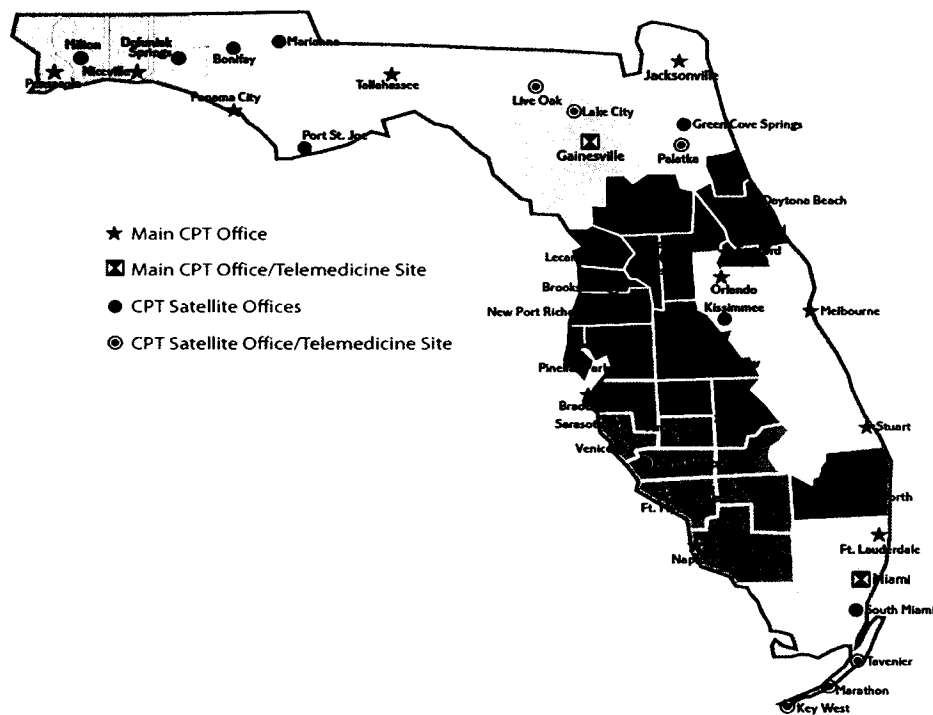
A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the Department of Children and Families (DCF) and local sheriffs' offices in cases of child abuse and neglect.¹ CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.² The Department of Health (DOH) Children's Medical Services program contracts for CPT services with local community-based programs.³

CPTs are divided into 15 circuits across the state and provide services to all 67 counties by utilizing satellite offices and telemedicine sites.⁴ Each circuit is supervised by one or more child protection team medical directors, depending on its size and the subdivision of the particular circuit.⁵



Certain reports of child abuse, abandonment, and neglect to the DCF central abuse hotline must be referred to CPTs:

¹ S. 39.01(13), F.S.; see also Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited December 11, 2017).

² Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited December 11, 2017).

³ S. 39.303, F.S.

⁴ Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf> (last accessed December 11, 2017).

⁵ *Id.*

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁶

Each CPT must be capable of providing the following services:

- Medical diagnosis and evaluation;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations;
- Community awareness campaigns; and
- Expert court testimony.⁷

CPT staff also provide training services for child protection investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community.⁸

Child Advocacy Centers

Child advocacy centers (CACs) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.⁹ CACs bring together professionals to confer and conclude about investigations, treatment, and prosecution of child abuse cases.¹⁰ The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecutions, and provide efficient and thorough provision of necessary services to the child victim and the child's family.¹¹ CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment;
- Crisis intervention and emotional support for victims and non-offending family members;
- Counseling for victims and non-offending family members;
- Medical evaluations and services;
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, CPTs, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates;
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children; and
- Professional training and community education to effectively respond to child abuse.¹²

⁶ S. 39.303(4), F.S.

⁷ S. 39.303(3), F.S.

⁸ S. 39.303(3)(h), F.S.

⁹ Department of Health, *Agency Legislative Bill Analysis for 2018 House Bill 417*, (October 31, 2017), on file with the Health Quality Subcommittee.

¹⁰ Florida Network of Child Advocacy Centers, *What is a CAC?*, <http://www.fncac.org/what-cac> (last visited December 22, 2017).

¹¹ *Id.*

¹² *Id.*

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization representing all local CACs in Florida.¹³ Membership in FNCAC¹⁴ requires that each CAC:

- Be a private, nonprofit incorporated agency or a governmental entity;
- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team;
- Have a neutral, child-focused facility where interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse;
- Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity;
- Have a multidisciplinary case review team that meets on a regularly scheduled basis or as the caseload of the community requires;
- Provide case tracking of child abuse cases seen through the center;
- Provide referrals for medical exams and mental health therapy;
- Provide training for various disciplines in the community that deal with child abuse; and
- Have an interagency commitment covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.¹⁵

The Nancy J. Cotterman Center in Broward County has received three public records requests for information relating to its CPT and CAC personnel.¹⁶

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.¹⁷ The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹⁸ The public also has a right to notice of, and access to meetings of any collegial public body of the executive branch of state government or of any local government at which official acts are to be taken or at which public business is to be transacted or discussed.¹⁹ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²⁰

Florida law specifies the conditions under which public access must be provided to government records and meetings.²¹ The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³ The Sunshine Law²⁴ requires all meetings of any board or

¹³ Florida Network of Child Advocacy Centers, *About Us*, <https://www.fncac.org/about-us> (last visited December 22, 2017).

¹⁴ There are currently 27 CACs in Florida. *Id.*

¹⁵ Section 39.3035(1), F.S.

¹⁶ Email from Miriam Firpo-jimenez, *RE: NJCC Public Records Exemption Question* (Nov. 9, 2017), on file with Health Quality Subcommittee.

¹⁷ FLA. CONST., art. I, s. 24.

¹⁸ FLA. CONST., art. I, s. 24(a).

¹⁹ FLA. CONST., art. I, s. 24(b).

²⁰ *Id.*

²¹ Ch. 119, F.S.

²² *Id.*

²³ "Public record" means "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." S. 119.011(12), F.S. "Agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.

²⁴ S. 286.011, F.S.

commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.²⁵

The Legislature may create an exemption to public records or open meetings requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸ There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be confidential and exempt.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.³⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.³¹ The Legislature must reenact the exemption in order to save it from repeal.³²

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary³³ to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then neither a public necessity statement nor a two-thirds vote is required.

²⁵ S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *Id.*

²⁸ *Id.*

²⁹ 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).

³⁰ S. 119.15, F.S. An exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

³¹ S. 119.15(3), F.S.

³² *Id.*

³³ S. 119.15(6)(b), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ FLA. CONST., art. I, s. 24(c).

If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.³⁷

Effect of Proposed Changes

HB 417 exempts from public records requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, and clinical employees of a CAC that meet the requirements of s. 39.3035, F.S.;
- CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as part of a multidisciplinary case review team; and
- Spouses and children of the above CAC and CPT personnel.

Additionally, the bill exempts the places of employment of spouses and children of these personnel and the names and locations of schools and day care facilities attended by the children of those personnel.

The bill further requires the agency to maintain the exempt status of the information only if the named personnel submits a written request for the maintenance of the exemption.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by such personnel. The bill further provides that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The bill also provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

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

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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 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 creates a public record exemption; 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 creates a public record exemption; 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 seeks to prevent the disclosure certain identifying information of certain CPT and CAC personnel and their families to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

In describing the personnel to whom the exemption applies, section (1)(b) of the public necessity statement should include the qualifying phrase “whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team.”

Other Comments: Social Security Numbers

There is a general public record exemption for social security numbers for all current and former agency personnel in s. 119.071(4)(a), F.S. There is also an exemption for social security numbers in s. 119.071(5)(a)5., F.S. which is generally applicable to everyone.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to public records; amending s.
 119.071, F.S.; providing an exemption from public
 records requirements for certain identifying and
 location information of child advocacy center
 personnel or child protection team members, and their
 spouses and children; providing for retroactive
 application; providing for future legislative review
 and repeal of the exemption; providing a statement of
 public necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

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

2.a. The home addresses, telephone numbers, dates of
 birth, and photographs of active or former sworn or civilian law

26 enforcement personnel, including correctional and correctional
 27 probation officers, personnel of the Department of Children and
 28 Families whose duties include the investigation of abuse,
 29 neglect, exploitation, fraud, theft, or other criminal
 30 activities, personnel of the Department of Health whose duties
 31 are to support the investigation of child abuse or neglect, and
 32 personnel of the Department of Revenue or local governments
 33 whose responsibilities include revenue collection and
 34 enforcement or child support enforcement; the names, home
 35 addresses, telephone numbers, photographs, dates of birth, and
 36 places of employment of the spouses and children of such
 37 personnel; and the names and locations of schools and day care
 38 facilities attended by the children of such personnel are exempt
 39 from s. 119.07(1) and s. 24(a), Art. I of the State
 40 Constitution. This sub-subparagraph is subject to the Open
 41 Government Sunset Review Act in accordance with s. 119.15 and
 42 shall stand repealed on October 2, 2022, unless reviewed and
 43 saved from repeal through reenactment by the Legislature.

44 b. The home addresses, telephone numbers, dates of birth,
 45 and photographs of current or former nonsworn investigative
 46 personnel of the Department of Financial Services whose duties
 47 include the investigation of fraud, theft, workers' compensation
 48 coverage requirements and compliance, other related criminal
 49 activities, or state regulatory requirement violations; the
 50 names, home addresses, telephone numbers, dates of birth, and

51 places of employment of the spouses and children of such
 52 personnel; and the names and locations of schools and day care
 53 facilities attended by the children of such personnel are exempt
 54 from s. 119.07(1) and s. 24(a), Art. I of the State
 55 Constitution. This sub-subparagraph is subject to the Open
 56 Government Sunset Review Act in accordance with s. 119.15 and
 57 shall stand repealed on October 2, 2021, unless reviewed and
 58 saved from repeal through reenactment by the Legislature.

59 c. The home addresses, telephone numbers, dates of birth,
 60 and photographs of current or former nonsworn investigative
 61 personnel of the Office of Financial Regulation's Bureau of
 62 Financial Investigations whose duties include the investigation
 63 of fraud, theft, other related criminal activities, or state
 64 regulatory requirement violations; the names, home addresses,
 65 telephone numbers, dates of birth, and places of employment of
 66 the spouses and children of such personnel; and the names and
 67 locations of schools and day care facilities attended by the
 68 children of such personnel are exempt from s. 119.07(1) and s.
 69 24(a), Art. I of the State Constitution. This sub-subparagraph
 70 is subject to the Open Government Sunset Review Act in
 71 accordance with s. 119.15 and shall stand repealed on October 2,
 72 2022, unless reviewed and saved from repeal through reenactment
 73 by the Legislature.

74 d. The home addresses, telephone numbers, dates of birth,
 75 and photographs of current or former firefighters certified in

76 compliance with s. 633.408; the names, home addresses, telephone
 77 numbers, photographs, dates of birth, and places of employment
 78 of the spouses and children of such firefighters; and the names
 79 and locations of schools and day care facilities attended by the
 80 children of such firefighters are exempt from s. 119.07(1) and
 81 s. 24(a), Art. I of the State Constitution. This sub-
 82 subparagraph is subject to the Open Government Sunset Review Act
 83 in accordance with s. 119.15, and shall stand repealed on
 84 October 2, 2022, unless reviewed and saved from repeal through
 85 reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone
 87 numbers of current or former justices of the Supreme Court,
 88 district court of appeal judges, circuit court judges, and
 89 county court judges; the names, home addresses, telephone
 90 numbers, dates of birth, and places of employment of the spouses
 91 and children of current or former justices and judges; and the
 92 names and locations of schools and day care facilities attended
 93 by the children of current or former justices and judges are
 94 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 95 Constitution. This sub-subparagraph is subject to the Open
 96 Government Sunset Review Act in accordance with s. 119.15 and
 97 shall stand repealed on October 2, 2022, unless reviewed and
 98 saved from repeal through reenactment by the Legislature.

