



Oversight, Transparency & Administration Subcommittee

January 23, 2018
3:30 PM – 6:30 PM
Morris Hall (17 HOB)

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time: Tuesday, January 23, 2018 03:30 pm
End Date and Time: Tuesday, January 23, 2018 06:30 pm
Location: Morris Hall (17 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 79 Public Meetings by Roth
HB 155 State Symbols by Magar
HB 653 Pub. Rec./Photographs or Video or Audio Recordings that Depict or Record Killing of a Person by Brown
HB 889 West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County by Willhite
HB 941 Administrative Procedures by Moraitis
HB 977 Retirement of Instructional Personnel and Administrative Personnel by Fine
CS/HB 1037 Pub. Rec./Public Guardians/Employees with Fiduciary Responsibility by Children, Families & Seniors Subcommittee, Gruters
HB 1055 Pub. Rec./Addiction Treatment Facility Personnel by DuBose
HB 1139 City Pension Fund for Firefighters and Police Officers in the City of Tampa, Hillsborough County by Cruz, Harrison
CS/HB 1141 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County by Local, Federal & Veterans Affairs Subcommittee, White
HB 1199 Pub. Rec./Diversion Programs by Ahern
HB 1319 Voter Registration Maintenance by Mariano
HB 1357 Information Technology by Grant, J., Toledo

Consideration of the following proposed committee bill(s):

PCB OTA 18-06 -- Budgetary Transparency
PCB OTA 18-07 -- Public Records/United States Census Bureau


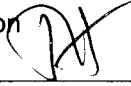
Workshop on the following:

HB 715 Direct Purchases of Tangible Personal Property by Contractors by Leek

NOTICE FINALIZED on 01/19/2018 4:29PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 79 Public Meetings
SPONSOR(S): Roth
TIED BILLS: **IDEN./SIM. BILLS:** SB 192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore 	Harrington 
2) Local, Federal & Veterans Affairs Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

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

The "Government in the Sunshine Law" further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings. Minutes of a public meeting must be promptly recorded and be open to public inspection.

The bill defines "de facto meeting" as the use of board or commission staff or third parties, acting as intermediaries, to facilitate a discussion of public business between or among board or commission members. The bill clarifies that de facto meetings are subject to the Sunshine Law.

The bill specifies that members of the same board or commission may participate in fact-finding exercises or excursions to research public business, and may participate in meetings with a member of the Legislature, if:

- The board or commission provides reasonable notice;
- A vote, an official act, or an agreement regarding an action at a future meeting does not occur;
- There is no discussion of "public business" that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

The bill also provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

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

Public Meetings Law

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

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.¹ Minutes of a public meeting must be promptly recorded and be open to public inspection.²

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.³ Acts taken by a board or commission in violation of this requirement are considered void,⁴ though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.⁵

The Sunshine Law applies to "[m]embers-elect of boards, commissions, agencies, etc." as soon as they are elected, even if they have not yet been sworn into office.⁶ Any assemblage of members-elect or elected members of a collegial body who "discuss matters on which foreseeable action may be taken by that board or commission" constitutes a meeting subject to the Sunshine Law.⁷

Definition of "Meeting"

The Legislature has not defined the term "meeting" within the context of the Sunshine Law. However, the courts have. In *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, the Florida Supreme Court stated:

[M]eetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission where the members deal with some matter on which foreseeable action will be taken by the Board.⁸

¹ Section 286.011(1), F.S.

² Section 286.011(2), F.S.

³ Section 286.011(1), F.S.

⁴ *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).

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

⁶ *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

⁷ *Id.*

⁸ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

The Court has also interpreted the intent of the Sunshine Law in relation to the types of assemblages that constitute a “meeting”:

The obvious intent of the Government in the Sunshine Law, *supra*, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board.⁹

A meeting, within the meaning of the Sunshine Law, can occur even if the members of a collegial body do not speak to each other about a topic where foreseeable action may take place. Courts have ruled that the *opportunity* to make a decision was sufficient to make a gathering of school officials a public meeting.¹⁰ In one case, school board members, two school board candidates, a superintendent and his deputy, and members of the press, toured new school bus routes on a school bus. The school board members sat several rows away from each other as a precaution and none of the members discussed preferences, expressed opinions, or voted on the bus trip.¹¹ Despite taking those precautions, the court opined that the school board “had ultimate decision-making authority,” gathered in a confined space, and had “the opportunity at that time to make decisions outside of the public scrutiny.” Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.¹²

A “sunshine meeting” may also occur even if the members of a board do not assemble or share information through an intermediary. In this case, a superintendent met individual school board members in succession to discuss redistricting, but denied acting as a “go-between” or sharing the opinions of one board member with another one.¹³ Although board members did not exchange information or otherwise congregate, the court, in finding a violation of the Sunshine Law, held:

The scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in *de facto* meetings by two or more members of the board at which official action was taken.¹⁴

Any meeting when public officials meet to avoid being seen or heard by the public violates the Sunshine Law, regardless of whether that meeting is formal or informal.¹⁵ The judiciary has advised, “[i]f a public official is unable to know whether by convening two or more officials he is violating the law, he should leave the meeting forthwith.”¹⁶

Not all meetings of government officials are subject to the Sunshine Law, and the presence of two government officials alone is not sufficient to require a public meeting.¹⁷ In addition to the exemptions listed in statute, staff meetings and fact-finding meetings are exceptions to the Sunshine Law and there is no requirement that these meetings be open and noticed to the public.

Officials may also meet alone with their staff or employees for “fact-finding” purposes in order to execute their duties without violating the Sunshine Law.¹⁸ In addition, case law states that as long as they do not have decision making authority, “fact-finding” committees are not subject to the Sunshine Law.¹⁹ The Florida Supreme Court ruled that “[w]hen a committee has been established for and

⁹ *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).

¹⁰ *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

¹¹ *Id.*

¹² *Id.*

¹³ *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).

¹⁴ *Id.*

¹⁵ *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).

¹⁶ *Id.*

¹⁷ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).

¹⁸ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010). See also *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).

¹⁹ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat.”²⁰

Effect of the Bill

The bill creates the following definitions:

- “De facto meeting” means the use of board or commission staff or third parties, acting as intermediaries, to facilitate a discussion of public business between or among board or commission members.
- “Discussion” means a conversation between or among board or commission members regardless of whether through oral, written, electronic, or any other form of communication.
- “Meeting” means a gathering, whether formal or informal, of two or more members of the same board or commission, even if they have not yet taken office.
- “Official act” means the adoption of a resolution or rule or other formal action being taken by the board or commission.
- “Public business” means any matter before, or foreseeably expected to come before, the board or commission.

The bill clarifies that de facto meetings are subject to the Sunshine Law.

The bill also specifies that members of the same board or commission may participate in fact-finding exercises or excursions to research public business, and may participate in meetings with a member of the Legislature, if:

- The board or commission provides reasonable notice;
- A vote, an official act, or an agreement regarding an action at a future meeting does not occur;
- There is no discussion of “public business” that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

Finally, the bill provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

B. SECTION DIRECTORY:

Section 1. amends s. 286.011, F.S., relating to public meetings and public records; public inspection; criminal and civil penalties.

Section 2. provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁰ *Id.* at 757.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of "Meeting"

The definition of "meeting" refers to a gathering of two or more members of the same board or commission, even if they have not yet taken office; however, by definition, a member of a board or commission has already taken office.

Fact-finding Exercises

It is unclear whether the provision regarding fact-finding exercises and excursions requires such exercises and excursions to be open to the public.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public meetings; amending s.
 3 286.011, F.S.; defining terms; specifying conditions
 4 under which members of any board or commission of any
 5 state agency or authority or of any agency or
 6 authority of any county, municipal corporation, or
 7 political subdivision may participate in fact-finding
 8 exercises or excursions; providing for construction;
 9 providing an effective date.

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

12
 13 Section 1. Subsection (1) of section 286.011, Florida
 14 Statutes, is amended, subsections (2) through (8) are renumbered
 15 as subsections (3) through (9), respectively, and a new
 16 subsection (2) is added to that section, to read:

17 286.011 Public meetings and records; public inspection;
 18 criminal and civil penalties.—

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

20 1. "De facto meeting" means the use of board or commission
 21 staff or third parties, acting as intermediaries, to facilitate
 22 a discussion of public business between or among board or
 23 commission members.

24 2. "Discussion" means a conversation between or among
 25 board or commission members regardless of whether through oral,

26 written, electronic, or any other form of communication.

27 3. "Meeting" means a gathering, whether formal or
 28 informal, of two or more members of the same board or
 29 commission, even if they have not yet taken office.

30 4. "Official act" means the adoption of a resolution or
 31 rule or other formal action being taken by the board or
 32 commission.

33 5. "Public business" means any matter before, or
 34 foreseeably expected to come before, the board or commission.

35 (b) Except as otherwise provided in the State
 36 Constitution, all meetings or de facto meetings of any board or
 37 commission of any state agency or authority or of any agency or
 38 authority of any county, municipal corporation, or political
 39 subdivision at which official acts are to be taken or public
 40 business is to be transacted or discussed are declared to be
 41 public meetings open to the public., ~~except as otherwise~~
 42 ~~provided in the Constitution, including meetings with or~~
 43 ~~attended by any person elected to such board or commission, but~~
 44 ~~who has not yet taken office, at which official acts are to be~~
 45 ~~taken are declared to be public meetings open to the public at~~
 46 ~~all times, and~~

47 (c) Members of the same board or commission may
 48 participate in fact-finding exercises or excursions to research
 49 public business, and may participate in meetings with a member
 50 of the Legislature, if:

51 1. The board or commission provides reasonable notice;

52 2. A vote, an official act, or an agreement regarding an
 53 action at a future meeting does not occur;

54 3. A discussion of public business, as those terms are
 55 defined in paragraph (a), does not occur; and

56 4. Appropriate records, minutes, audio recordings, or
 57 video recordings are made and retained as a public record.

58 (d) A ~~no~~ resolution, rule, or formal action ~~is not shall~~
 59 be considered binding ~~unless~~ ~~except~~ as taken or made at a public
 60 ~~such~~ meeting. The board or commission must provide reasonable
 61 notice of all such meetings.

62 (2) If official acts are not taken and public business is
 63 not discussed, subsection (1) may not be construed to require
 64 public notice of, and access to, any gathering of two or more
 65 members of the same board or commission.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 155 State Symbols
SPONSOR(S): Magar
TIED BILLS: IDEN./SIM. **BILLS:** SB 404

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

SUMMARY ANALYSIS

The Legislature has designated various state emblems, including designating a state seal, motto, fruit, beverage, saltwater reptile, and horse. In 2008, the Legislature designated the Loggerhead Turtle as the official state saltwater reptile and the Florida Cracker Horse as the official state horse. Each of these two designations is scheduled for repeal on July 1, 2018, unless the Legislature reviews and reenacts the designations before that date. There is no animal designated as the official state heritage cattle breed.

This bill removes the scheduled repeal of the Loggerhead Turtle as the official state saltwater reptile and the scheduled repeal of the Florida Cracker Horse as the official state horse. As such, if the bill passes, these animals will remain designated state symbols. In addition, the bill designates the Florida Cracker Cattle as the official state heritage cattle breed.

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:

Present Situation

Chapter 15, F.S., designates official state emblems. To date, there are designations for a state seal, motto, tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, and horse.¹

In 2008, the Legislature designated the Loggerhead Turtle as the official state saltwater reptile and the Florida Cracker Horse as the official state horse.² Each of these two designations is scheduled for repeal on July 1, 2018, unless the Legislature reviews and reenacts the designations before that date.³ There is no animal designated as the official state heritage cattle breed.