99 f. The home addresses, telephone numbers, dates of birth,
 100 and photographs of current or former state attorneys, assistant

101 state attorneys, statewide prosecutors, or assistant statewide
 102 prosecutors; the names, home addresses, telephone numbers,
 103 photographs, dates of birth, and places of employment of the
 104 spouses and children of current or former state attorneys,
 105 assistant state attorneys, statewide prosecutors, or assistant
 106 statewide prosecutors; and the names and locations of schools
 107 and day care facilities attended by the children of current or
 108 former state attorneys, assistant state attorneys, statewide
 109 prosecutors, or assistant statewide prosecutors are exempt from
 110 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

111 g. The home addresses, dates of birth, and telephone
 112 numbers of general magistrates, special magistrates, judges of
 113 compensation claims, administrative law judges of the Division
 114 of Administrative Hearings, and child support enforcement
 115 hearing officers; the names, home addresses, telephone numbers,
 116 dates of birth, and places of employment of the spouses and
 117 children of general magistrates, special magistrates, judges of
 118 compensation claims, administrative law judges of the Division
 119 of Administrative Hearings, and child support enforcement
 120 hearing officers; and the names and locations of schools and day
 121 care facilities attended by the children of general magistrates,
 122 special magistrates, judges of compensation claims,
 123 administrative law judges of the Division of Administrative
 124 Hearings, and child support enforcement hearing officers are
 125 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

126 Constitution. This sub-subparagraph is subject to the Open
 127 Government Sunset Review Act in accordance with s. 119.15 and
 128 shall stand repealed on October 2, 2022, unless reviewed and
 129 saved from repeal through reenactment by the Legislature.

130 h. The home addresses, telephone numbers, dates of birth,
 131 and photographs of current or former human resource, labor
 132 relations, or employee relations directors, assistant directors,
 133 managers, or assistant managers of any local government agency
 134 or water management district whose duties include hiring and
 135 firing employees, labor contract negotiation, administration, or
 136 other personnel-related duties; the names, home addresses,
 137 telephone numbers, dates of birth, and places of employment of
 138 the spouses and children of such personnel; and the names and
 139 locations of schools and day care facilities attended by the
 140 children of such personnel are exempt from s. 119.07(1) and s.
 141 24(a), Art. I of the State Constitution.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former code enforcement officers;
 144 the names, home addresses, telephone numbers, dates of birth,
 145 and places of employment of the spouses and children of such
 146 personnel; and the names and locations of schools and day care
 147 facilities attended by the children of such personnel are exempt
 148 from s. 119.07(1) and s. 24(a), Art. I of the State
 149 Constitution.

150 j. The home addresses, telephone numbers, places of

151 employment, dates of birth, and photographs of current or former
 152 guardians ad litem, as defined in s. 39.820; the names, home
 153 addresses, telephone numbers, dates of birth, and places of
 154 employment of the spouses and children of such persons; and the
 155 names and locations of schools and day care facilities attended
 156 by the children of such persons are exempt from s. 119.07(1) and
 157 s. 24(a), Art. I of the State Constitution. This sub-
 158 subparagraph is subject to the Open Government Sunset Review Act
 159 in accordance with s. 119.15 and shall stand repealed on October
 160 2, 2022, unless reviewed and saved from repeal through
 161 reenactment by the Legislature.

162 k. The home addresses, telephone numbers, dates of birth,
 163 and photographs of current or former juvenile probation
 164 officers, juvenile probation supervisors, detention
 165 superintendents, assistant detention superintendents, juvenile
 166 justice detention officers I and II, juvenile justice detention
 167 officer supervisors, juvenile justice residential officers,
 168 juvenile justice residential officer supervisors I and II,
 169 juvenile justice counselors, juvenile justice counselor
 170 supervisors, human services counselor administrators, senior
 171 human services counselor administrators, rehabilitation
 172 therapists, and social services counselors of the Department of
 173 Juvenile Justice; the names, home addresses, telephone numbers,
 174 dates of birth, and places of employment of spouses and children
 175 of such personnel; and the names and locations of schools and

176 day care facilities attended by the children of such personnel
 177 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 178 Constitution.

179 1. The home addresses, telephone numbers, dates of birth,
 180 and photographs of current or former public defenders, assistant
 181 public defenders, criminal conflict and civil regional counsel,
 182 and assistant criminal conflict and civil regional counsel; the
 183 names, home addresses, telephone numbers, dates of birth, and
 184 places of employment of the spouses and children of such
 185 defenders or counsel; and the names and locations of schools and
 186 day care facilities attended by the children of such defenders
 187 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 188 the State Constitution.

189 m. The home addresses, telephone numbers, dates of birth,
 190 and photographs of current or former investigators or inspectors
 191 of the Department of Business and Professional Regulation; the
 192 names, home addresses, telephone numbers, dates of birth, and
 193 places of employment of the spouses and children of such current
 194 or former investigators and inspectors; and the names and
 195 locations of schools and day care facilities attended by the
 196 children of such current or former investigators and inspectors
 197 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 198 Constitution. This sub-subparagraph is subject to the Open
 199 Government Sunset Review Act in accordance with s. 119.15 and
 200 shall stand repealed on October 2, 2022, unless reviewed and

201 saved from repeal through reenactment by the Legislature.

202 n. The home addresses, telephone numbers, and dates of
 203 birth of county tax collectors; the names, home addresses,
 204 telephone numbers, dates of birth, and places of employment of
 205 the spouses and children of such tax collectors; and the names
 206 and locations of schools and day care facilities attended by the
 207 children of such tax collectors are exempt from s. 119.07(1) and
 208 s. 24(a), Art. I of the State Constitution. This sub-
 209 subparagraph is subject to the Open Government Sunset Review Act
 210 in accordance with s. 119.15 and shall stand repealed on October
 211 2, 2022, unless reviewed and saved from repeal through
 212 reenactment by the Legislature.

213 o. The home addresses, telephone numbers, dates of birth,
 214 and photographs of current or former personnel of the Department
 215 of Health whose duties include, or result in, the determination
 216 or adjudication of eligibility for social security disability
 217 benefits, the investigation or prosecution of complaints filed
 218 against health care practitioners, or the inspection of health
 219 care practitioners or health care facilities licensed by the
 220 Department of Health; the names, home addresses, telephone
 221 numbers, dates of birth, and places of employment of the spouses
 222 and children of such personnel; and the names and locations of
 223 schools and day care facilities attended by the children of such
 224 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 225 the State Constitution. This sub-subparagraph is subject to the

226 Open Government Sunset Review Act in accordance with s. 119.15
 227 and shall stand repealed on October 2, 2019, unless reviewed and
 228 saved from repeal through reenactment by the Legislature.

229 p. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former impaired practitioner
 231 consultants who are retained by an agency or current or former
 232 employees of an impaired practitioner consultant whose duties
 233 result in a determination of a person's skill and safety to
 234 practice a licensed profession; the names, home addresses,
 235 telephone numbers, dates of birth, and places of employment of
 236 the spouses and children of such consultants or their employees;
 237 and the names and locations of schools and day care facilities
 238 attended by the children of such consultants or employees are
 239 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution. This sub-subparagraph is subject to the Open
 241 Government Sunset Review Act in accordance with s. 119.15 and
 242 shall stand repealed on October 2, 2020, unless reviewed and
 243 saved from repeal through reenactment by the Legislature.

244 q. The home addresses, telephone numbers, dates of birth,
 245 and photographs of current or former emergency medical
 246 technicians or paramedics certified under chapter 401; the
 247 names, home addresses, telephone numbers, dates of birth, and
 248 places of employment of the spouses and children of such
 249 emergency medical technicians or paramedics; and the names and
 250 locations of schools and day care facilities attended by the

251 children of such emergency medical technicians or paramedics are
 252 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 253 Constitution. This sub-subparagraph is subject to the Open
 254 Government Sunset Review Act in accordance with s. 119.15 and
 255 shall stand repealed on October 2, 2021, unless reviewed and
 256 saved from repeal through reenactment by the Legislature.

257 r. The home addresses, telephone numbers, dates of birth,
 258 and photographs of current or former personnel employed in an
 259 agency's office of inspector general or internal audit
 260 department whose duties include auditing or investigating waste,
 261 fraud, abuse, theft, exploitation, or other activities that
 262 could lead to criminal prosecution or administrative discipline;
 263 the names, home addresses, telephone numbers, dates of birth,
 264 and places of employment of spouses and children of such
 265 personnel; and the names and locations of schools and day care
 266 facilities attended by the children of such personnel are exempt
 267 from s. 119.07(1) and s. 24(a), Art. I of the State
 268 Constitution. This sub-subparagraph is subject to the Open
 269 Government Sunset Review Act in accordance with s. 119.15 and
 270 shall stand repealed on October 2, 2021, unless reviewed and
 271 saved from repeal through reenactment by the Legislature.

272 s. The home addresses, telephone numbers, social security
 273 numbers, dates of birth, and photographs of current or former
 274 directors, managers, supervisors, and clinical employees of a
 275 child advocacy center that meets the requirements of s. 39.3035

276 and the members of a child protection team as provided in s.
 277 39.303 whose duties include supporting the investigation of
 278 child abuse or sexual abuse, child abandonment, child neglect,
 279 or child exploitation or to provide services as part of a
 280 multidisciplinary case review team; the home addresses,
 281 telephone numbers, social security numbers, photographs, dates
 282 of birth, and places of employment of the spouses and children
 283 of such personnel; and the names and locations of schools and
 284 day care facilities attended by the children of such personnel
 285 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 286 Constitution. An agency that is the custodian of information
 287 specified in this sub-subparagraph shall maintain the exempt
 288 status of such information only if the current or former
 289 director, manager, supervisor, or clinical employee of a child
 290 advocacy center that meets the requirements of s. 39.3035 or the
 291 member of a child protection team as provided in s. 39.303
 292 submits a written request for the maintenance of the exemption
 293 to the custodial agency. This sub-subparagraph is subject to the
 294 Open Government Sunset Review Act in accordance with s. 119.15
 295 and shall stand repealed on October 2, 2023, unless reviewed and
 296 saved from repeal through reenactment by the Legislature.

297 3. An agency that is the custodian of the information
 298 specified in subparagraph 2. and that is not the employer of the
 299 officer, employee, justice, judge, or other person specified in
 300 subparagraph 2. shall maintain the exempt status of that

301 information only if the officer, employee, justice, judge, other
 302 person, or employing agency of the designated employee submits a
 303 written request for maintenance of the exemption to the
 304 custodial agency.

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

308 Section 2. (1) The Legislature finds that it is a public
 309 necessity that the following identifying and location
 310 information be exempt from s. 119.07(1), Florida Statutes, and
 311 s. 24(a), Article I of the State Constitution:

312 (a) The home addresses, telephone numbers, social security
 313 numbers, dates of birth, and photographs of current or former
 314 directors, managers, supervisors, and clinical employees of a
 315 child advocacy center that meets the requirements of s. 39.3035,
 316 Florida Statutes.

317 (b) The home addresses, telephone numbers, social security
 318 numbers, dates of birth, and photographs of current or former
 319 members of a child protection team as provided in s. 39.303,
 320 Florida Statutes.

321 (c) The home addresses, telephone numbers, social security
 322 numbers, photographs, dates of birth, and places of employment
 323 of the spouses and children of personnel identified in
 324 paragraphs (a) and (b).

325 (d) The names and locations of schools and day care
 326 facilities attended by the children of such personnel.
 327 (2) The Legislature finds that the release of such
 328 identifying and location information may place current or former
 329 directors, managers, supervisors, and clinical employees of a
 330 child advocacy center that meets the requirements of s. 39.3035,
 331 Florida Statutes, and the members of a child protection team as
 332 provided in s. 39.303, Florida Statutes, and the family members
 333 of such personnel, in danger of physical and emotional harm from
 334 disgruntled individuals who may react inappropriately and
 335 violently to actions taken by such personnel. These personnel
 336 provide necessary and appropriate support services to abused,
 337 abandoned, neglected, and exploited children who are some of the
 338 state's most vulnerable residents. Despite the value of these
 339 services, an individual may become dissatisfied with the
 340 assistance provided, or the recommendations or decisions these
 341 personnel make, which may result in a director, manager,
 342 supervisor, or clinical employee of a child advocacy center, a
 343 member of a child protection team, or a family member of such
 344 personnel becoming a potential target for an act of revenge. The
 345 risk continues after such personnel concludes his or her service
 346 because a disgruntled individual may wait to commit an act of
 347 revenge until such personnel no longer holds a position at a
 348 child advocacy center or on a child protection team. The harm
 349 that may result from the release of such personal identifying

350 and location information outweighs any public benefit that may
351 be derived from the disclosure of the information.

352 Section 3. This act shall take effect July 1, 2018.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
 2 Administration Subcommittee
 3 Representative Jenne offered the following:
 4

Amendment

6 Remove lines 272-332 and insert:

7 s. The home addresses, telephone numbers, dates of birth,
 8 and photographs of current or former directors, managers,
 9 supervisors, and clinical employees of a child advocacy center
 10 that meets the requirements of s. 39.3035 and the members of a
 11 child protection team as provided in s. 39.303 whose duties
 12 include supporting the investigation of child abuse or sexual
 13 abuse, child abandonment, child neglect, or child exploitation
 14 or to provide services as part of a multidisciplinary case
 15 review team; the home addresses, telephone numbers, photographs,
 16 dates of birth, and places of employment of the spouses and



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17 children of such personnel; and the names and locations of
18 schools and day care facilities attended by the children of such
19 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
20 the State Constitution. This sub-subparagraph is subject to the
21 Open Government Sunset Review Act in accordance with s. 119.15
22 and shall stand repealed on October 2, 2023, unless reviewed and
23 saved from repeal through reenactment by the Legislature.

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

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

35 Section 2. (1) The Legislature finds that it is a public
36 necessity that the following identifying and location
37 information be exempt from s. 119.07(1), Florida Statutes, and
38 s. 24(a), Article I of the State Constitution:

39 (a) The home addresses, telephone numbers, dates of birth,
40 and photographs of current or former directors, managers,



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41 supervisors, and clinical employees of a child advocacy center
42 that meets the requirements of s. 39.3035, Florida Statutes.

43 (b) The home addresses, telephone numbers, dates of birth,
44 and photographs of current or former members of a child
45 protection team as provided in s. 39.303, Florida Statutes,
46 whose duties include supporting the investigation of child abuse
47 or sexual abuse, child abandonment, child neglect, or child
48 exploitation or to provide services as part of a
49 multidisciplinary case review team.

50 (c) The home addresses, telephone numbers, photographs,
51 dates of birth, and places of employment of the spouses and
52 children of personnel identified in paragraphs (a) and (b).

53 (d) The names and locations of schools and day care
54 facilities attended by the children of such personnel.

55 (2) The Legislature finds that the release of such
56 identifying and location information may place current or former
57 directors, managers, supervisors, and clinical employees of a
58 child advocacy center that meets the requirements of s. 39.3035,
59 Florida Statutes, and the members of a child protection team as
60 provided in s. 39.303, Florida Statutes, whose duties include
61 supporting the investigation of child abuse or sexual abuse,
62 child abandonment, child neglect, or child exploitation or to
63 provide services as part of a multidisciplinary case review
64 team, and the family members

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 609 Vote-by-Mail Ballots
SPONSOR(S): Davis
TIED BILLS: IDEN./SIM. BILLS: SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>HA</i>
2) Public Integrity & Ethics Committee			

SUMMARY ANALYSIS

Florida law allows an elector to cast his or her ballot by mail. Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute. Once the elector has completed his or her vote-by-mail ballot, the elector may choose to mail, deliver, or have delivered the completed ballot to the supervisor of elections (supervisor).

Early voting allows voters to vote in advance of an upcoming election in specified locations. The supervisor must allow a voter to vote early in his or her main office or in any established branch offices. In addition to those mandatory early voting sites, a supervisor may designate certain additional locations as early voting sites.

The bill allows an elector to personally deliver, or have an immediate family member personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of Elections within the Department of State must adopt rules for the receipt of these vote-by-mail ballots.

The bill may have an insignificant fiscal impact on the state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vote-by-mail Ballots

Florida law allows an elector to cast his or her ballot by mail.¹ Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute.² In brief, an elector may request a vote-by-mail ballot from his or her supervisor of elections (supervisor).³ Thereafter, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,⁴ and a secrecy envelope for returning the ballot.⁵ Once the elector has completed the ballot and inserted and sealed the ballot within the secrecy envelope, the elector may choose to "[m]ail, deliver, or have delivered the completed mailing envelope" to the supervisor.⁶

Early Voting

Early voting allows voters to vote in advance of an upcoming election in specified locations.⁷ The supervisor must allow a voter to vote early in his or her main office or in any established branch offices.⁸ In addition to those mandatory early voting sites, a supervisor, at his or her discretion, may designate any of the following locations as early voting sites: city hall; permanent public library facility; fairground; civic center; courthouse; county commission building; stadium; convention center; and government-owned senior center.⁹

In addition, a supervisor may designate one early voting site per election in an area of the county that does not have any of the sites listed.¹⁰ Each county is required to operate at least as many early voting sites as it did in the 2012 general election.¹¹

Each county must begin early voting by the 10th day before an election that contains state or federal races and cannot end early voting prior to the third day before that election.¹² However, at the supervisor's discretion, early voting may be offered up to 15 days before an election and continue until the second day before that election.¹³ Each early voting site must be open at least eight hours per day and may continue operating for up to a maximum of 12 hours per day.¹⁴

Effect of the Bill

The bill allows an elector to personally deliver or have an immediate family member personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of

¹ Section 101.62, F.S.

² See ss. 101.6105, 101.6106, 101.6107, 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, and 101.698, F.S.

³ Section 101.62, F.S.

⁴ Section 101.65, F.S.

⁵ Section 101.64(1), F.S. Prior to vote-by-mail ballot being sent to the voter, the envelope must be addressed to the supervisor.

⁶ Section 101.65, F.S.

⁷ Section 101.657(1)(a), F.S.

⁸ *Id.* Branch offices of the supervisor must be a permanent facility and must have been designated and used as such for at least one year prior to the election.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 101.657(1)(d), F.S.

¹³ *Id.*

¹⁴ *Id.*

Elections (Division) within the Department of State is required to adopt rules for the receipt of these vote-by-mail ballots.

B. SECTION DIRECTORY:

Section 1 amends s. 101.64, F.S., relating to the delivery of vote-by-mail ballots.

Section 2 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on the Division because it requires the Division to adopt rules governing the receipt of the ballots at early voting sites. In addition, the bill may have an insignificant negative fiscal impact on local governments because early voting sites will be required to accept vote-by-mail ballots.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Division to adopt uniform rules for the receipt of vote-by-mail ballots at early voting sites.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 21, the phrase "Division of Elections of the Department of State" should be changed to "division" as that term is defined in s. 97.021(8), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to vote-by-mail ballots; amending s.
 3 101.64, F.S.; authorizing an absent elector to
 4 personally deliver, or have his or her immediate
 5 family member personally deliver, his or her completed
 6 vote-by-mail ballot to an early voting site during
 7 specified hours; requiring the Division of Elections
 8 to adopt rules; providing an effective date.

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

11
 12 Section 1. Subsection (5) is added to section 101.64,
 13 Florida Statutes, to read:

14 101.64 Delivery of vote-by-mail ballots; envelopes; form;
 15 early voting sites.—

16 (5) An absent elector may vote by personally delivering,
 17 or having his or her immediate family member personally deliver,
 18 his or her completed vote-by-mail ballot to an early voting site
 19 during the early voting period hours established under s.
 20 101.657. The Division of Elections of the Department of State
 21 shall adopt uniform rules for the receipt of the ballots.

22 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 State Employment
SPONSOR(S): Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Hoffman <i>MH</i>	Harrington <i>JH</i>
2) Government Accountability Committee			

SUMMARY ANALYSIS

Current law provides for the Florida State Employees' Charitable Campaign ("FSECC"), an annual charitable fundraising drive administered by the Department of Management Services. It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, and for which the state will provide a payroll deduction. State officer and employee participation is completely voluntary. A state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the officer's or employee's contribution. Participation in the FSECC is limited to nonprofit charitable organizations that meet certain criteria.

The bill eliminates the FSECC and provides that no organization, entity, or person may intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services, non-coercive voluntary communications between state employees in workplace areas, and activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill may have a positive fiscal impact on the state and does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida State Employees' Charitable Campaign ("FSECC") is an annual charitable fundraising drive administered by the Department of Management Services ("DMS").¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, except for those conducted by state universities.² During an FSECC fundraising drive, a state officer or employee may contribute to various participating charitable organizations, and must specifically designate a participating organization as the recipient of the contribution.³ Participation must be completely voluntary.⁴ Employees can contribute through payroll deduction.⁵

Participation in the FSECC is limited to a nonprofit charitable organization that has as its principal mission public health and welfare, education, environmental restoration and conservation, civil and human rights, or the relief of human suffering and poverty.⁶

DMS must procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.⁷ A FSECC steering committee is established to assist it in oversight, development, and administration of the FSECC.⁸

On December 7, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because more than 63 percent of every dollar pledged would have gone to cover the fiscal agent fee instead of to the designated charities.⁹

Effect of the Bill

The bill eliminates the FSECC. The bill also prohibits an organization, entity, or person from intentionally soliciting a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services, non-coercive voluntary communications between state employees in workplace areas, and activities at authorized public events occurring in non-work areas of state owned or leased facilities.

B. SECTION DIRECTORY:

Section 1. Repeals s. 110.181, F.S., relating to the FSECC.

Section 2. Creates s. 110.182, F.S., prohibiting solicitation of state employees.

Section 3. Provides an effective date of July 1, 2018.

¹ Section 110.181(1)(a), F.S.

² *Id.*; Section 110.181(5), F.S.

³ Section 110.181(1)(b), F.S.

⁴ *Id.*

⁵ Section 110.181(1)(a), F.S.

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(2)(a), F.S.

⁸ Section 110.181(4), F.S.. The FSECC steering committee has seven members appointed by the administration commission, and two members appointed by the secretary of DMS from among applicants submitted from other agencies or departments. The committee members serve staggered terms and meet at the call of the secretary. Members serve without compensation, but are entitled to receive reimbursement for travel and per diem expenses.

⁹ Florida Department of Management Services, Agency Analysis of 2018 House Bill 651, p. 3 (Dec. 20, 2017).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on DMS because the department would no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations for the FSECC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 state employment; repealing s.
 3 110.181, F.S., relating to Florida State Employees'
 4 Charitable Campaign; creating s. 110.182, F.S.;
 5 prohibiting an organization, entity, or person from
 6 intentionally soliciting state employees for
 7 fundraising or business purposes within specified
 8 areas during specified times; providing exceptions;
 9 providing an effective date.

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

12
 13 Section 1. Section 110.181, Florida Statutes, is repealed.

14 Section 2. Section 110.182, Florida Statutes, is created
 15 to read:

16 110.182 Solicitation of state employees prohibited.—An
 17 organization, entity, or person may not intentionally solicit a
 18 state employee through any means for fundraising or business
 19 purposes within work areas during work hours. This section does
 20 not prohibit:

21 (1) State-approved communications by entities with whom
 22 the state has contracted to provide employee benefits or
 23 services.

24 (2) Noncoercive voluntary communications between state
 25 employees in workplace areas.

26 (3) Activities at authorized public events occurring in
27 non-work areas of state owned or leased facilities.

28 Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 661 Business Filings
SPONSOR(S): Miller
TIED BILLS: IDEN./SIM. **BILLS:** SB 610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Hoffman <i>MH</i>	Harrington <i>JH</i>
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law provides that limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida maintain business records with the Department of State's Division of Corporations (department), which are available to the public. The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements. The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid. In 2016, the department received 467,208 business entity filings. Any user can file an annual report or amendment online and there does not appear to be a verification system in place for business entities to review these filings before the records are filed.

This bill requires the department to create an optional secure business filing service designed to discourage fraudulent business filings for limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida by December 31, 2018. Following any document's delivery for filing, the entity or its representative has 15 days to confirm or reject the filing. If no action is taken by the entity to reject the filing, then the department must file the document. The fee associated with the rejected filing may be retained by the department. After filing a record, the bill requires the department to deliver a notification of the filing to all e-mail addresses on file for, or a certified copy of the document to the mailing address and the physical address of, the entity or its authorized representative.

The bill may have a negative fiscal impact on the state and does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Business Filings

The Division of Corporations (division) within the Department of State (department) collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.¹ This information includes:

- filings of corporations, limited liability companies, limited partnerships, general partnerships;
- declarations of trust;
- certain specified cooperative associations;
- notary commissions;
- cable franchises;
- trademarks and service marks;
- Uniform Commercial Code financing statements;
- federal liens and judgment liens; and
- fictitious name registrations.²

All business entity documents and commercial registrations received and filed by the division are available to the public via the internet, mail, and walk-in requests.³ The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements.⁴ The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid.⁵

Sunbiz.org

Sunbiz.org is the official website for the division. In the 2016 calendar year, the division received 467,208 business entity filings.⁶ These filings can be found online, along with the document numbers, which are unique IDs for each filed business entity in the state.⁷

On the division's website, any user can enter a document number to file or amend a business filing.⁸ With the document number, any user of this website can file an annual report or amendment, with no additional information. The annual report allows you to:

- Add, delete, or change the names or addresses of the officers, directors, managers, authorized members and make changes to addresses only for any general partners.
- Change the registered agent and registered office address.
- Change the principal office address and mailing address for the business entity.
- Add or change the federal employer identification number.