Loggerhead Turtle

The Loggerhead sea turtle inhabits the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans.⁴ Adults grow to an average weight of about 200 pounds.⁵ The loggerhead is characterized by a large head with blunt jaws.⁶ The top shell and flippers are a reddish-brown color; the underside is yellow.⁷

The loggerhead turtle feeds on mollusks, crustaceans, fish, and other marine animals.⁸ The United States nesting season extends from about May through August with nesting occurring primarily at night.⁹ The major nesting concentration in the United States is found in South Florida.¹⁰ The species has been on the threatened species list since 1978.¹¹

Cracker Horse

The Florida Cracker Horse's history in Florida can be traced back to the 1500s when its ancestors were left behind in Florida by Spanish explorers making room on their ships for treasure collected during their explorations.¹² The explorers brought horses derived from the Iberian Horse of Sixteenth Century Spain.¹³ The horses carried the genes of the North African Barb, Spanish Sorraia, and Spanish Jennet (gaited).¹⁴ The horses spread throughout the region and developed into the modern breed of the Florida Cracker Horse.¹⁵ By the Eighteenth and Nineteenth centuries, cattle ranching had become big business

¹ s. 15.03–15.0526, F.S.

² s. 15.0386, F.S.; s. 15.0526, F.S.; ch. 2008-34, L.O.F.

³ *Id.*

⁴ U.S. FISH & WILDLIFE SERVICE, *Loggerhead Sea Turtle*,

<http://www.fws.gov/northflorida/SeaTurtles/Turtle%20Factsheets/loggerhead-sea-turtle.htm> (last visited Jan. 17, 2018).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² THE FLORIDA CRACKER HORSE ASSOCIATION, *History of the Cracker Horse*, <http://floridacrackerhorses.com/history.htm> (last visited Jan. 17, 2018).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

in Florida, and the horse was a popular choice among farmers and cattlemen.¹⁶ The Cracker Horse gained its name from the fact that the Florida cattlemen who used the horse were called “Cracker” after the sound their whips made.¹⁷

Cracker Cattle

The Florida Cracker Cattle is one of the oldest breeds of cattle in the United States, descending from Spanish cattle brought to the new World in the early 1500s.¹⁸ This breed is unique, as it was shaped by the Florida climate and became “heat tolerant, long lived, resistant to parasites and diseases, and productive on the low quality forage found on the grasslands and in the swamps of the Deep South.”¹⁹ While the Florida Cracker cattle breed is rare, it is considered a “living part of Florida history, and herds have been maintained at several state parks and forests.”²⁰

Effect of the Bill

The bill removes the scheduled repeal date for the designation of both the Loggerhead Turtle as the official state saltwater reptile and the Florida Cracker Horse as the official state horse. As such, if the bill passes, these animals will remain designated state symbols.

The bill also designates the Florida Cracker Cattle as the official state heritage cattle breed.

B. SECTION DIRECTORY:

Section 1 amends s. 15.0386, F.S., deleting the scheduled repeal of the Loggerhead Turtle as the official state saltwater reptile.

Section 2 amends s. 15.0526, F.S., deleting the scheduled repeal of the Florida Cracker Horse as the official state horse.

Section 3 creates s. 15.0527, F.S., to designate the Florida Cracker Cattle as the official Florida heritage cattle breed.

Section 4 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ THE LIVESTOCK CONSERVANCY, *Florida Cracker Cattle*, <https://livestockconservancy.org/index.php/heritage/internal/florida-cracker-cattle> (last visited Jan. 17, 2018).

¹⁹ *Id.*

²⁰ *Id.*

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 government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

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 symbols; amending s. 15.0386,
 3 F.S.; abrogating the scheduled repeal of the state
 4 saltwater reptile designation; amending s. 15.0526,
 5 F.S.; abrogating the scheduled repeal of the state
 6 horse designation; creating s. 15.0527, F.S.;
 7 designating the Florida Cracker Cattle as the official
 8 state heritage cattle breed; providing an effective
 9 date.

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

Section 1. Section 15.0386, Florida Statutes, is amended to read:

15.0386 Official state saltwater reptile.—

~~(1)~~ The Loggerhead Turtle is designated as the official Florida state saltwater reptile.

~~(2) This section is repealed July 1, 2018, unless reviewed and reenacted by the Legislature before that date.~~

Section 2. Section 15.0526, Florida Statutes, is amended to read:

15.0526 Official state horse.—

~~(1)~~ The Florida Cracker Horse (Marshtackie) is designated as the official Florida state horse.

~~(2) This section is repealed July 1, 2018, unless reviewed~~

26 ~~and reenacted by the Legislature before that date.~~

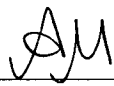
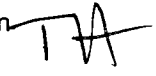
27 Section 3. Section 15.0527, Florida Statutes, is created
28 to read:

29 15.0527 Official state heritage cattle breed.—The Florida
30 Cracker Cattle is designated as the official Florida heritage
31 cattle breed.

32 Section 4. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 653 Pub. Rec./Photographs or Video or Audio Recordings that Depict or Record Killing of a Person
SPONSOR(S): Brown
TIED BILLS: IDEN./SIM. **BILLS:** SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore 	Harrington 
2) Criminal Justice Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings held by an agency that depict or record the killing of a person. In 2016, the Legislature narrowed the exemption so that it applies only to photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

These photographs and video and audio recordings are confidential and exempt from public record requirements, except that the exemption permits a surviving spouse to view, listen to, and copy these records. If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records. Access to the confidential and exempt records is also permitted for a local governmental entity or a state or federal agency in furtherance of its official duties and to others who obtain a court order granting access.

The bill expands the exemption so that it applies to photographs and video and audio recordings that depict or record the killing of *any* person. Thus, it reverts the exemption back to the exemption that was in place from 2011 to 2016 before the Legislature narrowed it. However, the bill does provide that the term does not include the killing of a person in the care and custody of a state agency. The term "care and custody of a state agency" includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, a protective investigation or protective supervision of a vulnerable adult, or correctional supervision.

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 public necessity statement as required by the State Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³ Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Open Government Sunset Review Act

The Open Government Sunset Review Act⁴ 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.⁵

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.⁶

Exemption for Photographs and Recordings Depicting the Killing of a Person

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings held by an agency⁷ that depict or record the killing of a person.⁸ Pursuant to the Open Government Sunset Review Act, the exemption was scheduled to repeal on October 2, 2016, unless reenacted by the Legislature.⁹ During the 2015 interim, staff of the House of Representatives and Senate conducted a review of the exemption and jointly sent a survey regarding interpretation and implementation of the public record exemption to state agencies, state universities and colleges,

¹ FLA. CONST. art. I, s. 24(c).

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

³ FLA. CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(3), F.S.

⁶ Section 119.15(6)(b), F.S.

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

⁸ Section 1, ch. 2011-115, L.O.F. "Killing of a person" was defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death."

⁹ *Id.*

municipalities, and local law enforcement agencies that received or maintained the records protected by the exemption. Most of the entities that responded recommended reenacting the exemption.¹⁰

During the 2016 Regular Session, the Legislature narrowed the exemption so that it applies only to photographs and video and audio recordings that depict the killing of a law enforcement officer who was acting in accordance with his or her official duties.¹¹ These photographs and video and audio recordings are confidential and exempt¹² from public record requirements, except that the exemption permits a surviving spouse to view, listen to, and copy these records.¹³ If there is no surviving spouse, the deceased's surviving parents may access the confidential and exempt records, and if there are no surviving parents, an adult child of the deceased may access the records.¹⁴ The surviving relative who has the authority to access these records may designate in writing an agent to obtain them.¹⁵

In addition, a local governmental entity or a state or federal agency, upon written request, may view, listen to, or copy the confidential and exempt photographs and video and audio recordings in furtherance of its official duties. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.¹⁶

Persons other than those covered by these exceptions may only have access to the confidential and exempt photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view, listen to, or copy a confidential and exempt photograph or video or audio recording. The court is authorized to prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.¹⁷

If a petition is filed with the court to view, listen to, or copy the confidential and exempt photographs or recordings, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter.¹⁸ If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased. If the court grants access to the confidential and exempt record, the access must be provided under the direct supervision of the custodian of the record or his or her designee.¹⁹

¹⁰ House of Representatives Final Bill Analysis for Senate Bill 7022 (2016), p. 4 (Apr. 13, 2016)(on file with the Oversight, Transparency & Administration Subcommittee).

¹¹ Chapter 2016-214, L.O.F. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 406.136(2), F.S.

¹⁴ *Id.*

¹⁵ Section 406.136(3)(a), F.S.

¹⁶ Section 406.136(3)(b), F.S.

¹⁷ Section 406.136(4), F.S.

¹⁸ Section 406.136(5), F.S.

¹⁹ Section 406.136(4)(c), F.S.

It is a third degree felony for any custodian of a photograph or video or audio recording to willfully and knowingly violate these provisions.²⁰ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.²¹

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio recording.²²

The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.²³

Effect of the Bill

The bill expands the public record exemption for photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties to apply the exemption to such records that depict or record the killing of *any* person. Thus, it reverts the exemption back to the exemption that was in place from 2011 to 2016 before the Legislature narrowed it. However, the bill does provide that the term does not include the killing of a person in the care and custody of a state agency. The term “care and custody of a state agency” includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, a protective investigation or protective supervision of a vulnerable adult, or correctional supervision, as defined in chapters 39, 409, 415, or 945, F.S.

The bill provides a public necessity statement as required by the State Constitution, specifying that the photographs and video and audio recordings are highly sensitive representations of the deceased that, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased.

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

B. SECTION DIRECTORY:

Section 1. amends s. 406.136, F.S., relating to a photograph or video or audio recording that depicts or records the killing of a person.

Section 2. provides a public necessity statement.

Section 3. provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

²⁰ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years and a fine up to \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

²¹ Section 406.136(6)(b), F.S.

²² Section 406.136(c), F.S. In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

²³ Section 406.136(7), F.S.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption for photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties to apply the exemption to such records that depict or record the killing of *any* person. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.136, F.S.; expanding an exemption from public
 4 records requirements for a photograph or video or
 5 audio recording held by an agency that depicts or
 6 records the killing of a law enforcement officer to
 7 include a photograph or video or audio recording held
 8 by an agency that depicts or records the killing of a
 9 person; providing for future legislative review and
 10 repeal of the exemption; providing a statement of
 11 public necessity; providing an effective date.

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

14
 15 Section 1. Section 406.136, Florida Statutes, is amended
 16 to read:

17 406.136 A photograph or video or audio recording that
 18 depicts or records the killing of a person ~~law enforcement~~
 19 ~~officer who was acting in accordance with his or her official~~
 20 ~~duties.~~-

21 (1) As used in this section, the term "killing of a
 22 person" ~~"killing of a law enforcement officer who was acting in~~
 23 ~~accordance with his or her official duties"~~ means all acts or
 24 events that cause or otherwise relate to the death of any human
 25 being ~~a law enforcement officer who was acting in accordance~~

26 ~~with his or her official duties~~, including any related acts or
 27 events immediately preceding or subsequent to the acts or events
 28 that were the proximate cause of death. The term does not
 29 include the killing of a person in the care and custody of a
 30 state agency. For purposes of this subsection, the term "care
 31 and custody of a state agency" includes, but is not limited to,
 32 a child abuse protective investigation, protective supervision,
 33 foster care and related services, a protective investigation or
 34 protective supervision of a vulnerable adult, or correctional
 35 supervision, as defined in chapter 39, chapter 409, chapter 415,
 36 or chapter 945.