¹ OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, *Department of State – Corporations*, <http://www.oppga.state.fl.us/profiles/4092/front.htm/> (last visited Jan. 4, 2018).

² *Id.*

³ *Id.*

⁴ Section 605.0206(1), F.S.

⁵ Section 605.0210(5), F.S.

⁶ *Id.*

⁷ DIVISION OF CORPORATIONS, *Search for Corporations, Limited Liability Companies, Limited Partnerships and Trademarks by Name*, <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (last visited Jan. 4, 2018).

⁸ DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <https://services.sunbiz.org/Filings/AnnualReport/FilingStart> (last visited Jan. 4, 2018).

Prior to filing the report, the user must verify the name of the registered agent, agree to the changes, and make a payment. The payment can be any major credit card or any debit card with a Visa or MasterCard logo.⁹

Fraudulent Filings

Sunbiz.org warns a user that he or she must be authorized to execute the annual report or a supplement as required by Chapter 605, F.S.¹⁰ The penalties for a false filing with the department include a third degree felony for "fraudulent practices."¹¹ In addition, such a person may be charged with the crime of forgery and counterfeiting.¹²

Beyond these warnings, there appears to be no verification system in place for entities to review these filings before the division files them, which has raised concerns.¹³

Effect of the Bill

This bill requires the department to create an optional secure business filing service designed to discourage fraudulent business filings for limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida by December 31, 2018. The service must notify an entity by email when a document is filed. Following any document's delivery for filing, the entity or its representative has 15 days to confirm or reject the filing. If no action is taken by the entity to reject the filing, then the department must file the document. The fee associated with the rejected filing may be retained by the department.

After filing a record, the bill requires the department to deliver a notification of the filing to all e-mail addresses on file for, or a certified copy of the document to the mailing address and the physical address of, the entity or its authorized representative.

B. SECTION DIRECTORY:

Section 1. Amends s. 605.0210, F.S., relating to an optional secure business filing service for limited liability companies.

Section 2. Amends s. 607.0125, F.S., relating to an optional secure business filing service for Florida corporations.

Section 3. Amends s. 617.0125, F.S., relating to an optional secure business filing service for not-for-profit corporations.

Section 4. Amends s. 620.8105, F.S., relating to an optional secure business filing service for partnerships.

Section 5. Amends s. 605.0206, F.S., conforming provisions.

Section 6 through 15. Amends ss. 605.0103, 607.0123, 617.0123, 620.8303, 620.8304, 620.8704, 620.8914, 620.8918, 620.9001, and 620.9102, F.S., conforming cross-references.

⁹ DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment> (last visited Jan. 4, 2018).

¹⁰ DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment> (last visited Jan. 4, 2018).

¹¹ Section 817.155, F.S.

¹² Section 831.06, F.S.

¹³ For an example of reported abuse, see Samantha Joseph, *How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk*, FLA. BUS. R. ONLINE, available at <https://advance.lexis.com/api/permalink/6f55602d-bbfd-4097-aa7a-0dfd87c0c354/?context=1000516>.

Section 16. Provides an effective date of July 1, 2018

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the department, as resources will likely be required to assess, create, and implement an optional secure business filing service. The department indicates that implementation of the secure business filing service will require an overhaul of the current legacy system and its related hardware and software.¹⁴

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:

The bill requires the department to establish procedures for an optional secure business filing service through electronic means. This may require the department to adopt rules to implement the optional filing system. For example, the department may need to establish by rule procedures for how an entity may reject a filed document.

¹⁴ Florida Department of State, Agency Analysis of 2018 Senate Bill 610, p. 5 (Nov. 13, 2017).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Covered Entities

The bill requires the department to develop and offer an optional secure business filing service for limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida. As drafted, the optional filing service does not include filings for the fictitious name registration. As such, the bill sponsor may wish to expand the bill to include every type of business entity or business filing.

Other Comments: Timeframe for Filing a Document

The bill requires the department to notify a business entity when the department receives a document for filing and requires the department to file the document within 15 days of receipt. Because the time period runs from the date that the department receives the document and the bill does not specify when the department must notify a business entity that the department has received the document, a business entity may not have sufficient time to review the document before it is filed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled
 2 An act relating to business filings; amending ss.
 3 605.0210 and 607.0125, F.S.; requiring that the
 4 Department of State develop and offer an optional
 5 secure business filing service designed to discourage
 6 fraudulent filings; requiring that the service notify
 7 an entity via e-mail whenever a document relating to
 8 the entity is delivered for filing; requiring that the
 9 entity have the opportunity to review the file;
 10 requiring the department to give the entity an
 11 opportunity to reject further processing of the
 12 filing; authorizing the department to keep any fees
 13 associated with a rejected filing; requiring that the
 14 department file the document within 15 days after
 15 receipt if the entity does not reject further
 16 processing; providing an exception; requiring the
 17 department to deliver a notification of the filing
 18 through e-mail or deliver a certified copy of the
 19 document to the mailing address and physical address
 20 of the entity or its authorized representative;
 21 amending s. 617.0125, F.S.; requiring that the
 22 department develop and offer an optional secure
 23 business filing service designed to discourage
 24 fraudulent filings; requiring that the service notify
 25 a corporation via e-mail whenever a document relating

26 to the corporation is delivered for filing; requiring
 27 that the corporation have the opportunity to review
 28 the file; requiring the department to give the
 29 corporation an opportunity to reject further
 30 processing of the filing; authorizing the department
 31 to keep any fees associated with a rejected filing;
 32 requiring that the department file the document within
 33 15 days after receipt if the corporation does not
 34 reject further processing; providing exceptions;
 35 requiring the department to deliver a notification of
 36 the filing through e-mail or deliver a certified copy
 37 of the document to the mailing address and physical
 38 address of the corporation or its representative;
 39 amending s. 620.8105, F.S.; requiring that the
 40 department develop and offer an optional secure
 41 business filing service designed to discourage
 42 fraudulent filings; requiring that the service notify
 43 a partnership whenever a document relating to the
 44 partnership is delivered for filing; requiring that
 45 the partnership have the opportunity to review the
 46 file; requiring the department to give the partnership
 47 an opportunity to reject further processing of the
 48 filing; authorizing the department to keep any fees
 49 associated with a rejected filing; requiring that the
 50 department file the document within 15 days after

51 receipt if the partnership does not reject further
 52 processing; requiring the department to deliver a
 53 notification of the filing through e-mail or deliver a
 54 certified copy of the document to the mailing address
 55 and physical address of the partnership or its agent;
 56 amending s. 605.0206, F.S.; conforming provisions;
 57 amending ss. 605.0103, 607.0123, 617.0123, 620.8303,
 58 620.8304, 620.8704, 620.8914, 620.8918, 620.9001, and
 59 620.9102, F.S.; conforming cross-references; providing
 60 an effective date.

61

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

63

64 Section 1. Present subsections (1) through (8) of section
 65 605.0210, Florida Statutes, are renumbered as subsections (2)
 66 through (9), respectively, a new subsection (1) is added to that
 67 section, and present subsection (2) of that section is amended,
 68 to read:

69 605.0210 Duty of department to file; review of refusal to
 70 file; transmission of information by department.--

71 (1) By December 31, 2018, the department shall develop and
 72 offer an optional secure business filing service designed to
 73 discourage fraudulent business filings. The service must notify
 74 an entity via e-mail whenever a document relating to that entity
 75 is delivered for filing. The entity must have the opportunity to

76 review the filing and reject further processing of the filing by
 77 the department. If an entity rejects further processing of the
 78 filing, the department may keep any fees associated with the
 79 rejected filing. The document must be filed within 15 days after
 80 receipt if the entity does not reject further processing.

81 ~~(3)(2)~~ After filing a record, the department shall deliver
 82 a notification ~~an acknowledgment~~ of the filing to all e-mail
 83 addresses on file for, or a certified copy of the document to
 84 the mailing address and the physical address of, the entity ~~the~~
 85 ~~company or foreign limited liability company~~ or its authorized
 86 representative.

87 Section 2. Present subsections (1) through (5) of section
 88 607.0125, Florida Statutes, are renumbered as subsections (2)
 89 through (6), respectively, a new subsection (1) is added to that
 90 section, and present subsections (1) and (2) are amended, to
 91 read:

92 607.0125 Filing duties of Department of State.—

93 (1) By December 31, 2018, the Department of State shall
 94 develop and offer an optional secure business filing service
 95 designed to discourage fraudulent business filings. The service
 96 must notify an entity via e-mail whenever a document relating to
 97 the entity is delivered for filing. The entity must have the
 98 opportunity to review the filing and reject further processing
 99 by the Department of State. If an entity rejects further
 100 processing of the filing, the Department of State may keep any

101 fees associated with the rejected filing. The document must be
 102 filed within 15 days after receipt if the entity does not reject
 103 further processing.

104 (2)(1) Except as provided in subsection (1), if a document
 105 delivered to the Department of State for filing satisfies the
 106 requirements of s. 607.0120, the Department of State shall file
 107 it.

108 (3)(2) The Department of State files a document by
 109 recording it as filed on the date of receipt. After filing a
 110 document, the Department of State shall deliver a notification
 111 of the filing to all e-mail addresses on file for, an
 112 acknowledgment or a certified copy to the mailing address and
 113 the physical address of, the entity ~~the domestic or foreign~~
 114 corporation or its representative.

115 Section 3. Section 617.0125, Florida Statutes, is amended
 116 to read:

117 617.0125 Filing duties of Department of State.—

118 (1) By December 31, 2018, the department shall develop and
 119 offer an optional secure business filing service designed to
 120 discourage fraudulent business filings. The service must notify
 121 a corporation via e-mail whenever a document relating to the
 122 corporation is delivered for filing. The corporation must have
 123 the opportunity to review the filing and reject further
 124 processing by the department. If a corporation rejects further
 125 processing, the department may keep any fees associated with the

126 rejected filing. The document must be filed within 15 days after
 127 receipt if the entity does not reject further processing.

128 (2)-(1) Except as provided in subsection (1), if a document
 129 delivered to the department ~~of State~~ for filing satisfies the
 130 requirements of s. 617.01201, the department ~~of State~~ shall file
 131 it.

132 (3)-(2) The department ~~of State~~ files a document by
 133 stamping or otherwise endorsing "filed," together with the
 134 Secretary of State's official title and the date and time of
 135 receipt. After filing a document, the department ~~of State~~ shall
 136 deliver a notification of the filing to all e-mail addresses on
 137 file for, the acknowledgment of filing or a certified copy to
 138 the mailing address and the physical address of, the domestic or
 139 foreign corporation or its representative.

140 (4)-(3) If the department ~~of State~~ refuses to file a
 141 document, it shall return it to the domestic or foreign
 142 corporation or its representative within 15 days after the
 143 document was received for filing, together with a brief, written
 144 explanation of the reason for refusal.

145 (5)-(4) The department's ~~department of State's~~ duty to file
 146 documents under this section is ministerial. The filing or
 147 refusing to file a document does not:

148 (a) Affect the validity or invalidity of the document in
 149 whole or part;

150 (b) Relate to the correctness or incorrectness of

151 information contained in the document; or

152 (c) Create a presumption that the document is valid or
 153 invalid or that information contained in the document is correct
 154 or incorrect.

155 ~~(6)~~ ~~(5)~~ If not otherwise provided by law and the provisions
 156 of this act, the department of State shall determine, by rule,
 157 the appropriate format for, number of copies of, manner of
 158 execution of, method of electronic transmission of, and amount
 159 of and method of payment of fees for, any document placed under
 160 its jurisdiction.