37 (2) A photograph or video or audio recording that depicts
 38 or records the killing of a person ~~law enforcement officer who~~
 39 ~~was acting in accordance with his or her official duties~~ is
 40 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 41 of the State Constitution, except that a surviving spouse of the
 42 decedent may view and copy any such photograph or video
 43 recording or listen to or copy any such audio recording. If
 44 there is no surviving spouse, ~~then~~ the surviving parents shall
 45 have access to such records. If there is no surviving spouse or
 46 parent, ~~the then an~~ adult children ~~child~~ shall have access to
 47 such records.

48 (3) (a) The deceased's surviving relative, with whom
 49 authority rests to obtain such records, may designate in writing
 50 an agent to obtain such records.

51 (b) A local governmental entity, or a state or federal
 52 agency, in furtherance of its official duties, pursuant to a
 53 written request, may view or copy a photograph or video
 54 recording or may listen to or copy an audio recording of the
 55 killing of a person ~~law enforcement officer who was acting in~~
 56 ~~accordance with his or her official duties~~ and, unless otherwise
 57 required in the performance of its ~~their~~ duties, the identity of
 58 the deceased shall remain confidential and exempt.

59 (c) The custodian of the record, or his or her designee,
 60 may not permit any other person to view or copy such photograph
 61 or video recording or listen to or copy such audio recording
 62 without a court order.

63 (4) (a) The court, upon a showing of good cause, may issue
 64 an order authorizing any person to view or copy a photograph or
 65 video recording that depicts or records the killing of a person
 66 ~~law enforcement officer who was acting in accordance with his or~~
 67 ~~her official duties~~ or to listen to or copy an audio recording
 68 that depicts or records the killing of a person ~~law enforcement~~
 69 ~~officer who was acting in accordance with his or her official~~
 70 ~~duties~~ and may prescribe any restrictions or stipulations that
 71 the court deems appropriate.

72 (b) In determining good cause, the court shall consider:

- 73 1. Whether such disclosure is necessary for the public
- 74 evaluation of governmental performance;
- 75 2. The seriousness of the intrusion into the family's

76 | right to privacy and whether such disclosure is the least
 77 | intrusive means available; and

78 | 3. The availability of similar information in other public
 79 | records, regardless of form.

80 | (c) In all cases, the viewing, copying, listening to, or
 81 | other handling of a photograph or video or audio recording that
 82 | depicts or records the killing of a person ~~law enforcement~~
 83 | ~~officer who was acting in accordance with his or her official~~
 84 | ~~duties~~ must be under the direct supervision of the custodian of
 85 | the record or his or her designee.

86 | (5) A surviving spouse shall be given reasonable notice of
 87 | a petition filed with the court to view or copy a photograph or
 88 | video recording that depicts or records the killing of a person
 89 | ~~law enforcement officer who was acting in accordance with his or~~
 90 | ~~her official duties~~ or to listen to or copy any such audio
 91 | recording, a copy of such petition, and reasonable notice of the
 92 | opportunity to be present and heard at any hearing on the
 93 | matter. If there is no surviving spouse, ~~then~~ such notice must
 94 | be given to the parents of the deceased and, if the deceased has
 95 | no surviving ~~living~~ parent, ~~then~~ to the adult children of the
 96 | deceased.

97 | (6) (a) Any custodian of a photograph or video or audio
 98 | recording that depicts or records the killing of a person ~~law~~
 99 | ~~enforcement officer who was acting in accordance with his or her~~
 100 | ~~official duties~~ who willfully and knowingly violates this

101 section commits a felony of the third degree, punishable as
 102 provided in s. 775.082, s. 775.083, or s. 775.084.

103 (b) Any person who willfully and knowingly violates a
 104 court order issued pursuant to this section commits a felony of
 105 the third degree, punishable as provided in s. 775.082, s.
 106 775.083, or s. 775.084.

107 (c) A criminal or administrative proceeding is exempt from
 108 this section but, unless otherwise exempted, is subject to all
 109 other provisions of chapter 119; 7 provided, however, ~~that~~ this
 110 section does not prohibit a court in a criminal or
 111 administrative proceeding upon good cause shown from restricting
 112 or otherwise controlling the disclosure of a killing, crime
 113 scene, or similar photograph or video or audio recording
 114 ~~recordings~~ in the manner prescribed in this section ~~herein~~.

115 (7) The ~~This~~ exemption in this section shall be given
 116 retroactive application and shall apply to all photographs or
 117 video or audio recordings that depict or record the killing of a
 118 person ~~law enforcement officer who was acting in accordance with~~
 119 ~~his or her official duties~~, regardless of whether the killing of
 120 the person occurred before, on, or after July 1, 2015 ~~2011~~.
 121 However, nothing in this section ~~herein~~ is intended to, nor may
 122 be construed to, overturn or abrogate or alter any existing
 123 orders duly entered into by any court of this state, as of the
 124 effective date of this act, which restrict or limit access to
 125 any photographs or video or audio recordings that depict or

126 record the killing of a person ~~law enforcement officer who was~~
 127 ~~acting in accordance with his or her official duties.~~

128 (8) This section only applies to such photographs and
 129 video and audio recordings held by an agency as defined in s.
 130 119.011.

131 (9) This section is subject to the Open Government Sunset
 132 Review Act in accordance with s. 119.15 and shall stand repealed
 133 on October 2, 2023, unless reviewed and saved from repeal
 134 through reenactment by the Legislature.

135 Section 2. (1) The Legislature finds that it is a public
 136 necessity that photographs and video and audio recordings that
 137 depict or record the killing of a person be made confidential
 138 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 139 Art. I of the State Constitution. The Legislature finds that
 140 photographs and video and audio recordings that depict or record
 141 the killing of a person render a graphic and often disturbing
 142 visual or aural representation of the deceased. Such photographs
 143 and video and audio recordings provide a view of the deceased in
 144 the final moments of life, often bruised, bloodied, broken, with
 145 bullet wounds or other wounds, cut open, dismembered, or
 146 decapitated. As such, photographs and video and audio recordings
 147 that depict or record the killing of a person are highly
 148 sensitive representations of the deceased which, if heard,
 149 viewed, copied, or publicized, could result in trauma, sorrow,
 150 humiliation, or emotional injury to the immediate family of the

151 deceased and detract from the memory of the deceased. The
 152 Legislature recognizes that the existence of the Internet and
 153 the proliferation of personal computers and cellular telephones
 154 throughout the world encourages and promotes the wide
 155 dissemination of such photographs and video and audio recordings
 156 24 hours a day and that widespread unauthorized dissemination of
 157 such photographs and video and audio recordings would subject
 158 the immediate family of the deceased to continuous injury.

159 (2) In addition to the emotional and mental injury that
 160 these photographs and recordings may cause family members, the
 161 Legislature is also concerned that dissemination of photographs
 162 and video and audio recordings that depict or record the killing
 163 of a person is harmful to the public. The Legislature is gravely
 164 concerned and saddened by the horrific mass killings perpetrated
 165 at the Pulse nightclub in Orlando and the Fort Lauderdale-
 166 Hollywood International Airport. The Legislature is concerned
 167 that, if these photographs and recordings are released,
 168 terrorists will use them to attract followers, bring attention
 169 to their causes, and inspire others to kill. The Legislature
 170 also finds that dissemination of these photographs and
 171 recordings may also educe violent acts by the mentally ill or
 172 morally corrupt.

173 (3) The Legislature further recognizes that there
 174 continues to be other types of available information, such as
 175 crime scene reports, which are less intrusive and injurious to

176 the immediate family of the deceased and which continue to
177 provide for public oversight. The Legislature further finds that
178 the exemption provided in this act should be given retroactive
179 application because it is remedial in nature.

180 Section 3. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 889 West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County
SPONSOR(S): Willhite
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee		Harrington <i>TH</i>	Harrington <i>TH</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

The West Palm Beach Police Pension Fund (Fund) was established by the Legislature in 1947. Each police officer employed by West Palm Beach is a Fund participant. According to the most recent data from the Department of Management Services, the fund has 241 active members, 214 retired members, and 36 members in the Deferred Retirement Option Plan (DROP). As of December 30, 2015, the Fund had \$263,834,220 in total assets and \$56,666,324 in unfunded actuarial accrued liability.

The bill modifies the special act creating the Fund to revise the methodology for calculating the monthly pension benefit amount for Fund participants for all years of service earned after October 1, 2017. The bill also makes two technical corrections concerning the effective date of a previous change to the special act and a reference to DROP account balances for deceased Fund members.

The bill implements an agreement reached by the City of West Palm Beach and the union representing the city's police officers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Police Pensions: Marvin B. Clayton Police Officers Pension Trust Fund Act

Local police pension plans are governed by ch. 185, F.S., the Marvin B. Clayton Police Officers Pension Trust Fund Act (Clayton Police Pension Act).¹ Originally enacted in 1939, the Clayton Police Pension Act encouraged cities to create police pension plans by providing access to premium tax revenues. The Clayton Police Pension Act sets forth minimum benefits and standards for municipal police pensions, which cannot be reduced by municipalities; however, the benefits provided by a local plan may vary from the provisions in the Clayton Police Pension Act so long as the minimum standards are met.

Local police pension plans created pursuant to the Clayton Police Pension Act are funded by four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);²
- Employee contributions;³
- Other revenue sources;⁴ and
- Mandatory payments by the city of the normal cost of the plan.⁵

The premium tax is an excise tax of 0.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality.⁶ It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division). In 2016, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to \$75.9 million.⁷

To qualify for insurance premium tax dollars, plans must meet the requirements found in ch. 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division; however, the day-to-day operational control rests with the local boards of trustees.⁸ The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., unless specifically authorized to vary from the law. If the Division determines that a police pension plan created pursuant to ch. 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.⁹

The default employee contribution under the Clayton Police Pension Act is 5 percent of salary, but the percentage may be adjusted.¹⁰ A municipality may elect to make an employee's contributions, but the employee must still contribute at least 0.5 percent of his or her salary.¹¹ Rates may also be increased

¹ Section 185.015, F.S.

² Section 185.07(1)(a), F.S.

³ Section 185.07(1)(b), F.S.

⁴ Section 185.07(1)(c), (e)-(g), F.S.

⁵ Section 185.07(1)(d), F.S.

⁶ Section 185.08, F.S.

⁷ Department of Management Services, *Municipal Police and Fire Plans*, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last accessed Dec. 12, 2017).

⁸ See s. 185.06, F.S.

⁹ Section 185.23(1), F.S.

¹⁰ Section 185.07(1)(b), F.S.

¹¹ Section 185.07(2)(a), F.S.

above 5 percent, subject to the consent of the members' collective bargaining representative or, if none, by a majority consent of the police officer members of the fund.¹²

Florida Protection of Public Employee Retirement Benefits Act

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.¹³ The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.¹⁴ The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.¹⁵

Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.¹⁶ This statement must also be furnished to the Division before the local government can agree to the change.¹⁷ The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).¹⁸

West Palm Beach Police Pension Fund

The West Palm Beach Police Pension Fund (Fund or Plan) was established by the Legislature in 1947.¹⁹ The act governing the Fund was most recently amended in 2012.²⁰ As of September 30, 2016, the Fund had 241 active members, 214 retired members, and 36 members in the Deferred Retirement Option Plan (DROP).²¹ As of December 30, 2015, the Fund had \$263,834,220 in total assets and \$56,666,324 in unfunded actuarial accrued liability.²² Normal retirement age is 55 years of age for those with at least 10 years of service, 50 years of age for those with at least 20 years of service, and any age for those with at least 25 years of service.²³

The Fund currently assumes 8 percent annual growth of its assets.²⁴ During the 2014-15 fiscal year, the Fund saw a 10.40 percent growth in the actuarial value of its assets and a 2.10 percent decline in the market value of its assets.

Retirement Pension Calculation

Retirement benefits under the Plan are calculated using several methods based on both the member's years of service and dates of employment.²⁵ A member's benefit under the Plan must be at least 2 percent of final average salary for each year of service.

¹² Section 185.07(2)(b), F.S.

¹³ Article X, s. 14, Fla. Const.

¹⁴ Section 112.61, F.S.

¹⁵ Section 112.62, F.S.

¹⁶ Section 112.63(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Chapter 47-24981, Laws of Fla.

²⁰ Chapter 2012-259, Laws of Fla.

²¹ Department of Management Services, *Florida Local Government Retirement Systems 2016 Annual Report*, p. 16 of Appendix F, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last accessed Dec. 12, 2017) (herein DMS Local Government Reports).

²² DMS Local Government Reports, p. 19 of Appendix A.

²³ DMS Local Government Reports, p. 67 of Appendix B1.

²⁴ DMS Local Government Reports, p. 21 of Appendix E.

²⁵ Chapter 47-24981, s. 16(9)(a), Laws of Fla., as amended.

Credit for service earned before October 1, 2011, is calculated as follows:

- For members with at least 12 years and 6 months of service as of October 1, 1999, and who were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service²⁶ earned between April 1, 1987, and September 30, 2011, plus 2.5 percent of the final average salary multiplied by years of service earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.
- For members who had less than 12 years and 6 months of service and were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service, earned up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.
- For members who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999, the greater of:
 - 2.5 percent of final average salary multiplied by years of service, up to a total of 26 years, plus 1 percent of final average salary multiplied by the number of years in excess of 26 years.
 - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

For service after October 1, 2011, retirement benefits are calculated using 2.68 percent of the member's final average salary per year and fractional parts of the years of service up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years of service in excess of 26 years.

Effect of Proposed Changes

Retirement Pension Calculation

The bill revises the formula for service earned after October 1, 2017. The pension benefit for all years of service earned after October 1, 2017 is calculated using 3 percent of the final average salary per year and fractional parts of a year up to a total of 26 years, plus 1 percent of the final average salary for the number of years or fractions of years in excess of 26 years of credited service.

Years of service occurring between October 1, 2011 and October 1, 2017 are calculated using 2.68 percent of the Plan member's final average salary per year and are included in the 26-year limitation.

The bill also provides that in no event may the benefit be less than 2.75 percent per year of credited service, rather than 2 percent.

Other Changes

The bill also makes two technical changes. First, the bill inserts the effective date of a 2017 special act amending the plan to reflect when the provision took effect. Second, the bill clarifies a reference to DROP account balances for deceased Fund members.

B. SECTION DIRECTORY:

Section 1: Amends ch. 24981 (1947), Laws of Fla., to revise the formula for calculating the monthly pension benefit for Fund members.

Section 2: Provides that the bill shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 1, 2017

WHERE? *The Palm Beach Post*, a daily newspaper of general circulation published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the West Palm Beach Police Pension
 3 Fund of the City of West Palm Beach, Palm Beach
 4 County; amending ch. 24981 (1947), Laws of Florida, as
 5 amended; revising retirement pension calculation;
 6 conforming terminology; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (h) of subsection (2), paragraph (a)
 11 of subsection (9), paragraph (b) of subsection (13), and
 12 paragraph (c) of subsection (17) of chapter 24981 (1947), Laws
 13 of Florida, as amended by chapter 2017-207, Laws of Florida, are
 14 amended to read:

15 Section 16. West Palm Beach Police Pension Fund.—
 16 (2) Definitions.—The following words or phrases, as used
 17 in this act, shall have the following meanings, unless a
 18 different meaning is clearly indicated by the context:
 19 (h) "Final average salary" means the average of the
 20 monthly salary paid to a member in the 3 best years of
 21 employment. In no event shall any one year, beginning January 1,
 22 2005, include more than 400 hours of overtime. Prior to January
 23 1, 2005, individual years may include more than 400 hours of
 24 overtime. Effective prospectively from January 1, 2013, the
 25 overtime will be limited to 300 hours in any one year. As of the

26 effective date of this act, for purposes of determining final
 27 average salary, any lump sum payment made to a member for
 28 retroactive pay, such amounts shall not be considered as a lump
 29 sum but will be treated as if paid during the retroactive pay
 30 periods.

31 (9) Retirement pension calculation.—

32 (a) Upon retirement eligibility as provided in subsection
 33 (8), a member shall receive a monthly pension. The pension shall
 34 be the following, as applicable:

35 1. For all years of service earned after October 1, 2017,
 36 the benefit is calculated using 3 percent of final average
 37 salary per year and fractional parts of the years of service up
 38 to a total of 26 years, plus 1 percent of the final average
 39 salary multiplied by the number of years, and fraction of a
 40 year, of credited service in excess of 26 years. For all years
 41 of service earned after October 1, 2011, and before October 1,
 42 2017, the benefit is calculated using 2.68 percent of final
 43 average salary per year and fractional parts of the years of
 44 service and is included in the 26-year limitation ~~up to a total~~
 45 ~~of 26 prospective years, plus 1 percent of the final average~~
 46 ~~salary multiplied by the number of years, and fraction of a~~
 47 ~~year, of credited service in excess of 26 years.~~ This change in
 48 the multiplier was due to the change in assumptions in a prior
 49 version of this special act. This reduction is required by this
 50 paragraph. For years of service earned before October 1, 2011,

51 the benefit will be calculated under the provisions of the
 52 applicable subparagraphs 2.-4. For purposes of determining the
 53 26-year limitation, the member's total number of years of
 54 credited service are used, regardless of whether the multiplier
 55 is 3 percent or 2.68 percent. In no event shall the benefit be
 56 less than 2.75 ~~2~~ percent per year of credited service.

57 2. A member who has more than or equal to 12 years and 6
 58 months of service at October 1, 1999, and who was actively
 59 employed by the Department on or after October 1, 1999, shall
 60 receive a benefit equal to 3 ~~three~~ percent of final average
 61 salary multiplied by the number of years, and fraction of a
 62 year, of credited service earned from April 1, 1987, to
 63 September 30, 2011, plus 2.5 percent of final average salary
 64 multiplied by the number of years, and fraction of a year, of
 65 credited service earned prior to April 1, 1987, up to a total of
 66 26 years, plus 1 percent of the final average salary multiplied
 67 by the number of years, and fraction of a year, of credited
 68 service which is in excess of 26 years. ~~However,~~ In no event
 69 shall the benefit be less than 2.75 ~~2~~ percent per year of
 70 credited service. For all years of service after October 1,
 71 2011, the benefit will be calculated in accordance with
 72 subparagraph 1.

73 3. A member who has less than 12 years and 6 months of
 74 service on October 1, 1999, and who was actively employed by the
 75 Department on or after October 1, 1999, shall receive a benefit

76 equal to 3 ~~three~~ percent of final average salary multiplied by
 77 the number of years, and fraction of a year, of credited service
 78 up to September 30, 2011, plus 1 percent of the final average
 79 salary multiplied by the number of years, and fraction of a
 80 year, of credited service which is in excess of 26 years.
 81 ~~However,~~ In no event shall the benefit be less than 2.75 ~~2~~
 82 percent per year of credited service. For all years of service
 83 after October 1, 2011, the benefit will be calculated in
 84 accordance with subparagraph 1.

85 4. A member who terminated employment, retired on a vested
 86 deferred benefit, or retired on or before October 1, 1999, shall
 87 receive a benefit equal to the greater of the following:

88 a. Two and one-half percent of final average salary
 89 multiplied by the number of years, and fraction of a year, of
 90 credited service not to exceed 26 years, plus 1 percent of the
 91 final average salary multiplied by the number of years, and
 92 fraction of a year, of credited service which is in excess of 26
 93 years; or

94 b. The sum of the following:

95 (I) Two and one-half percent of final average salary
 96 multiplied by the number of years, and fraction of a year, of
 97 credited service earned through September 30, 1988; and

98 (II) Two percent of final average salary multiplied by the
 99 number of years, and fraction of a year, of credited service
 100 earned on and after October 1, 1988.

101
 102 To the extent that the benefit accrual factor is less than 3
 103 percent for active members with less than 12 years and 6 months
 104 of service on October 1, 1999, the supplemental pension
 105 distribution calculation under subparagraph (12)(a)2. shall be
 106 adjusted for employees who retire or enter the DROP after
 107 October 1, 1999. The adjustment shall be to decrease the minimum
 108 return of 8.25 percent needed to afford the supplemental pension
 109 distribution, where the amount of the reduction is zero if an
 110 employee has been credited with 12 years and 6 months of service
 111 or more with the 3-percent benefit accrual factor or 1.25
 112 percent if an employee has been credited with no more than a
 113 2.5-percent benefit accrual factor. If an employee has been
 114 credited with less than 12 years and 6 months of service at the
 115 3-percent benefit accrual factor, then the accumulated amount
 116 over 2.5 percent for each year of service divided by one-half
 117 percent divided by 12.5 subtracted from 1 multiplied by 1.25
 118 percent is the reduction from 8.25 percent. An example of the
 119 calculation of the minimum return for the supplemental pension
 120 distribution as herein described is set forth in the collective
 121 bargaining agreement between the City of West Palm Beach and the
 122 Police Benevolent Association, Certified Unit No. 145 and
 123 Certified Unit No. 825, October 1, 1998-September 30, 2001.
 124
 125 Effective October 1, 2011, the assumed investment rate of return

126 was lowered from 8.25 percent to 8 percent, which resulted in a
 127 reduction in the benefit multiplier to 2.68 percent for all
 128 prospective years of service, up to 26 years of service in
 129 total, and 1 percent for each year of service after 26.
 130 Additionally, for any supplemental pension distributions
 131 subsequent to October 1, 2011, the revised factors in this
 132 paragraph will be applied.

133 (13) Deferred Retirement Option Plan (DROP).—

134 (b) Amounts payable upon election to participate in DROP.—

135 1. Monthly retirement benefits that would have been
 136 payable had the member terminated employment with the Department
 137 and elected to receive monthly pension payments shall be paid
 138 into the DROP and credited to the retirant. Payments into the
 139 DROP shall be made monthly over the period the retirant
 140 participates in the DROP, up to a maximum of 60 months.

141 2. Effective October 1, 2002, DROP Participants have the
 142 option to select between two methods to credit investment
 143 earnings to their account. The method may be changed each year
 144 effective October 1; however, the method must be elected prior
 145 to October 1. The methods are:

146 a. Earnings using the rate of investment return earned (or
 147 lost) on Pension Fund assets as reported by the Fund's
 148 investment monitor. DROP assets are commingled with the Pension
 149 Fund assets for investment purposes.