161 Section 4. Present subsections (1) through (10) of section
 162 620.8105, Florida Statutes, are renumbered as subsections (2)
 163 through (11), respectively, a new subsection (1) is added to
 164 that section, present subsections (2), (3), and (4) are amended,
 165 and subsection (12) is added to that section, to read:

166 620.8105 Execution, filing, and recording of partnership
 167 registration and other statements.—

168 (1) By December 31, 2018, the Department of State shall
 169 develop and offer an optional secure business filing service
 170 designed to discourage fraudulent business filings. The service
 171 must notify a partnership via e-mail whenever a document
 172 relating to the partnership is delivered for filing. The
 173 partnership must have the opportunity to review the filing and
 174 reject further processing by the Department of State. If a
 175 partnership rejects further processing, the Department of State

176 may keep any fees associated with the rejected filing. The
 177 document must be filed within 15 days after receipt if the
 178 entity does not reject further processing.

179 (3)~~(2)~~ The Department of State shall file a partnership
 180 registration statement under subsection (2) ~~(1)~~ without regard
 181 to the use of the same or a similar name by another partnership
 182 registered or other entity organized or qualified in this state.
 183 The use of a partnership name in a registration statement filed
 184 with the Department of State is for the purpose of public notice
 185 only and does not create a presumption of ownership of the name
 186 used beyond that acquired under the common law.

187 (4)~~(3)~~ Each partner of a registered partnership, and any
 188 agent named pursuant to subparagraph (2)(c)2. ~~(1)(e)2.~~ that is a
 189 legal or other commercial entity, and not an individual, must:

190 (a) Be organized or otherwise registered with the
 191 Department of State as required by law.

192 (b) Maintain an active status with the Department of
 193 State.

194 (c) Not be dissolved, revoked, canceled, or withdrawn.

195 (5)~~(4)~~ Except as provided in s. 620.8304 or s. 620.8704, a
 196 statement or a certificate of conversion or certificate of
 197 merger may be filed with the Department of State only if the
 198 partnership has filed a registration statement pursuant to
 199 subsection (2) ~~(1)~~. If otherwise sufficient, a certified copy of
 200 a statement that is filed in a jurisdiction other than this

201 | state may be filed with the Department of State in lieu of an
 202 | original statement. Any such filing has the effect provided in
 203 | this act with respect to partnership property located in, or
 204 | transactions that occur in, this state.

205 | (12) After filing a document, the Department of State
 206 | shall deliver an electronic notification of the filing to all e-
 207 | mail addresses on file for, or a certified copy to the mailing
 208 | address and the physical address of, the partnership or its
 209 | agent.

210 | Section 5. Subsection (1) of section 605.0206, Florida
 211 | Statutes, is amended to read:

212 | 605.0206 Filing requirements.—

213 | (1) A record authorized or required to be delivered to the
 214 | department for filing under this chapter must be captioned to
 215 | describe the record's purpose, be in a medium authorized by the
 216 | department, and be delivered to the department. If all filing
 217 | fees are paid, the department shall file the record unless the
 218 | department determines that the record does not comply with the
 219 | filing requirements or an entity rejects further processing
 220 | under s. 605.0210.

221 | Section 6. Subsection (3) of section 605.0103, Florida
 222 | Statutes, is amended to read:

223 | 605.0103 Knowledge; notice.—

224 | (3) Subject to s. 605.0210(9) ~~s. 605.0210(8)~~, a person
 225 | notifies another person of a fact by taking steps reasonably

226 required to inform the other person in the ordinary course of
 227 events, regardless of whether those steps actually cause the
 228 other person to know of the fact.

229 Section 7. Subsection (3) of section 607.0123, Florida
 230 Statutes, is amended to read:

231 607.0123 Effective time and date of document.—

232 (3) If a document is determined by the Department of State
 233 to be incomplete and inappropriate for filing, the Department of
 234 State may return the document to the person or corporation
 235 filing it, together with a brief written explanation of the
 236 reason for the refusal to file, in accordance with s.
 237 607.0125(4) ~~s. 607.0125(3)~~. If the applicant returns the
 238 document with corrections in accordance with the rules of the
 239 department within 60 days after it was mailed to the applicant
 240 by the department and if at the time of return the applicant so
 241 requests in writing, the filing date of the document will be the
 242 filing date that would have been applied had the original
 243 document not been deficient, except as to persons who relied on
 244 the record before correction and were adversely affected
 245 thereby.

246 Section 8. Subsection (3) of section 617.0123, Florida
 247 Statutes, is amended to read:

248 617.0123 Effective date of document.—

249 (3) If a document is determined by the department ~~of State~~
 250 to be incomplete and inappropriate for filing, the department ~~of~~

251 ~~State~~ may return the document to the person or corporation
 252 filing it, together with a brief written explanation of the
 253 reason for the refusal to file, in accordance with s.
 254 617.0125(4) ~~s. 617.0125(3)~~. If the applicant returns the
 255 document with corrections in accordance with the rules of the
 256 department within 60 days after it was mailed to the applicant
 257 by the department, and if at the time of return the applicant so
 258 requests in writing, the filing date of the document will be the
 259 filing date that would have been applied had the original
 260 document not been deficient, except as to persons who relied on
 261 the record before correction and were adversely affected
 262 thereby.

263 Section 9. Subsection (2) of section 620.8303, Florida
 264 Statutes, is amended to read:

265 620.8303 Statement of partnership authority.—

266 (2) If a filed statement of partnership authority is
 267 executed pursuant to s. 620.8105(7) ~~s. 620.8105(6)~~ and states
 268 the name of the partnership but does not contain all of the
 269 other information required by subsection (1), the statement
 270 nevertheless operates with respect to a person not a partner as
 271 provided in subsections (3) and (4).

272 Section 10. Subsections (1) and (2) of section 620.8304,
 273 Florida Statutes, are amended to read:

274 620.8304 Statement of denial.—

275 (1) A partner or other person named as a partner in a

276 filed registration, statement of partnership authority, or in a
 277 list maintained by an agent pursuant to s. 620.8105(2)(c) ~~s.~~
 278 ~~620.8105(1)(e)~~ may file a statement of denial stating:

279 (a) The name of the partnership, as identified in the
 280 records of the Department of State; and

281 (b) The fact that is being denied, which may include
 282 denial of a person's authority or status as a partner.

283 (2) A statement of denial may be filed without regard to
 284 the provisions of s. 620.8105(5) ~~s. 620.8105(4)~~ if it states
 285 that no partnership registration statement has been filed with
 286 the Department of State.

287 Section 11. Subsection (2) of section 620.8704, Florida
 288 Statutes, is amended to read:

289 620.8704 Statement of dissociation.—

290 (2) A statement of dissociation may be filed without
 291 regard to the provisions of s. 620.8105(5) ~~s. 620.8105(4)~~ if it
 292 states that no partnership registration statement has been filed
 293 with the Department of State.

294 Section 12. Section 620.8914, Florida Statutes, is amended
 295 to read:

296 620.8914 Filings required for conversion; effective date.—

297 (1) After a plan of conversion is approved:

298 (a) A converting partnership shall deliver to the
 299 Department of State for filing a registration statement in
 300 accordance with s. 620.8105, if such statement was not

301 | previously filed, and a certificate of conversion, in accordance
 302 | with s. 620.8105, which must include:

303 | 1. A statement that the partnership has been converted
 304 | into another organization.

305 | 2. The name and form of the organization and the
 306 | jurisdiction of its governing law.

307 | 3. The date the conversion is effective under the
 308 | governing law of the converted organization.

309 | 4. A statement that the conversion was approved as
 310 | required by this act.

311 | 5. A statement that the conversion was approved as
 312 | required by the governing law of the converted organization.

313 | 6. If the converted organization is a foreign organization
 314 | not authorized to transact business in this state, the street
 315 | and mailing address of an office which the Department of State
 316 | may use for the purposes of s. 620.8915(3).

317 | (b) In the case of a converting organization converting
 318 | into a partnership to be governed by this act, the converting
 319 | organization shall deliver to the Department of State for
 320 | filing:

321 | 1. A registration statement in accordance with s.
 322 | 620.8105.

323 | 2. A certificate of conversion, in accordance with s.
 324 | 620.8105, signed by a general partner of the partnership in
 325 | accordance with s. 620.8105(7) ~~s. 620.8105(6)~~ and by the

326 | converting organization as required by applicable law, which
 327 | certificate of conversion must include:

328 | a. A statement that the partnership was converted from
 329 | another organization.

330 | b. The name and form of the converting organization and
 331 | the jurisdiction of its governing law.

332 | c. A statement that the conversion was approved as
 333 | required by this act.

334 | d. A statement that the conversion was approved in a
 335 | manner that complied with the converting organization's
 336 | governing law.

337 | e. The effective time of the conversion, if other than the
 338 | time of the filing of the certificate of conversion.

339 |
 340 | A converting domestic partnership is not required to file a
 341 | certificate of conversion pursuant to paragraph (a) if the
 342 | converting domestic partnership files articles of conversion or
 343 | a certificate of conversion that substantially complies with the
 344 | requirements of this section pursuant to s. 605.1045, s.
 345 | 607.1115, or s. 620.2104(1)(b) and contains the signatures
 346 | required by this chapter. In such a case, the other certificate
 347 | of conversion may also be used for purposes of s. 620.8915(4).

348 | (2) A conversion becomes effective:
 349 | (a) If the converted organization is a partnership, at the
 350 | time specified in the certificate of conversion, which may be as

351 of or after the time of the filing of the certificate of
 352 conversion, and, if the certificate of conversion does not
 353 contain such an effective time, the effective time shall be upon
 354 the filing of the certificate of conversion with the Department
 355 of State. However, if the certificate has a delayed effective
 356 date, the certificate may not be effective any later than the
 357 90th day after the date it was filed and the effective date may
 358 not be any earlier than the effective date of the registration
 359 statement filed with the Department of State for the partnership
 360 in accordance with s. 620.8105.

361 (b) If the converted organization is not a partnership, as
 362 provided by the governing law of the converted organization.
 363

364 A certificate of conversion acts as a cancellation of any
 365 registration statement for a converting partnership for purposes
 366 of s. 620.8105, and the cancellation shall be deemed filed upon
 367 the effective date of the conversion.

368 Section 13. Subsection (3) of section 620.8918, Florida
 369 Statutes, is amended to read:

370 620.8918 Filings required for merger; effective date.—

371 (3) Each domestic constituent partnership shall deliver
 372 the certificate of merger for filing with the Department of
 373 State, unless the domestic constituent partnership is named as a
 374 party or constituent organization in articles of merger or a
 375 certificate of merger filed for the same merger in accordance

376 with s. 605.1025, s. 607.1109(1), s. 617.1108, or s.
 377 620.2108(3). The articles of merger or certificate of merger
 378 must substantially comply with the requirements of this section.
 379 In such a case, the other articles of merger or certificate of
 380 merger may also be used for purposes of s. 620.8919(3). Each
 381 domestic constituent partnership in the merger shall also file a
 382 registration statement in accordance with s. 620.8105(2) ~~s.~~
 383 ~~620.8105(1)~~ if it does not have a currently effective
 384 registration statement filed with the Department of State.

385 Section 14. Subsection (4) of section 620.9001, Florida
 386 Statutes, is amended to read:

387 620.9001 Statement of qualification.—

388 (4) The status of a partnership as a limited liability
 389 partnership is effective on the later of the filing of the
 390 statement or a date specified in the statement. The status
 391 remains effective, regardless of changes in the partnership,
 392 until it is canceled pursuant to s. 620.8105(8) ~~s. 620.8105(7)~~
 393 or revoked pursuant to s. 620.9003.

394 Section 15. Subsection (2) of section 620.9102, Florida
 395 Statutes, is amended to read:

396 620.9102 Statement of foreign qualification.—

397 (2) The status of a partnership as a foreign limited
 398 liability partnership is effective on the later of the filing of
 399 the statement of foreign qualification or a date specified in
 400 the statement. The status remains effective, regardless of

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401 | changes in the partnership, until it is canceled pursuant to s.
402 | 620.8105(8) ~~s. 620.8105(7)~~ or revoked pursuant to s. 620.9003.
403 | Section 16. This act shall take effect July 1, 2018.



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: Oversight, Transparency &
2 Administration Subcommittee
3 Representative Miller, M. offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Subsection (1) of section 605.0209, Florida
8 Statutes, is amended, and subsection (5) is added to that
9 section, to read:

10 605.0209 Correcting filed record.—

11 (1) A person on whose behalf a filed record was delivered
12 to the department for filing may correct the record if any of
13 the following applies:

14 (a) The record at the time of filing was inaccurate.†

15 (b) The record was defectively signed.†~~or~~



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16 (c) The electronic transmission of the record to the
17 department was defective.