150 b. A fixed rate of 8.25 percent for members who reached

151 normal retirement age on or before October 1, 2012. Effective
 152 October 1, 2012, the fixed rate is 8 percent for members who
 153 retire or enter the DROP on or after October 1, 2012. In any
 154 fiscal year, if the amount paid in investment earnings under
 155 this paragraph creates a deficiency as compared to the gross
 156 earnings of the pension fund as a whole (using the rate
 157 determined by the Fund's investment monitor), then the rate will
 158 be reduced to 4 percent effective the next October 1 until the
 159 deficiency is satisfied. When the deficiency is satisfied, the
 160 rate will return to 8 percent, effective the next October 1.
 161 Beginning October 1, 2012, the cumulative amounts paid in
 162 earnings for the fixed rate will be maintained in the actuarial
 163 valuation.

164
 165 However, if a police officer does not terminate employment at
 166 the end of participation in the DROP, interest credits shall
 167 cease on the balance.

168 3. No payments shall be made from the DROP until the
 169 member terminates employment with the Department.

170 4. Upon termination of employment, participants in the
 171 DROP shall receive the balance of the DROP account in accordance
 172 with the following rules:

173 a. Members may elect to begin to receive payment upon
 174 termination of employment or defer payment of the DROP until the
 175 latest day as provided under sub-subparagraph c.

176 b. Payments shall be made in either:
 177 (I) Lump sum.—The entire account balance shall be paid to
 178 the retirant upon approval of the Board of Trustees.
 179 (II) Installments.—The account balance shall be paid out
 180 to the retirant in three equal payments paid over 3 years, the
 181 first payment to be made upon approval of the Board of Trustees.
 182 (III) Annuity.—The account balance shall be paid out in
 183 monthly installments over the lifetime of the member or until
 184 the entire balance is exhausted. Monthly amount paid shall be
 185 determined by the Fund's actuary in accordance with selections
 186 made by the member on a form provided by the Board of Trustees.
 187 c. Any form of payment selected by a police officer must
 188 comply with the minimum distribution requirements of s.
 189 401(A)(9) of the Internal Revenue Code and is subject to the
 190 requirements of subsection (30) of this act; e.g., payments must
 191 commence by age 70-1/2.
 192 d. If a member dies and is eligible for benefits from the
 193 DROP account, the entire balance of the DROP account shall be
 194 converted to the name of the beneficiary designated in
 195 accordance with subsection (9)(e). The entire balance shall be
 196 paid out in a lump sum to the beneficiary, at the discretion of
 197 the beneficiary. If the designated beneficiary is the surviving
 198 spouse, the account may remain with the Fund until the latest
 199 period specified under subsection (30). These DROP accounts
 200 shall not be eligible for any further DROP distributions but are

201 eligible for earnings. If a member fails to designate a
 202 beneficiary, or if the beneficiary predeceases the member, the
 203 entire balance shall be converted, in the following order, to
 204 the name or names of:

- 205 1. The member's surviving children on a pro rata basis;
- 206 2. If no children are alive, the member's spouse;
- 207 3. If no spouse is alive, the member's surviving parents
- 208 on a pro rata basis; or
- 209 4. If none are alive, the estate of the member.

210
 211 The accounts which are converted to the names of the
 212 beneficiaries shall have the right to name a successor
 213 beneficiary. Any designated beneficiary, other than the
 214 surviving spouse of the member, must take a distribution of the
 215 entire DROP ~~share~~ account balance by the end of 5 years after
 216 the death of the member. Installment distributions which begin
 217 in the calendar year of the member's death shall be treated as
 218 complying with this 5-year distribution requirement, even though
 219 the installments are not completed within 5 years after the
 220 member's death.

221 e. Costs, fees, and expenses of administration shall be
 222 debited from the individual member accounts on a proportionate
 223 basis, taking the cost, fees, and expenses of administration of
 224 the Fund as a whole, multiplied by a fraction, the numerator of
 225 which is the total assets in all individual member accounts and

226 the denominator of which is the total assets of the Fund as a
 227 whole.

228 (17) Death benefits.—

229 (c) Death after retirement.—Upon the death of a retirant,
 230 the following applicable pensions shall be paid, subject to the
 231 provisions of subsection (18). This paragraph is not applicable
 232 if a retiree chose an optional form of benefit at the time of
 233 retirement or if the retiree was not entitled at the time of
 234 retirement under paragraph (9)(c).

235 1. The surviving spouse of the retirant shall receive a
 236 pension of two-thirds of the retirant's pension, provided that
 237 the retirant was receiving a pension under paragraph (9)(a).
 238 Upon the surviving spouse's death, the pension shall terminate.
 239 Effective for years of service earned after June 6, 2017, ~~the~~
 240 ~~effective date of this act~~, if the retiree leaves a surviving
 241 spouse that he or she was not married to on the date of
 242 retirement, then the survivor benefit may be actuarially reduced
 243 to take into account the age of the substituted survivor.

244 2. In the event the deceased retirant does not leave a
 245 surviving spouse eligible to receive a pension, or if the
 246 surviving spouse dies and he or she leaves an unmarried child or
 247 children under age 18, each child shall receive a pension of an
 248 equal share of two-thirds of the deceased retirant's pension.
 249 Upon any child's adoption, marriage, death, or attainment of age
 250 18, the child's pension shall terminate and it shall be

251 apporportioned to the pensions payable to the deceased retirant's
 252 remaining eligible children under age 18. In no case shall the
 253 pension payable to any such child exceed 20 percent of the
 254 deceased retirant's pension, or be less than \$15 per month.

255 3. In the event the deceased retirant does not leave a
 256 surviving spouse or children eligible to a pension provided for
 257 in subparagraphs 1. and 2. above, and he or she leaves a parent
 258 or parents who the Board finds are dependent upon the retirant
 259 for at least 50 percent of his, her, or their financial support,
 260 each parent shall receive a pension of an equal share of two-
 261 thirds of the deceased retirant's pension. Upon any parent's
 262 remarriage or death, his or her pension shall terminate.

263 4. In the event the deceased member does not leave a
 264 surviving spouse, children, or parents eligible to receive a
 265 pension, then the death benefit, if any, shall be paid to the
 266 estate of the deceased member. Any retirement income payments
 267 due after the death of a vested member may, in the discretion of
 268 the Board, be paid to the member's designated beneficiary or
 269 beneficiaries.

270
 271 In any of the above cases, the Board, in its discretion, may
 272 direct that the actuarial value of the monthly benefit be paid
 273 as a lump sum.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941 Administrative Procedures
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>HA</i>
2) Government Operations & Technology Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Administrative Procedure Act sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. Agencies do not have the discretion in and of themselves to engage in rulemaking. To adopt a rule, an agency must have a general grant of authority to implement a specific law. Once a rule is adopted, the rule continues to remain in effect until amended or repealed. Annually, an agency must verify that it regularly reviews all of its rules to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

The bill requires each agency to periodically review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines that substantive changes to update a rule are not required, the agency must repromulgate the rule to reflect the date of the review. The agency, before repromulgation of the rule and upon the approval of its agency head, must:

- Publish a notice of repromulgation in the Florida Administrative Register; and
- File the rule with the Department of State (department). The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice of repromulgation. If the agency fails to meet this time limit, it must withdraw the rule for repromulgation.

The bill provides that each agency, upon approval of the agency head, is required to submit three certified copies of the repromulgated rule it proposes to adopt with the department and one certified copy of any material incorporated by reference in the rule. The bill requires the department to adopt rules to implement the bill's repromulgation provisions by December 31, 2018.

The bill requires that, after December 31, 2018, all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference to submit the material in the prescribed electronic format to the department with the full text available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code. Alternatively, if an agency determines that posting the material incorporated by reference on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the address of locations at the department and the agency at which the material is available for public inspection and examination.

The bill requires the Division of Administrative Hearing (DOAH) to serve all documents on all parties of record electronically. Parties to a proceeding at DOAH who file electronically are relieved of any requirement to serve other parties so long as those persons are registered for electronic filing.

The bill may have a negative fiscal impact on state government. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Rulemaking

The Administrative Procedure Act¹ sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.² Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to “adopt, develop, establish, or otherwise create”³ rules. Agencies do not have the discretion in and of themselves to engage in rulemaking.⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the rule. The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals. Next, an agency must file, upon approval of the agency head, a notice of proposed rulemaking.⁷ The notice is published by the Department of State (department) in the FAR⁸ and must contain the full text of the proposed rule or amendment and a summary thereof.⁹ If a person requests a hearing within 21 days following the publication of the notice, that agency must hold a hearing.¹⁰ The agency, based upon the comments received at the hearing, can publish a notice of change.¹¹ The agency then files for rule adoption with the department and the rule becomes effective 20 days later, unless a different date is indicated in the rule.¹² The rule is then published in the Florida Administrative Code (FAC).

Small Business Impact in Rulemaking

Each agency, before the adoption, amendment, or repeal of a rule, is required to consider the impact of the rule on small businesses.¹³ If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.¹⁴ The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses.¹⁵

¹ Chapter 120, F.S.

² Section 120.52(16), F.S.

³ Section 120.52(17), F.S.

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.

⁶ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b), F.S.

⁹ Section 120.54(3)(a)1., F.S.

¹⁰ Section 120.54(3)(c), F.S.

¹¹ Section 120.54(3)(d)1., F.S.

¹² Section 120.54(3)(e)6., F.S.

¹³ Section 120.54(3)(b)2., F.S.

¹⁴ Section 120.54(3)(b)2.b.(I), F.S.

¹⁵ Section 120.54(3)(b)2.b.(II), F.S.

If the agency does not adopt the alternatives offered it must, before rule adoption or amendment, file a detailed written statement with Joint Administrative Procedures Committee (JAPC) explaining the reasons for failure to adopt such alternatives.¹⁶

Incorporation by Reference

The APA allows an agency to incorporate material external to the text of the rule by reference.¹⁷ The material to be incorporated must exist on the date that the rule is adopted.¹⁸ If, after the rule has been adopted, the agency wishes to alter the material incorporated by reference the rule itself must be amended for the change to be effective.¹⁹ However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.²⁰ A rule cannot be amended by reference only.²¹ An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to the department and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at the department and the agency at which the material is available for public inspection and examination, must be included in the notice.²²

The department has adopted a rule governing the requirements for materials incorporated by reference.²³ The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with the department electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.²⁴

Joint Administrative Procedures Committee (JAPC)

JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.²⁵ Specifically, JAPC is required to examine each proposed rule and its accompanying material to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule's Statement of Estimated Regulatory Cost (SERC) complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person,

¹⁶ Section 120.54(3)(b)2.b.(III), F.S.

¹⁷ Section 120.54(1)(i), F.S.; *see also* Fla. Admin. Code R. 1-1.013.

¹⁸ Section 120.54(1)(i)1., F.S.

¹⁹ *Id.*

²⁰ Section 120.54(1)(i)2., F.S.

²¹ Section 120.54(1)(i)4., F.S.

²² Section 120.54(1)(i)3., F.S.

²³ Fla. Admin. Code R. 1-1.013.

²⁴ Fla. Admin. Code R. 1-1.013(5)(d).

²⁵ Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; and

- The rule will require additional appropriations.²⁶

Statement of Estimated Regulatory Cost (SERC)

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.²⁷ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.²⁸ However, a SERC is required if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate within one year after implementation of the rule.²⁹

If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.³⁰ At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to JAPC and must provide notice on the agency's website that it is available to the public.³¹

Annual Regulatory Review

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months which creates or modifies the duties or authority of the agency and state whether the agency must adopt rules to implement the newly adopted laws.³² The plan must also include a list of each additional law not otherwise listed which the agency expects to implement by rulemaking before the following July 1, except emergency rules. The plan must include a certification by the agency head, or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan and verifying that the agency regularly reviews all of its rules and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.³³ By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan. The agency must also deliver a copy of the certification to JAPC and publish a notice in FAR identifying the date of publication of the agency's regulatory plan.³⁴

Electronic Filing

Current law provides that a party represented by an attorney in a proceeding before the Division of Administrative Hearings (DOAH) is required to file all documents electronically through DOAH's website.³⁵ However, if a party is not represented by an attorney, he or she must file documents through DOAH's website "whenever possible."³⁶

Effect of the Bill

The bill requires each agency to periodically review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines that

²⁶ Section 120.545(1), F.S.

²⁷ Section 120.541(2), F.S.

²⁸ Section 120.54(3)(b)1., F.S.

²⁹ Section 120.54(3)(b)1., F.S.

³⁰ Section 120.541(1)(c), F.S.

³¹ Section 120.541(1)(d), F.S.

³² Section 120.74(1), F.S.

³³ Section 120.74(1)(d), F.S.

³⁴ Section 120.74(2), F.S.

³⁵ Section 120.52(5), F.S.

³⁶ *Id.*

substantive changes to update a rule are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines “repromulgate” to mean the publication and adoption of an existing rule following an agency’s review of the rule for consistency with the power and duties granted by its enabling statute. The agency, before repromulgation of the rule and upon the approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule;
- File the rule with the department. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice. If the agency fails to meet this time limit, it must withdraw the rule for repromulgation and give notice of the withdrawal in the next available issue of the FAR.

The agency must file a notice of repromulgation with JAPC at least 14 days before filing the rule with the department. JAPC must certify at the time of filing whether the agency has responded to all of JAPC’s material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge.

The bill provides that each agency, upon approval of the agency head, is required to submit three certified copies of the repromulgated rule it proposes to adopt with the department and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its being filing with the department and becomes effective 20 days later. The department then must update the history note of the rule in the FAC to reflect the effective date. The bill requires the department to adopt rules to implement the bill’s repromulgation provisions by December 31, 2018.

The bill requires that, after December 31, 2018, all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference to submit the material in the prescribed electronic format to the department with the full text available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code. Alternatively, if an agency determines that posting the material incorporated by reference on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the address of locations at the department and the agency at which the material is available for public inspection and examination.

The bill requires an agency to provide a copy of any proposal for a lower cost regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

The bill requires DOAH to serve all documents on all parties of record electronically. Parties to a proceeding at DOAH who file electronically are relieved of any requirement to serve other parties so long as those persons are registered for electronic filing.

The bill removes from JAPC the ability to petition an agency to repeal a rule, or a portion of a rule, because it exceeds that agency’s rulemaking authority.

Lastly, the bill makes changes to cross-references to correspond to changes made by the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 120.52, F.S., relating to definitions in the APA.

Section 2 amends s. 120.536, F.S., relating to rulemaking authority and challenges thereto.

Section 3 amends s. 120.54, F.S., relating to rulemaking procedures.

Section 4 amends s. 120.541, F.S., relating to SERCs.

Section 5 creates s. 120.5435, F.S., relating to the repromulgation of rules.

Section 6 amends s. 120.55, F.S., relating to publication requirements in the APA.

Section 7 amends s. 120.569, F.S., relating to agency decisions affecting substantial interests.

Section 8 amends s. 120.08, F.S., relating to exceptions for certain agencies from APA requirements.

Section 9 amends s. 120.81, F.S., relating to exceptions for certain general areas from APA requirements.

Section 10 amends s. 420.9072, F.S., relating to the state housing initiative program.

Section 11 amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 12 amends s. 443.091, F.S., relating to unemployment benefit eligibility conditions.

Section 13 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 requires each agency to review and repromulgate its rules periodically, which may require agencies to expend funds to institute this new process. While the review process the bill creates is neither intensive nor time-consuming, it would still require agencies to dedicate staff to reviewing existing rules and engage in rulemaking to repromulgate the rules. It is unclear whether this new activity could be absorbed into each agency's current budget.

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:

The bill creates new rulemaking authority for the department. It requires the department to adopt rules relating to the repromulgation of administrative rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Timeframe for Repromulgation

On lines 499-500 of the bill, the timeframe for filing a rule for repromulgation could result in confusion. The bill provides that such rule must be filed 28 days before the notice for repromulgation or no more than 90 days after the notice. As such, it would seem to allow a rule to be filed 28 days before the notice or even concurrently with the notice. Instead, it should likely read that the rule may not be filed for repromulgation "less than 28 days or more than 90 days after the publication of the notice..." This would mirror the language found in the final rule adoption section of the APA.³⁷

Drafting Issues:

Line 596 should begin with subparagraph "6." and not subsection "(6)".

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 120.52, F.S.; revising and providing definitions;
 4 amending s. 120.536, F.S.; conforming a provision to
 5 changes made by the act; amending s. 120.54, F.S.;
 6 applying certain provisions applicable to all rules
 7 other than emergency rules to repromulgated rules;
 8 requiring that a proposed rule and material proposed
 9 to be incorporated by reference be available to the
 10 public; requiring that material proposed to be
 11 incorporated by reference be made available in a
 12 specified manner; requiring an agency to provide
 13 notice of a regulatory alternative to the
 14 Administrative Procedures Committee by a certain date;
 15 requiring an agency to file copies of certain
 16 petitions with the committee; amending s. 120.541,
 17 F.S.; requiring an agency to provide a copy of any
 18 proposal for a lower cost regulatory alternative to
 19 the Administrative Procedures Committee by a certain
 20 date; creating s. 120.5435, F.S.; providing
 21 legislative intent; requiring agency review of rules
 22 and repromulgation of rules that do not require
 23 substantive changes; requiring an agency to publish a
 24 notice of repromulgation in the Florida Administrative
 25 Register and file a rule for promulgation with the

26 Department of State within a specified time period;
 27 requiring an agency to file a notice of repromulgation
 28 with the committee within a specified time period;
 29 requiring withdrawal of a rule proposed for
 30 repromulgation if the rule is not filed within a
 31 specified time period; providing that a repromulgated
 32 rule is not subject to challenge as a proposed rule
 33 and that certain hearing requirements do not apply;
 34 requiring an agency to file a specified number of
 35 certified copies of a proposed repromulgated rule and
 36 any material incorporated by reference; providing that
 37 a repromulgated rule is adopted upon filing with the
 38 department and becomes effective after a specified
 39 time period; requiring the department to update
 40 certain information in the Florida Administrative
 41 Code; requiring the department to adopt rules by a
 42 certain date; amending s. 120.55, F.S.; providing that
 43 the department shall require material incorporated by
 44 reference to be filed in a specified manner; requiring
 45 the department to include the date of a technical rule
 46 change in the Florida Administrative Code; providing
 47 that a technical change does not affect the effective
 48 date of a rule; requiring specified rules; amending
 49 120.569, F.S.; requiring that certain documents filed
 50 with the Division of Administrative Hearings be filed

51 | electronically; relieving certain parties from a
 52 | requirement to serve other certain parties; amending
 53 | ss. 120.80, 120.81, 420.9072, 420.9075, and 443.091,
 54 | F.S.; conforming cross-references; providing an
 55 | effective date.

56 |

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

58 |

59 | Section 1. Subsections (16) through (22) of section
 60 | 120.52, Florida Statutes, are renumbered as subsections (17)
 61 | through (23), respectively, subsection (5) is amended, and a new
 62 | subsection (16) is added to that section, to read:

63 | 120.52 Definitions.—As used in this act:

64 | (5) "Division" means the Division of Administrative
 65 | Hearings. ~~Any document filed with the division by a party~~
 66 | ~~represented by an attorney shall be filed by electronic means~~
 67 | ~~through the division's website. Any document filed with the~~
 68 | ~~division by a party not represented by an attorney shall,~~
 69 | ~~whenever possible, be filed by electronic means through the~~
 70 | ~~division's website.~~

71 | (16) "Repromulgate" or "repromulgation" means the
 72 | publication and adoption of an existing rule following an
 73 | agency's review of the rule for consistency with the powers and
 74 | duties granted by its enabling statute.

75 | Section 2. Subsection (3) of section 120.536, Florida

76 Statutes, is amended to read:

77 120.536 Rulemaking authority; repeal; challenge.—

78 (3) ~~The Administrative Procedures Committee or Any~~
79 substantially affected person may petition an agency to repeal
80 any rule, or portion thereof, because it exceeds the rulemaking
81 authority permitted by this section. Not later than 30 days
82 after the date of filing the petition if the agency is headed by
83 an individual, or not later than 45 days if the agency is headed
84 by a collegial body, the agency shall initiate rulemaking
85 proceedings to repeal the rule, or portion thereof, or deny the
86 petition, giving a written statement of its reasons for the
87 denial.

88 Section 3. Paragraph (i) of subsection (1), subsection
89 (3), and paragraph (a) of subsection (7) of section 120.54,
90 Florida Statutes, are amended to read:

91 120.54 Rulemaking.—

92 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
93 EMERGENCY RULES.—

94 (i)1. A rule may incorporate material by reference but
95 only as the material exists on the date the rule is adopted. For
96 purposes of the rule, changes in the material are not effective
97 unless the rule is amended to incorporate the changes.

98 2. An agency rule that incorporates by specific reference
99 another rule of that agency automatically incorporates
100 subsequent amendments to the referenced rule unless a contrary

101 intent is clearly indicated in the referencing rule. A notice of
 102 amendments to a rule that has been incorporated by specific
 103 reference in other rules of that agency must explain the effect
 104 of those amendments on the referencing rules.

105 3. In rules adopted after December 31, 2010, and rules
 106 repromulgated after December 31, 2018, material may not be
 107 incorporated by reference unless:

108 a. The material has been submitted in the prescribed
 109 electronic format to the Department of State and the full text
 110 of the material can be made available for free public access
 111 through an electronic hyperlink from the rule making the
 112 reference in the Florida Administrative Code; or

113 b. The agency has determined that posting the material on
 114 the Internet for purposes of public examination and inspection
 115 would constitute a violation of federal copyright law, in which
 116 case a statement to that effect, along with the address of
 117 locations at the Department of State and the agency at which the
 118 material is available for public inspection and examination,
 119 must be included in the notice required by subparagraph (3)(a)1.

120 4. A rule may not be amended by reference only. Amendments
 121 must set out the amended rule in full in the same manner as
 122 required by the State Constitution for laws.

123 5. Notwithstanding any contrary provision in this section,
 124 when an adopted rule of the Department of Environmental
 125 Protection or a water management district is incorporated by

126 reference in the other agency's rule to implement a provision of
 127 part IV of chapter 373, subsequent amendments to the rule are
 128 not effective as to the incorporating rule unless the agency
 129 incorporating by reference notifies the committee and the
 130 Department of State of its intent to adopt the subsequent
 131 amendment, publishes notice of such intent in the Florida
 132 Administrative Register, and files with the Department of State
 133 a copy of the amended rule incorporated by reference. Changes in
 134 the rule incorporated by reference are effective as to the other
 135 agency 20 days after the date of the published notice and filing
 136 with the Department of State. The Department of State shall
 137 amend the history note of the incorporating rule to show the
 138 effective date of such change. Any substantially affected person
 139 may, within 14 days after the date of publication of the notice
 140 of intent in the Florida Administrative Register, file an
 141 objection to rulemaking with the agency. The objection shall
 142 specify the portions of the rule incorporated by reference to
 143 which the person objects and the reasons for the objection. The
 144 agency shall not have the authority under this subparagraph to
 145 adopt those portions of the rule specified in such objection.
 146 The agency shall publish notice of the objection and of its
 147 action in response in the next available issue of the Florida
 148 Administrative Register.