18 (d) The record contains false, misleading, or fraudulent
19 information.

20 (5) A statement of correction filed to correct false,
21 misleading, or fraudulent information is not subject to any
22 department fee if the statement of correction is delivered to
23 the department within 15 days after the notification of filing
24 sent pursuant to s. 605.0210.

25 Section 2. Subsection (2) of section 605.0210, Florida
26 Statutes is amended to read:

27 605.0210 Duty of department to file; review of refusal to
28 file; transmission of information by department.-

29 (2) After filing a record, the department shall send
30 notice ~~deliver an acknowledgment~~ of the filing to the e-mail
31 address on file for the entity or its authorized representative
32 or shall send a ~~or certified~~ copy of the document to the mailing
33 address of such entity ~~the company or foreign limited liability~~
34 ~~company~~ or its authorized representative. If the record changes
35 the entity's e-mail address, the department must send such
36 notice to the new e-mail address and to the most recent prior e-
37 mail address. If the record changes the entity's mailing
38 address, the department must send such notice to the new mailing
39 address and to the most recent prior mailing address.



Amendment No.

40 Section 3. Subsection (1) of section 607.0124, Florida
41 Statutes, is amended, and subsection (4) is added to that
42 section, to read:

43 607.0124 Correcting filed document.—

44 (1) A domestic or foreign corporation may correct a
45 document filed by the Department of State within 30 days after
46 filing if the document if any of the following applies:

47 (a) The document contains an inaccuracy.†

48 (b) The document contains false, misleading, or fraudulent
49 information.

50 (c) ~~(b)~~ The document was defectively executed, attested,
51 sealed, verified, or acknowledged.†~~or~~

52 (d) ~~(e)~~ The electronic transmission of the document was
53 defective.

54 (4) Articles of correction filed to correct false,
55 misleading, or fraudulent information are not subject to any
56 Department of State fee if the articles of correction are
57 delivered to the Department of State within 15 days after the
58 notification of filing sent pursuant to s. 607.0125(2).

59 Section 4. Subsection (2) of section 607.0125, Florida
60 Statutes, is amended to read:

61 607.0125 Filing duties of Department of State.—

62 (2) The Department of State files a document by recording
63 it as filed on the date of receipt. After filing a document, the
64 Department of State shall send a notice of the filing to the e-



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65 mail address on file for the entity or its representative or a
66 deliver an acknowledgment or certified copy of the document to
67 the mailing address such entity or the domestic or foreign
68 corporation or its representative. If the record changes the
69 entity's e-mail address, the Department of State must send such
70 notice to the new e-mail address and to the most recent prior e-
71 mail address. If the record changes the entity's mailing
72 address, the Department of State must send such notice to the
73 new mailing address and to the most recent prior mailing
74 address.

75 Section 5. Subsection (1) of section 617.0124, Florida
76 Statutes, is amended, and subsection (4) is added to that
77 section, to read:

78 617.0124 Correcting filed document.—

79 (1) A domestic or foreign corporation may correct a
80 document filed by the department within 30 days after filing if
81 any of the following applies:

82 (a) The document contains an incorrect statement.†

83 (b) The document contains false, misleading, or fraudulent
84 information.

85 (c) ~~(b)~~ The document was defectively executed, attested,
86 sealed, verified, or acknowledged.†~~or~~

87 (d) ~~(e)~~ The electronic transmission of the document was
88 defective.



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89 (4) Articles of correction filed to correct false,
90 misleading, or fraudulent information are not subject to a
91 department fee if the articles of correction are delivered to
92 the department within 15 days after the notification of filing
93 sent pursuant to s. 617.0125(2).

94 Section 6. Section 617.0125, Florida Statutes, is amended
95 to read:

96 617.0125 Filing duties of the department ~~Department of~~
97 ~~State.~~—

98 (1) If a document delivered to the department ~~Department~~
99 ~~of State~~ for filing satisfies the requirements of s. 617.01201,
100 the department ~~Department of State~~ shall file it.

101 (2) The department ~~of State~~ files a document by stamping
102 or otherwise endorsing "filed," together with the Secretary of
103 State's official title and the date and time of receipt. After
104 filing a document, the department ~~of State~~ shall send a notice
105 ~~deliver the acknowledgment~~ of the filing to the e-mail address
106 on file for the domestic or foreign corporation or its
107 representative or send a certified copy of the document to the
108 mailing address of such the domestic or foreign corporation or
109 its representative. If the record changes the domestic or
110 foreign corporation's e-mail address, the department must send
111 such notice to the new e-mail address and to the most recent
112 prior e-mail address. If the record changes the domestic or
113 foreign corporation's mailing address, the department must send



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114 such notice to new the mailing address and to the most recent
115 prior mailing address.

116 (3) If the department ~~of State~~ refuses to file a document,
117 it shall return it to the domestic or foreign corporation or its
118 representative within 15 days after the document was received
119 for filing, together with a brief, written explanation of the
120 reason for refusal.

121 (4) The department's ~~Department of State's~~ duty to file
122 documents under this section is ministerial. The filing or
123 refusing to file a document does not:

124 (a) Affect the validity or invalidity of the document in
125 whole or part;

126 (b) Relate to the correctness or incorrectness of
127 information contained in the document; or

128 (c) Create a presumption that the document is valid or
129 invalid or that information contained in the document is correct
130 or incorrect.

131 (5) If not otherwise provided by law and the provisions of
132 this act, the department ~~of State~~ shall determine, by rule, the
133 appropriate format for, number of copies of, manner of execution
134 of, method of electronic transmission of, and amount of and
135 method of payment of fees for, any document placed under its
136 jurisdiction.

137 Section 7. Present subsections (2) and (3) of section
138 620.1206, Florida Statutes, are redesignated as subsections (3)

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139 and (4), respectively, and a new subsection (2) is added to that
140 section, to read:

141 620.1206 Delivery to and filing of records by Department
142 of State; effective time and date; notice.—

143 (1) A record authorized or required to be delivered to the
144 Department of State for filing under this act must be captioned
145 to describe the record's purpose, be in a medium permitted by
146 the Department of State, and be delivered to the Department of
147 State. Unless the Department of State determines that a record
148 does not comply with the filing requirements of this act, and if
149 all filing fees have been paid, the Department of State shall
150 file the record.

151 (2) After filing a record, the Department of State shall
152 send a notice to the email address on file for the limited
153 partnership or foreign limited partnership or the registered
154 agent of such partnership or send a copy of the document to the
155 mailing address of such partnership or registered agent. If the
156 record changes the limited partnership's or foreign limited
157 partnership's e-mail address, the Department of State must send
158 such notice to the new e-mail address and to the most recent
159 prior e-mail address. If the record changes the limited
160 partnership or foreign limited partnership's mailing address,
161 the Department of State must send such notice to the new mailing
162 address and to the most recent prior mailing address.



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163 Section 8. Subsection (1) of section 620.1207, Florida
164 Statutes, is amended, and subsection (4) is added to that
165 section, to read:

166 620.1207 Correcting filed record.—

167 (1) A limited partnership or foreign limited partnership
168 may deliver to the Department of State for filing a statement of
169 correction to correct a record previously delivered by the
170 limited partnership or foreign limited partnership to the
171 Department of State and filed by the Department of State, if at
172 the time of filing the record contained false, misleading,
173 fraudulent, or erroneous information or was defectively signed.

174 (4) A statement of correction filed under subsection (1)
175 to correct a record that contains false, misleading, or
176 fraudulent information is not subject to any Department of State
177 fee if delivered to the Department of State within 15 days after
178 the notification of filing sent pursuant to s. 620.1206.

179 Section 9. Subsection (11) is added to section 620.8105,
180 Florida Statutes, to read:

181 620.8105 Execution, filing, and recording of partnership
182 registration and other statements.—

183 (11) After filing a document, the Department of State
184 shall send a notice of the filing to all e-mail address on file
185 for the partnership or limited liability partnership, or the
186 agent of such partnership, or send a copy of the document to the
187 mailing address of such partnership or agent. If the record



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188 changes the partnership's or limited liability partnership's e-
189 mail address, the Department of State must send such notice to
190 the new e-mail address and to the most recent prior e-mail
191 address. If the record changes the partnership or limited
192 liability partnership's mailing address, the Department of State
193 must send such notice to the new mailing address in and to the
194 most recent mailing address.

195 Section 10. Section 620.81054, Florida Statutes, is
196 created to read:

197 620.81054 Correcting a filed record.-

198 (1) A partnership or limited liability partnership may
199 correct a document filed by the Department of State within 30
200 days after filing if any of the following applies:

201 (a) The document contains an inaccuracy.

202 (b) The document contains false, misleading, or fraudulent
203 information.

204 (c) The document was defectively executed, attested,
205 sealed, verified, or acknowledged.

206 (d) The electronic transmission of the document was
207 defective.

208 (2) A document must be corrected by doing both of the
209 following:

210 (a) Preparing articles of correction that describe the
211 document, including its filing date; specify the inaccuracy or
212 defect to be corrected; and correct the inaccuracy or defect.



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213 (b) Delivering the articles of correction to the
214 Department of State for filing, executed in accordance with s.
215 620.8105.

216 (3) Articles of correction are effective as of the
217 effective date of the document they correct except as to persons
218 relying on the uncorrected document who are adversely affected
219 by the correction. As to those persons, articles of correction
220 are effective when filed.

221 (4) Articles of correction filed to correct false,
222 misleading, or fraudulent information are not subject to any
223 Department of State fee if delivered to the Department of State
224 within 15 days after the notification of filing sent pursuant to
225 s. 620.8105.

226 Section 11. Subsection (3) of section 620.1201, Florida
227 Statutes, is amended to read:

228 620.1201 Formation of limited partnership; certificate of
229 limited partnership.-

230 (3) If there has been substantial compliance with
231 subsection (1), then subject to s. 620.1206(4) ~~s. 620.1206(3)~~, a
232 limited partnership is formed when the Department of State files
233 the certificate of limited partnership.

234 Section 12. Subsections (5) and (8) of section 620.1202,
235 Florida Statutes, are amended to read:

236 620.1202 Amendment or restatement of certificate.-



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237 (5) Subject to s. 620.1206(4) ~~s. 620.1206(3)~~, an amendment
238 or restated certificate is effective when filed by the
239 Department of State.

240 (8) A restated certificate of limited partnership shall
241 state, either in its heading or in an introductory paragraph,
242 the limited partnership's present name, and, if it has been
243 changed, the name under which it was originally filed; the date
244 of filing of its original certificate of limited partnership
245 with the Department of State; and, subject to s. 620.1206(4) ~~s.~~
246 ~~620.1206(3)~~, the delayed effective date or time, which shall be
247 a date or time certain, of the restated certificate if it is not
248 to be effective upon the filing of the restated certificate. A
249 restated certificate shall also state that it was duly executed
250 and is being filed in accordance with this section. If the
251 restated certificate only restates and integrates and does not
252 further amend the limited partnership's certificate of limited
253 partnership as theretofore amended or supplemented and there is
254 no discrepancy between those provisions and the restated
255 certificate, it shall state that fact as well.

256 Section 13. Subsection (2) of section 620.1203, Florida
257 Statutes, is amended to read:

258 620.1203 Certificate of dissolution; statement of
259 termination.—

260 (2) If there has been substantial compliance with
261 subsection (1), then subject to s. 620.1206(4) ~~s. 620.1206(3)~~



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262 the dissolution of the limited partnership shall be effective
263 when the Department of State files the certificate of
264 dissolution.

265 Section 14. Subsection (4) of section 620.1812, Florida
266 Statutes, is amended to read:

267 620.1812 Revocation of dissolution.-

268 (4) If there has been substantial compliance with
269 subsection (3), subject to s. 620.1206(4) ~~s. 620.1206(3)~~ the
270 revocation of dissolution is effective when the Department of
271 State files the certificate of revocation of dissolution.

272 Section 15. Subsection (4) of section 620.2108, Florida
273 Statutes, is amended to read:

274 620.2108 Filings required for merger; effective date.-

275 (4) A merger becomes effective under this act:

276 (a) If the surviving organization is a limited
277 partnership, upon the later of:

278 1. Compliance with subsection (3); or

279 2. Subject to s. 620.1206(4) ~~s. 620.1206(3)~~, as specified
280 in the certificate of merger; or

281 (b) If the surviving organization is not a limited
282 partnership, as provided by the governing law of the surviving
283 organization.