149 6. The Department of State may adopt by rule requirements
 150 for incorporating materials pursuant to this paragraph.

151 (3) ADOPTION PROCEDURES.—
 152 (a) Notices.—
 153 1. Prior to the adoption, amendment, or repeal of any rule
 154 other than an emergency rule, an agency, upon approval of the
 155 agency head, shall give notice of its intended action, setting
 156 forth a short, plain explanation of the purpose and effect of
 157 the proposed action; the full text of the proposed rule or
 158 amendment and a summary thereof; a reference to the grant of
 159 rulemaking authority pursuant to which the rule is adopted; and
 160 a reference to the section or subsection of the Florida Statutes
 161 or the Laws of Florida being implemented or interpreted. The
 162 notice must include a summary of the agency's statement of the
 163 estimated regulatory costs, if one has been prepared, based on
 164 the factors set forth in s. 120.541(2); a statement that any
 165 person who wishes to provide the agency with information
 166 regarding the statement of estimated regulatory costs, or to
 167 provide a proposal for a lower cost regulatory alternative as
 168 provided by s. 120.541(1), must do so in writing within 21 days
 169 after publication of the notice; and a statement as to whether,
 170 based on the statement of the estimated regulatory costs or
 171 other information expressly relied upon and described by the
 172 agency if no statement of regulatory costs is required, the
 173 proposed rule is expected to require legislative ratification
 174 pursuant to s. 120.541(3). The notice must state the procedure
 175 for requesting a public hearing on the proposed rule. Except

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

180 2. The notice shall be published in the Florida
181 Administrative Register not less than 28 days prior to the
182 intended action. The proposed rule, including all material
183 proposed to be incorporated by reference, shall be available for
184 inspection and copying by the public at the time of the
185 publication of notice. After December 31, 2018, material
186 proposed to be incorporated by reference in the notice required
187 by this paragraph shall be made available in the manner
188 prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

189 3. The notice shall be mailed to all persons named in the
190 proposed rule and to all persons who, at least 14 days prior to
191 such mailing, have made requests of the agency for advance
192 notice of its proceedings. The agency shall also give such
193 notice as is prescribed by rule to those particular classes of
194 persons to whom the intended action is directed.

195 4. The adopting agency shall file with the committee, at
196 least 21 days prior to the proposed adoption date, a copy of
197 each rule it proposes to adopt; a copy of any material
198 incorporated by reference in the rule; a detailed written
199 statement of the facts and circumstances justifying the proposed
200 rule; a copy of any statement of estimated regulatory costs that

201 has been prepared pursuant to s. 120.541; a statement of the
 202 extent to which the proposed rule relates to federal standards
 203 or rules on the same subject; and the notice required by
 204 subparagraph 1.

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

206 1. Statement of estimated regulatory costs.—Before the
 207 adoption, amendment, or repeal of any rule other than an
 208 emergency rule, an agency is encouraged to prepare a statement
 209 of estimated regulatory costs of the proposed rule, as provided
 210 by s. 120.541. However, an agency must prepare a statement of
 211 estimated regulatory costs of the proposed rule, as provided by
 212 s. 120.541, if:

213 a. The proposed rule will have an adverse impact on small
 214 business; or

215 b. The proposed rule is likely to directly or indirectly
 216 increase regulatory costs in excess of \$200,000 in the aggregate
 217 in this state within 1 year after the implementation of the
 218 rule.

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

220 a. Each agency, before the adoption, amendment, or repeal
 221 of a rule, shall consider the impact of the rule on small
 222 businesses as defined by s. 288.703 and the impact of the rule
 223 on small counties or small cities as defined by s. 120.52.
 224 Whenever practicable, an agency shall tier its rules to reduce
 225 disproportionate impacts on small businesses, small counties, or

226 small cities to avoid regulating small businesses, small
 227 counties, or small cities that do not contribute significantly
 228 to the problem the rule is designed to address. An agency may
 229 define "small business" to include businesses employing more
 230 than 200 persons, may define "small county" to include those
 231 with populations of more than 75,000, and may define "small
 232 city" to include those with populations of more than 10,000, if
 233 it finds that such a definition is necessary to adapt a rule to
 234 the needs and problems of small businesses, small counties, or
 235 small cities. The agency shall consider each of the following
 236 methods for reducing the impact of the proposed rule on small
 237 businesses, small counties, and small cities, or any combination
 238 of these entities:

239 (I) Establishing less stringent compliance or reporting
 240 requirements in the rule.

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

243 (III) Consolidating or simplifying the rule's compliance
 244 or reporting requirements.

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

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

250 b.(I) If the agency determines that the proposed action

251 will affect small businesses as defined by the agency as
 252 provided in sub-subparagraph a., the agency shall send written
 253 notice of the rule to the rules ombudsman in the Executive
 254 Office of the Governor at least 28 days before the intended
 255 action.

256 (II) Each agency shall adopt those regulatory alternatives
 257 offered by the rules ombudsman in the Executive Office of the
 258 Governor and provided to the agency no later than 21 days after
 259 the rules ombudsman's receipt of the written notice of the rule
 260 which it finds are feasible and consistent with the stated
 261 objectives of the proposed rule and which would reduce the
 262 impact on small businesses. When regulatory alternatives are
 263 offered by the rules ombudsman in the Executive Office of the
 264 Governor, the 90-day period for filing the rule in subparagraph
 265 (e)2. is extended for a period of 21 days. The agency shall
 266 provide notice to the committee of any regulatory alternative
 267 offered to the agency pursuant to this sub-subparagraph at least
 268 21 days before filing the rule for adoption.

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

276 Office of the Governor.

277 (c) Hearings.—

278 1. If the intended action concerns any rule other than one
 279 relating exclusively to procedure or practice, the agency shall,
 280 on the request of any affected person received within 21 days
 281 after the date of publication of the notice of intended agency
 282 action, give affected persons an opportunity to present evidence
 283 and argument on all issues under consideration. The agency may
 284 schedule a public hearing on the rule and, if requested by any
 285 affected person, shall schedule a public hearing on the rule.
 286 When a public hearing is held, the agency must ensure that staff
 287 are available to explain the agency's proposal and to respond to
 288 questions or comments regarding the rule. If the agency head is
 289 a board or other collegial body created under s. 20.165(4) or s.
 290 20.43(3)(g), and one or more requested public hearings is
 291 scheduled, the board or other collegial body shall conduct at
 292 least one of the public hearings itself and may not delegate
 293 this responsibility without the consent of those persons
 294 requesting the public hearing. Any material pertinent to the
 295 issues under consideration submitted to the agency within 21
 296 days after the date of publication of the notice or submitted to
 297 the agency between the date of publication of the notice and the
 298 end of the final public hearing shall be considered by the
 299 agency and made a part of the record of the rulemaking
 300 proceeding.

301 2. Rulemaking proceedings shall be governed solely by the
 302 provisions of this section unless a person timely asserts that
 303 the person's substantial interests will be affected in the
 304 proceeding and affirmatively demonstrates to the agency that the
 305 proceeding does not provide adequate opportunity to protect
 306 those interests. If the agency determines that the rulemaking
 307 proceeding is not adequate to protect the person's interests, it
 308 shall suspend the rulemaking proceeding and convene a separate
 309 proceeding under the provisions of ss. 120.569 and 120.57.

310 Similarly situated persons may be requested to join and
 311 participate in the separate proceeding. Upon conclusion of the
 312 separate proceeding, the rulemaking proceeding shall be resumed.

313 (d) Modification or withdrawal of proposed rules.—

314 1. After the final public hearing on the proposed rule, or
 315 after the time for requesting a hearing has expired, if the rule
 316 has not been changed from the rule as previously filed with the
 317 committee, or contains only technical changes, the adopting
 318 agency shall file a notice to that effect with the committee at
 319 least 7 days prior to filing the rule for adoption. Any change,
 320 other than a technical change that does not affect the substance
 321 of the rule, must be supported by the record of public hearings
 322 held on the rule, must be in response to written material
 323 submitted to the agency within 21 days after the date of
 324 publication of the notice of intended agency action or submitted
 325 to the agency between the date of publication of the notice and

326 the end of the final public hearing, or must be in response to a
 327 proposed objection by the committee. In addition, when any
 328 change is made in the a proposed rule text or any material
 329 incorporated by reference, other than a technical change, the
 330 adopting agency shall provide a copy of a notice of change by
 331 certified mail or actual delivery to any person who requests it
 332 in writing no later than 21 days after the notice required in
 333 paragraph (a). The agency shall file the notice of change with
 334 the committee, along with the reasons for the change, and
 335 provide the notice of change to persons requesting it, at least
 336 21 days prior to filing the rule for adoption. The notice of
 337 change shall be published in the Florida Administrative Register
 338 at least 21 days prior to filing the rule for adoption. This
 339 subparagraph does not apply to emergency rules adopted pursuant
 340 to subsection (4). After December 31, 2018, material proposed to
 341 be incorporated by reference in the notice required by this
 342 subparagraph shall be made available in the manner prescribed by
 343 sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

344 2. After the notice required by paragraph (a) and prior to
 345 adoption, the agency may withdraw the rule in whole or in part.

346 3. After adoption and before the rule becomes effective, a
 347 rule may be modified or withdrawn only in the following
 348 circumstances:

- 349 a. When the committee objects to the rule;
- 350 b. When a final order, which is not subject to further

351 appeal, is entered in a rule challenge brought pursuant to s.
 352 120.56 after the date of adoption but before the rule becomes
 353 effective pursuant to subparagraph (e)6.;

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

358 d. When the committee notifies the agency that an
 359 objection to the rule is being considered, in which case the
 360 rule may be modified to extend the effective date by not more
 361 than 60 days.

362 4. The agency shall give notice of its decision to
 363 withdraw or modify a rule in the first available issue of the
 364 publication in which the original notice of rulemaking was
 365 published, shall notify those persons described in subparagraph
 366 (a)3. in accordance with the requirements of that subparagraph,
 367 and shall notify the Department of State if the rule is required
 368 to be filed with the Department of State.

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

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

373 1. If the adopting agency is required to publish its rules
 374 in the Florida Administrative Code, the agency, upon approval of
 375 the agency head, shall file with the Department of State three

376 certified copies of the rule it proposes to adopt; one copy of
 377 any material incorporated by reference in the rule, certified by
 378 the agency; a summary of the rule; a summary of any hearings
 379 held on the rule; and a detailed written statement of the facts
 380 and circumstances justifying the rule. Agencies not required to
 381 publish their rules in the Florida Administrative Code shall
 382 file one certified copy of the proposed rule, and the other
 383 material required by this subparagraph, in the office of the
 384 agency head, and such rules shall be open to the public.