284 Section 16. This act shall take effect July 1, 2018.

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

Remove everything before the enacting clause and insert:
An act relating to business filings; amending s. 605.0209, F.S.;
authorizing certain persons to correct filed records that
contain certain information; providing that a statement of
correction filed for certain reasons is not subject to a
Department of State fee if delivered within a certain timeframe;
amending s. 605.0210, F.S.; requiring the department to send a
notice of the filing of a record through e-mail or send a copy
of the document to the mailing address of the entity or its
representative; providing notice requirements for the department
if the record changes an entity's e-mail or mailing address;
amending s. 607.0124; authorizing a domestic or foreign
corporation to correct certain documents if they contain false,
misleading, or fraudulent information; providing that articles
of correction filed for certain reasons are not subject to any
department fee if delivered within a certain timeframe; amending
s. 607.0125, F.S.; requiring the department to send a notice of
the filing of a record through e-mail or send a copy of the
document to the mailing address of the entity or its
representative; providing notice requirements for the department
if the record changes the entity's e-mail or mailing address;
amending s. 617.0124, F.S.; authorizing a domestic or foreign
corporation to correct certain documents if they contain false,
misleading, or fraudulent information; providing that articles



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312 of correction filed for certain reasons are not subject to any
313 department fee if delivered within a certain timeframe; amending
314 s. 617.0125, F.S.; requiring the department to send a notice of
315 the filing of a record through e-mail or send a copy of the
316 document to the mailing address of the domestic or foreign
317 corporation or its representative; providing notice requirements
318 for the department if the record changes the domestic or foreign
319 corporation's e-mail or mailing address; amending s. 620.1206,
320 F.S.; requiring the department to send a notice of the filing of
321 a record through e-mail or send a copy of the document to the
322 mailing address of the limited partnership, foreign limited
323 partnership, or its registered agent; providing notice
324 requirements for the department if the record changes the
325 limited partnership's or foreign limited partnership's e-mail or
326 mailing address; amending s. 620.1207, F.S.; authorizing a
327 limited partnership or foreign limited partnership to correct
328 certain documents if they contain misleading or fraudulent
329 information; providing that a statement of correction filed for
330 certain reasons is not subject to any department fee if
331 delivered within a certain timeframe; amending s. 620.8105,
332 F.S.; requiring the department to send a notice of the filing of
333 a document through e-mail or send a copy of the document to the
334 mailing address of the partnership, limited liability
335 partnership, or its agent; providing notice requirements for the
336 department if the record changes the partnership's or limited

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337 liability partnership's e-mail or mailing address; creating s.
338 620.81054, F.S.; authorizing a partnership or limited liability
339 partnership to correct a document filed by the department within
340 a certain timeframe and under certain circumstances; providing
341 guidelines for correcting a document; providing construction;
342 providing that articles of correction filed for certain reasons
343 are not subject to a department fee if delivered within a
344 certain timeframe; amending ss. 620.1201, 620.1202, 620.1203,
345 620.1812, and 620.2108, F.S.; conforming provisions to changes
346 made by the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 705 Pub. Rec./Water Management District Surplus Lands
SPONSOR(S): Natural Resources & Public Lands Subcommittee and Burgess, Jr.
TIED BILLS: HB 703 **IDEN./SIM. BILLS:** SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	11 Y, 2 N, As CS	Gregory	Shugar
2) Oversight, Transparency & Administration Subcommittee		Hoffman <i>MH</i>	Harrington <i>JA</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

A water management district (“WMD”) may acquire real property for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes. Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”). A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The public record exemption expires when:

- The WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land;
- In the sole discretion of the WMD, the conclusion of negotiations or marketing efforts related to the surplus land; or
- The passage of one year from the date of the completion of the valuation.

The bill authorizes a WMD to disclose confidential and exempt valuations, valuation information related to surplus land, or written offers to purchase such surplus land to potential purchasers before the expiration of the exemption:

- During negotiations for the sale or exchange of the land; or
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on a WMD.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, section 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.¹

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 agency 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.³

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the State Constitution.⁴ The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

The Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.⁶ In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October second of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

¹ FLA. CONST., art. I, s. 24(a).

² 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; 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 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 *Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009).

⁴ FLA. CONST., art. I, s. 24(c).

⁵ *Id.*

⁶ Section 119.15, F.S.

⁷ Section 119.15(6)(b), F.S.

⁸ Section 119.15(3), F.S.

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as “exempt” or “confidential and exempt.” There is a difference between records the Legislature has designated as exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.⁹ However, records designated as exempt may be disclosed under certain circumstances and does not impose a secrecy requirement which bars a custodian from displaying a public record entirely of his or her own volition.¹⁰

Surplus of Water Management District Lands

A water management district (“WMD”) may acquire real property for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development; and preservation of wetlands, streams, and lakes.¹¹ Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”).¹²

The five WMDs own approximately 1,908,969 acres of conservation land.¹³ Approximately 1,481,129 acres are held in fee simple, while 427,840 acres are held in conservation easements.¹⁴ In addition to the purposes described above, the WMDs manage their lands for recreation, camping, trail use, hunting, and revenue generation.¹⁵

A WMD may sell lands its governing board determines to be surplus at any time.¹⁶ If a WMD decides to sell its real property, or interest therein, it must follow the procedures in ss. 373.056 or 373.089, F.S.¹⁷ These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.¹⁸

Public Record Exemptions for Written Valuations of Land and Written Offers

Currently, there is no public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, and written offers to purchase such surplus land.

A public records exemption exists for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation.¹⁹ The exemption expires two weeks before the Board of Trustees first considers for approval the contract or agreement regarding the purchase, exchange, or disposal of the surplus land.²⁰ The Department of Environmental Protection (“DEP”) may disclose the confidential and exempt appraisals, valuations, or valuation information regarding surplus land before the exemption expires:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process;

⁹ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

¹⁰ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹¹ Section 373.139(2), F.S.

¹² Section 373.099, F.S.

¹³ Florida Natural Areas Inventory, *Summary of Florida Conservation Lands February 2017*, available at: http://www.fnai.org/PDF/Maacres_201702_FCL_plus_LTF.pdf (last visited Dec, 13, 2017).

¹⁴ *Id.*

¹⁵ FLORIDA HIKES!, *Recreation on Florida’s Water Management District lands*, <http://floridahikes.com/category/public-lands/water-management-districts> (last visited Dec. 14, 2017).

¹⁶ Section 373.089(1), F.S.

¹⁷ Section 373.139(6), F.S.

¹⁸ Section 373.089(1), F.S.

¹⁹ Section 253.0341(8), F.S.

²⁰ *Id.*

- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.²¹

All appraisals, other reports relating to value, offers, and counteroffers are exempt when an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain.²² This exemption expires upon execution of a valid option contract or the agency conditionally accepts a written offer to sell.²³ For the purpose of the exemption, the term “option contract” means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval.²⁴ If parties do not execute a valid option contract, or the agency does not conditionally accept a written offer to sell, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property.²⁵

Lastly, appraisal reports, offers, and counteroffers for lands a WMD is seeking to purchase are confidential and exempt until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board.²⁶ A WMD may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the WMD determines that disclosure of such reports will bring the proposed acquisition to closure.²⁷ If negotiation is terminated by the WMD, the appraisal report, offers, and counteroffers shall become available.²⁸ A WMD and DEP may share and disclose appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated.²⁹ A WMD and DEP must maintain the confidentiality of such appraisal reports, appraisal information, offers, and counteroffers, except in those cases where a WMD and DEP have exercised discretion to disclose such information.³⁰ A WMD may disclose appraisal information, offers, and counteroffers to a third party who has entered into a contractual agreement with the WMD to work with or on the behalf of or to assist the district in connection with land acquisitions.³¹ The third party must maintain the confidentiality of such information in conformance with this section.³² In addition, a WMD may use, as its own, appraisals obtained by a third party provided the appraiser is selected from the WMD’s list of approved appraisers and the appraisal is reviewed and approved by the district.³³

HB 703 (2018)

HB 703 makes several changes to the surplus procedures for WMDs to create efficiencies in the process. Specifically, the bill:

- Requires a WMD to publish notice of its intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. Current law does not specify a date from which the 30 or 360 days must be counted;
- Authorizes a WMD to sell land valued at \$25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public;
- Requires a WMD to publish the notice of intention to offer to sell land valued at \$25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time;

²¹ *Id.*

²² Section 119.0711, F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 373.139(3)(a), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

- Defines “adjacent property owners;” and
- Removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at \$25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.³⁴

Effect of the Proposed Changes

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, and written offers to purchase such surplus land.³⁵ The bill provides that such documents are confidential and exempt from public record requirements.³⁶

The bill provides that the public record exemption will expire when:

- The WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land;
- In the sole discretion of the WMD, negotiations or marketing efforts related to the surplus land conclude; or
- The passage of one year from the date of the completion of the valuation.

The bill authorizes a WMD to disclose confidential and exempt valuations, valuation information related to surplus land, or written offers to purchase such surplus land to potential purchasers before the expiration of the exemption to facilitate successful or expedited closure of the sale of surplus land:

- During negotiations for the sale or exchange of the land; or
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. Specifically, the bill finds that the public availability of such valuations, related documents, and written offers can negatively impact the ability of a WMD to negotiate with potential purchasers and potentially places a WMD at a disadvantage in attempting to maximize the return on the sale of surplus land.

B. SECTION DIRECTORY:

- Section 1. Amends s. 373.089, F.S., creating a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land.
- Section 2. Provides a public necessity statement.
- Section 3. Provides an effective date that is contingent upon the passage of HB 703 or similar legislation.

³⁴ Florida House of Representatives, Analysis of 2018 House Bill 703, p. 1 (Dec. 6, 2017).

³⁵ *Id.*

³⁶ The public record exemption created in the bill for WMDs is similar to the exemption for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation in s. 253.0341(8)(a), F.S. However, it adds written offers to purchase such surplus lands.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may negatively affect potential surplus land purchasers who use public record requests to gain a competitive advantage when making offers for surplus WMD parcels.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on a WMD because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, a WMD may incur costs associated with redacting the exempt financial information prior to releasing a record. However, these costs can be absorbed as they are part of the day-to-day responsibilities of a WMD.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

On lines 66 and 67 of the bill, the public necessity statement indicates that the valuation, related documents, and written offers to purchase surplus land may be confidential and exempt for up to one year at the WMDs discretion. However, the bill provides for the expiration of the exemption upon the occurrence of three different events, only one of which appears to be in the discretion of the WMD.

Other Comments: Expiration of the Public Record Exemption

The bill provides for the expiration of the public record exemption upon the contract or agreement for the purchase of the surplus land being approved by the WMD; at the conclusion of negotiations or marketing efforts; or the passage of one year from the date of the valuation. However, the bill is not clear if the exemption expires upon the earliest of the events or the latest.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature; and
- Authorize WMDs to disclose valuations, valuation information which are related to surplus land, or written offers to purchase such surplus land to potential purchasers.

The bill analysis is drafted to the committee substitute as passed by the subcommittee.

1 A bill to be entitled
 2 An act relating to a public records; amending s.
 3 373.089, F.S.; providing an exemption for valuations,
 4 certain records, and sales offers for sales related to
 5 surplus lands; authorizing disclosure of such records
 6 under certain circumstances; providing for future
 7 legislative review and repeal of the exemption;
 8 providing a statement of public necessity; providing a
 9 contingent effective date.

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

12
 13 Section 1. Subsection (1) of section 373.089, Florida
 14 Statutes, is amended to read:

15 373.089 Sale or exchange of lands, or interests or rights
 16 in lands.—The governing board of the district may sell lands, or
 17 interests or rights in lands, to which the district has acquired
 18 title or to which it may hereafter acquire title in the
 19 following manner:

20 (1) (a) Any lands, or interests or rights in lands,
 21 determined by the governing board to be surplus may be sold by
 22 the district, at any time, for the highest price obtainable;
 23 however, ~~in no case shall~~ the selling price may not be less than
 24 the appraised value of the lands, or interests or rights in
 25 lands, as determined by a certified appraisal obtained within

26 360 days before the effective date of a contract for sale.

27 (b) A written valuation of land determined to be surplus
 28 pursuant to this section; related documents used to form, or
 29 which pertain to, the valuation; and written offers to purchase
 30 such surplus land are confidential and exempt from s. 119.07(1)
 31 and s. 24(a), Art. I of the State Constitution. This exemption
 32 expires upon:

33 1. The contract or agreement regarding the purchase,
 34 exchange, or disposal of the surplus land being approved by the
 35 district;

36 2. In the sole discretion of the district, the conclusion
 37 of negotiations or marketing efforts related to the surplus
 38 land; or

39 3. The passage of 1 year from the date of the completion
 40 of the valuation.

41 (c) Before expiration of the exemption established in
 42 paragraph (b), and in order to facilitate successful or
 43 expedited closure of the sale of surplus land, the district may
 44 disclose confidential and exempt valuations and valuation
 45 information which are related to surplus land, or written offers
 46 to purchase such surplus land, to potential purchasers:

47 1. During negotiations for the sale or exchange of the
 48 land; or

49 2. During the marketing effort or bidding process
 50 associated with the sale, disposal, or exchange of the land.

51 (d) Paragraphs (b) and (c) are subject to the Open
 52 Government Sunset Review Act in accordance with s. 119.15 and
 53 shall stand repealed on October 2, 2023, unless reviewed and
 54 saved from repeal through reenactment by the Legislature.

55
 56 If the Board of Trustees of the Internal Improvement Trust Fund
 57 declines to accept title to the lands offered under this
 58 section, the land may be disposed of by the district under the
 59 provisions of this section.

60 Section 2. The Legislature finds that it is a public
 61 necessity that written valuation of land determined to be
 62 surplus pursuant to s. 373.089, Florida Statutes, related
 63 documents used to form the valuation or which pertain to the
 64 valuation, and written offers to purchase surplus land, be made
 65 confidential and exempt from s. 119.07(1), Florida Statutes, and
 66 s. 24(a), Article I of the State Constitution for up to 1 year
 67 at a water management district's discretion in order to
 68 facilitate successful or expedited closure of the sale of
 69 surplus lands. The public availability of such valuations,
 70 related documents, and written offers can negatively impact the
 71 ability of water management districts to negotiate with
 72 potential purchasers and potentially places water management
 73 districts at a disadvantage in attempting to maximize the return
 74 on the sale of surplus land.

75 Section 3. This act shall take effect on the same date

76 | that HB 703 or similar legislation takes effect, if such
77 | legislation is adopted in the same legislative session or an
78 | extension thereof and becomes a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
 2 Administration Subcommittee
 3 Representative Burgess offered the following:

Amendment

6 Remove lines 32-67 and insert:
 7 expires upon the contract or agreement regarding the purchase,
 8 exchange, or disposal of the surplus land being approved by the
 9 district.

10 (c) Before expiration of the exemption established in
 11 paragraph (b), and in order to facilitate successful or
 12 expedited closure of the sale of surplus land, the district may
 13 disclose confidential and exempt valuations and valuation
 14 information which are related to surplus land, or written offers
 15 to purchase such surplus land, to potential purchasers:



Amendment No.

16 1. During negotiations for the sale or exchange of the
17 land;

18 2. During the marketing effort or bidding process
19 associated with the sale, disposal, or exchange of the land;

20 3. When the passage of time has made the conclusions of
21 value invalid; or

22 4. When negotiations or marketing efforts concerning the
23 land are concluded.

24 (d) Paragraphs (b) and (c) are subject to the Open
25 Government Sunset Review Act in accordance with s. 119.15 and
26 shall stand repealed on October 2, 2023, unless reviewed and
27 saved from repeal through reenactment by the Legislature.

28
29 If the Board of Trustees of the Internal Improvement Trust Fund
30 declines to accept title to the lands offered under this
31 section, the land may be disposed of by the district under the
32 provisions of this section.

33 Section 2. The Legislature finds that it is a public
34 necessity that written valuation of land determined to be
35 surplus pursuant to s. 373.089, Florida Statutes, related
36 documents used to form the valuation or which pertain to the
37 valuation, and written offers to purchase surplus land, be made
38 confidential and exempt from s. 119.07(1), Florida Statutes, and
39 s. 24(a), Article I of the State Constitution until the contract



Amendment No.

40 | or agreement regarding the purchase, exchange, or disposal of
41 | the surplus land is approved by the district in order to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-03 OGSR/Criminal Justice Commission
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Toliver <i>HT</i>	Harrington <i>HA</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.

Currently a municipality or county may create an advisory commission to examine local criminal justice issues. Such a commission, termed a duly constituted criminal justice commission (commission), may have a need to discuss active criminal intelligence or investigative information to develop strategies and offer recommendations regarding the criminal justice activities of their locality. As a governmental entity, each commission meeting is subject to the public meetings requirements of the sunshine law.

Current law provides an exemption from public meetings requirements for those portions of a commission meeting during which active criminal intelligence or investigative information is discussed and that information is being considered by, or which may foreseeably come before, the commission. However, at each commission meeting during which active criminal intelligence or investigative information is being considered, the commission members must publicly disclose it has been discussed.

The bill reenacts the public meeting exemption, which will repeal on October 2, 2018, 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:

- 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.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.

Duly Constituted Criminal Justice Commission

Currently a county or municipality may create a duly constituted criminal justice commission (commission) to examine local criminal justice issues.⁶ The commission, which serves as an advisory body, must be created by county or municipal ordinance and be composed of individuals from the private and public sectors.⁷ Meetings of the commission are subject to s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. As such, the meetings must be reasonably noticed and open to the public, unless otherwise made exempt.

Public Meeting Exemption under Review

In 2013, the Legislature created a public meeting exemption for portions of a commission meeting during which commission members discuss active criminal intelligence information⁸ or active criminal

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 286.01141, F.S.

⁷ *Id.*

⁸ Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information is considered "active" so long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d), F.S.

investigative information⁹ that is being considered by, or which may foreseeably come before, the commission.¹⁰ However, at any public meeting during which such information is discussed, the members of the commission are required to publicly disclose the fact that the matter has been discussed.¹¹

The 2013 public necessity statement for the exemption provides that:

If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.¹²

Pursuant to the Open Government Sunset Review Act, the public meeting exemption will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review Results

During the 2017 interim, subcommittee staff sent a questionnaire to each county and city as part of its review under the Open Government Sunset Review Act. In all, 20 questionnaire responses were received.¹³ Only two respondents, Miami-Dade County and Palm Beach County indicated they have a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council “was created in 1978 and was codified via ordinance in February 2014.”¹⁴ According to the questionnaire response, “[t]he general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities and other activities related to criminal justice.”¹⁵

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.¹⁶ The commission prioritizes its projects at its annual meeting and its discussions “center around the progress on these priorities which in the past few years have been [the

⁹ Section 119.011(3)(b), F.S., defines the term “criminal investigative information” to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information is considered to be “active” so long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d), F.S.

¹⁰ Section 286.01141(2), F.S.

¹¹ *Id.*

¹² Chapter 2013-196, L.O.F.

¹³ Questionnaire and responses are on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁴ Miami-Dade County Response to OGSR Questionnaire, pg. 2, on file with the House Oversight, Transparency & Administration Subcommittee; *see also* Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX, ss. 2-2166—2-2173. *See* https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTCXLIXDAAMCRJUCO_S2-2166CRPU (last visited on November 7, 2017).

¹⁵ Miami-Dade County Response to OGSR Questionnaire, pg. 3, on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁶ Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. *See* <http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf> (last visited on November 7, 2017).

commission's] ... reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law enforcement information sharing systems, and the Batterers' Intervention Program."¹⁷

The Dade-Miami Criminal Justice Council and the Palm Beach County Criminal Justice Commission have not closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigative information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County recommended reenactment of the exemption: "While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings."¹⁸

Effect of the Bill

The bill removes the repeal date thereby reenacting the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission.

B. SECTION DIRECTORY:

Section 1 amends s. 286.01141, F.S., to save from repeal the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission.

Section 2 provides an effective date of October 1, 2018.

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.

¹⁷ Palm Beach County Response to the Staff OGSR Questionnaire, pg. 5, on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁸ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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. 286.01141, F.S., which
 4 provides an exemption from public meeting requirements
 5 for certain portions of meetings by a duly constituted
 6 criminal justice commission; removing the scheduled
 7 repeal of the exemption; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 286.01141, Florida Statutes, is amended
 12 to read:



13 286.01141 Criminal justice commissions; public meetings
 14 exemption.—

15 ~~(3) This section is subject to the Open Government Sunset~~
 16 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 17 ~~on October 2, 2018, unless reviewed and saved from repeal~~
 18 ~~through reenactment by the Legislature.~~

19 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-04 OGSR/Human Trafficking Expunction
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Harrington 	Harrington 

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption 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.

Human trafficking is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Human trafficking is a form of modern-day slavery in which young children, teenagers, and adults are subjected to force, fraud, or coercion for sexual exploitation or forced labor.

Florida law allows a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme. The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.

Current law provides that a criminal history record related to human trafficking that is ordered expunged but that is retained by FDLE is confidential and exempt from public record requirements. Such records must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; and upon order of a court of competent jurisdiction.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on the 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 Act¹ 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:

- 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.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.

Human Trafficking

Human trafficking is a form of modern-day slavery affecting young children, teenagers, and adults, who are subjected to force, fraud, or coercion for sexual exploitation or forced labor.⁶ Many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry. Trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁷ In 2004, the Florida Legislature criminalized human trafficking and the unlawful procurement of human labor or services.⁸ Florida law defines the term "human trafficking" to include transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.⁹ Under current law, any person who knowingly engages in human trafficking commits a first-degree felony.¹⁰

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 of the State Constitution.

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

⁶ Section 787.06(1)(a), F.S.

⁷ *Id.*

⁸ Chapter 2004-391, L.O.F.; codified as s. 787.06, F.S.

⁹ *Id.*

¹⁰ *Id.*

Expunction of Human Trafficking Records

In 2013, the Legislature created a process to allow a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme.¹¹ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.¹²

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for a criminal history record that is ordered expunged but that is retained by FDLE. Such record is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹³ The record must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; and upon order of a court of competent jurisdiction.¹⁴

The 2013 public necessity statement for the exemption provided that:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.¹⁵

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.¹⁶

During the 2017 interim, subcommittee staff consulted with staff from FDLE, the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review under the Open Government Sunset Review Act. According to FDLE, a total of 33 orders for expunction have been processed since 2014. Specifically, there was one order processed in 2014, there were 12 processed in 2015 and six in 2016, and there have been 14 thus far in 2017.¹⁷

¹¹ Chapter 2013-99, L.O.F.; codified as s. 943.0583, F.S.

¹² Section 943.045(16), F.S.

¹³ Section 943.0583(10), F.S.

¹⁴ *Id.*

¹⁵ Section 2, ch. 2013-99, L.O.F.

¹⁶ Section 943.0583(10)(b), F.S.

¹⁷ Email from Ronald E. Draa, Director of External Affairs, FDLE, to Senate Criminal Justice Committee staff on October 19, 2017 (on file with the Oversight, Transparency & Administration Subcommittee).

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for a criminal history record of a victim of human trafficking that a court has ordered expunged but that has been retained by FDLE.

B. SECTION DIRECTORY:

Section 1 amends s. 943.0583, F.S., to reenact the public record exemption for certain expunged criminal history records retained by FDLE.

Section 2 provides an effective date of October 1, 2018.

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. 943.0583, F.S., which
 4 provides an exemption from public record requirements
 5 for certain criminal history records ordered expunged
 6 that are retained by the Department of Law
 7 Enforcement; removing the scheduled repeal of the
 8 exemption; providing an effective date.

9

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

11

12 Section 1. Subsection (10) of section 943.0583, Florida
 13 Statutes, is amended to read:

14 943.0583 Human trafficking victim expunction.—

15 (10) (a) A criminal history record ordered expunged under
 16 this section that is retained by the department is confidential
 17 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 18 Constitution, except that the record shall be made available:

19 1. To criminal justice agencies for their respective
 20 criminal justice purposes; ~~and~~

21 2. To any governmental agency that is authorized by state
 22 or federal law to determine eligibility to purchase or possess a
 23 firearm or to carry a concealed firearm for use in the course of
 24 such agency's official duties; and. ~~Otherwise, such record shall~~
 25 ~~not be disclosed to any person or entity except~~

26 3. Upon order of a court of competent jurisdiction.

27 (b) A criminal justice agency may retain a notation
 28 indicating compliance with an order to expunge.

29 ~~(b) This subsection is subject to the Open Government~~
 30 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 31 ~~repealed on October 2, 2018, unless reviewed and saved from~~
 32 ~~repeal through reenactment by the Legislature.~~

33 Section 2. This act shall take effect October 1, 2018.