385 2. A rule may not be filed for adoption less than 28 days
 386 or more than 90 days after the notice required by paragraph (a),
 387 until 21 days after the notice of change required by paragraph
 388 (d), until 14 days after the final public hearing, until 21 days
 389 after a statement of estimated regulatory costs required under
 390 s. 120.541 has been provided to all persons who submitted a
 391 lower cost regulatory alternative and made available to the
 392 public, or until the administrative law judge has rendered a
 393 decision under s. 120.56(2), whichever applies. When a required
 394 notice of change is published prior to the expiration of the
 395 time to file the rule for adoption, the period during which a
 396 rule must be filed for adoption is extended to 45 days after the
 397 date of publication. If notice of a public hearing is published
 398 prior to the expiration of the time to file the rule for
 399 adoption, the period during which a rule must be filed for
 400 adoption is extended to 45 days after adjournment of the final

401 hearing on the rule, 21 days after receipt of all material
 402 authorized to be submitted at the hearing, or 21 days after
 403 receipt of the transcript, if one is made, whichever is latest.
 404 The term "public hearing" includes any public meeting held by
 405 any agency at which the rule is considered. If a petition for an
 406 administrative determination under s. 120.56(2) is filed, the
 407 period during which a rule must be filed for adoption is
 408 extended to 60 days after the administrative law judge files the
 409 final order with the clerk or until 60 days after subsequent
 410 judicial review is complete.

411 3. At the time a rule is filed, the agency shall certify
 412 that the time limitations prescribed by this paragraph have been
 413 complied with, that all statutory rulemaking requirements have
 414 been met, and that there is no administrative determination
 415 pending on the rule.

416 4. At the time a rule is filed, the committee shall
 417 certify whether the agency has responded in writing to all
 418 material and timely written comments or written inquiries made
 419 on behalf of the committee. The department shall reject any rule
 420 that is not filed within the prescribed time limits; that does
 421 not comply with all statutory rulemaking requirements and rules
 422 of the department; upon which an agency has not responded in
 423 writing to all material and timely written inquiries or written
 424 comments; upon which an administrative determination is pending;
 425 or which does not include a statement of estimated regulatory

426 costs, if required.

427 5. If a rule has not been adopted within the time limits
 428 imposed by this paragraph or has not been adopted in compliance
 429 with all statutory rulemaking requirements, the agency proposing
 430 the rule shall withdraw the rule and give notice of its action
 431 in the next available issue of the Florida Administrative
 432 Register.

433 6. The proposed rule shall be adopted on being filed with
 434 the Department of State and become effective 20 days after being
 435 filed, on a later date specified in the notice required by
 436 subparagraph (a)1., on a date required by statute, or upon
 437 ratification by the Legislature pursuant to s. 120.541(3). Rules
 438 not required to be filed with the Department of State shall
 439 become effective when adopted by the agency head, on a later
 440 date specified by rule or statute, or upon ratification by the
 441 Legislature pursuant to s. 120.541(3). If the committee notifies
 442 an agency that an objection to a rule is being considered, the
 443 agency may postpone the adoption of the rule to accommodate
 444 review of the rule by the committee. When an agency postpones
 445 adoption of a rule to accommodate review by the committee, the
 446 90-day period for filing the rule is tolled until the committee
 447 notifies the agency that it has completed its review of the
 448 rule.

449
 450 For the purposes of this paragraph, the term "administrative

451 determination" does not include subsequent judicial review.

452 (7) PETITION TO INITIATE RULEMAKING.—

453 (a) Any person regulated by an agency or having
 454 substantial interest in an agency rule may petition an agency to
 455 adopt, amend, or repeal a rule or to provide the minimum public
 456 information required by this chapter. The petition shall specify
 457 the proposed rule and action requested. The agency shall file a
 458 copy of the petition with the committee. Not later than 30
 459 calendar days following the date of filing a petition, the
 460 agency shall initiate rulemaking proceedings under this chapter,
 461 otherwise comply with the requested action, or deny the petition
 462 with a written statement of its reasons for the denial.

463 Section 4. Paragraph (a) of subsection (1) of section
 464 120.541, Florida Statutes, is amended to read:

465 120.541 Statement of estimated regulatory costs.—

466 (1)(a) Within 21 days after publication of the notice
 467 required under s. 120.54(3)(a), a substantially affected person
 468 may submit to an agency a good faith written proposal for a
 469 lower cost regulatory alternative to a proposed rule which
 470 substantially accomplishes the objectives of the law being
 471 implemented. The agency shall provide a copy of any proposal for
 472 a lower cost regulatory alternative to the committee at least 21
 473 days before filing the rule for adoption. The proposal may
 474 include the alternative of not adopting any rule if the proposal
 475 explains how the lower costs and objectives of the law will be

476 achieved by not adopting any rule. If such a proposal is
 477 submitted, the 90-day period for filing the rule is extended 21
 478 days. Upon the submission of the lower cost regulatory
 479 alternative, the agency shall prepare a statement of estimated
 480 regulatory costs as provided in subsection (2), or shall revise
 481 its prior statement of estimated regulatory costs, and either
 482 adopt the alternative or provide a statement of the reasons for
 483 rejecting the alternative in favor of the proposed rule.

484 Section 5. Section 120.5435, Florida Statutes, is created
 485 to read:

486 120.5435 Repromulgation of rules.—

487 (1) It is the intent of the Legislature that each agency
 488 shall periodically review its rules for consistency with the
 489 powers and duties granted by its enabling statutes. If an agency
 490 determines after review that substantive changes to update a
 491 rule are not required, such agency shall repromulgate the rule
 492 to reflect the date of the review.

493 (2) Before repromulgation of the rule, an agency shall,
 494 upon approval by the agency head:

495 (a) Publish a notice of repromulgation in the Florida
 496 Administrative Register. A notice of repromulgation is not
 497 required to include the text of the rule being promulgated.

498 (b) File the rule for repromulgation with the Department
 499 of State. A rule may not be filed for repromulgation less than
 500 28 days before or more than 90 days after the publication of the

501 notice required by paragraph (a).

502 (3) The agency shall file a notice of repromulgation with
 503 the committee at least 14 days before filing the rule for
 504 repromulgation. At the time the rule is filed for
 505 repromulgation, the committee shall certify whether the agency
 506 has responded in writing to all material and timely written
 507 comments or written inquiries made on behalf of the committee.

508 (4) If the rule is not filed for repromulgation within the
 509 time limit imposed by paragraph (2)(b), the agency shall
 510 withdraw the rule for repromulgation and give notice of the
 511 withdrawal in the next available issue of the Florida
 512 Administrative Register.

513 (5) A repromulgated rule is not subject to challenge as a
 514 proposed rule pursuant to s. 120.56(2).

515 (6) The hearing requirements of s. 120.54 do not apply to
 516 repromulgation of a rule.

517 (7)(a) The agency, upon approval of the agency head or his
 518 or her designee, shall file with the Department of State three
 519 certified copies of the repromulgated rule it proposes to adopt
 520 and one certified copy of any material incorporated by reference
 521 in the rule.

522 (b) The repromulgated rule shall be adopted upon filing
 523 with the Department of State and becomes effective 20 days after
 524 being filed.

525 (c) The Department of State shall update the history note

526 of the rule in the Florida Administrative Code to reflect the
 527 effective date of the repromulgated rule.

528 (8) The Department of State shall adopt rules to implement
 529 this section by December 31, 2018.

530 Section 6. Paragraphs (a) and (c) of subsection (1) of
 531 section 120.55, Florida Statutes, are amended to read:

532 120.55 Publication.—

533 (1) The Department of State shall:

534 (a)1. Through a continuous revision and publication
 535 system, compile and publish electronically, on a website managed
 536 by the department, the "Florida Administrative Code." The
 537 Florida Administrative Code shall contain all rules adopted by
 538 each agency, citing the grant of rulemaking authority and the
 539 specific law implemented pursuant to which each rule was
 540 adopted, all history notes as authorized in s. 120.545(7),
 541 complete indexes to all rules contained in the code, and any
 542 other material required or authorized by law or deemed useful by
 543 the department. The electronic code shall display each rule
 544 chapter currently in effect in browse mode and allow full text
 545 search of the code and each rule chapter. The department may
 546 contract with a publishing firm for a printed publication;
 547 however, the department shall retain responsibility for the code
 548 as provided in this section. The electronic publication shall be
 549 the official compilation of the administrative rules of this
 550 state. The Department of State shall retain the copyright over

551 | the Florida Administrative Code.

552 | 2. Rules general in form but applicable to only one school
 553 | district, community college district, or county, or a part
 554 | thereof, or state university rules relating to internal
 555 | personnel or business and finance shall not be published in the
 556 | Florida Administrative Code. Exclusion from publication in the
 557 | Florida Administrative Code shall not affect the validity or
 558 | effectiveness of such rules.

559 | 3. At the beginning of the section of the code dealing
 560 | with an agency that files copies of its rules with the
 561 | department, the department shall publish the address and
 562 | telephone number of the executive offices of each agency, the
 563 | manner by which the agency indexes its rules, a listing of all
 564 | rules of that agency excluded from publication in the code, and
 565 | a statement as to where those rules may be inspected.

566 | 4. Forms shall not be published in the Florida
 567 | Administrative Code; but any form which an agency uses in its
 568 | dealings with the public, along with any accompanying
 569 | instructions, shall be filed with the committee before it is
 570 | used. Any form or instruction which meets the definition of
 571 | "rule" provided in s. 120.52 shall be incorporated by reference
 572 | into the appropriate rule. The reference shall specifically
 573 | state that the form is being incorporated by reference and shall
 574 | include the number, title, and effective date of the form and an
 575 | explanation of how the form may be obtained. Each form created

576 by an agency which is incorporated by reference in a rule notice
 577 of which is given under s. 120.54(3)(a) after December 31, 2007,
 578 must clearly display the number, title, and effective date of
 579 the form and the number of the rule in which the form is
 580 incorporated.

581 5. After December 31, 2018, the department shall require
 582 all material incorporated by reference in any part of an adopted
 583 rule and in any part of a repromulgated rule ~~allow adopted rules~~
 584 ~~and material incorporated by reference~~ to be filed in the manner
 585 prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b.
 586 ~~electronic form as prescribed by department rule.~~ When a rule is
 587 filed for adoption or repromulgation with incorporated material
 588 in electronic form, the department's publication of the Florida
 589 Administrative Code on its website must contain a hyperlink from
 590 the incorporating reference in the rule directly to that
 591 material. The department may not allow hyperlinks from rules in
 592 the Florida Administrative Code to any material other than that
 593 filed with and maintained by the department, but may allow
 594 hyperlinks to incorporated material maintained by the department
 595 from the adopting agency's website or other sites.

596 (6) The Department of State shall include the date of any
 597 technical changes to a rule in the history note of the rule in
 598 the Florida Administrative Code. A technical change does not
 599 affect the effective date of the rule.

600 (c) Prescribe by rule the style and form required for

601 rules, notices, and other materials submitted for filing,
 602 including a rule requiring documents created by an agency that
 603 are proposed to be incorporated by reference in notices
 604 published pursuant to s. 120.54(3)(a) and (d) to be coded in the
 605 same manner as notices published pursuant to s. 120.54(3)(a)1.

606 Section 7. Subsection (1) of section 120.569, Florida
 607 Statutes, is amended to read:

608 120.569 Decisions which affect substantial interests.—

609 (1) (a) The provisions of this section apply in all
 610 proceedings in which the substantial interests of a party are
 611 determined by an agency, unless the parties are proceeding under
 612 s. 120.573 or s. 120.574. Unless waived by all parties, s.
 613 120.57(1) applies whenever the proceeding involves a disputed
 614 issue of material fact. Unless otherwise agreed, s. 120.57(2)
 615 applies in all other cases. If a disputed issue of material fact
 616 arises during a proceeding under s. 120.57(2), then, unless
 617 waived by all parties, the proceeding under s. 120.57(2) shall
 618 be terminated and a proceeding under s. 120.57(1) shall be
 619 conducted. Parties shall be notified of any order, including a
 620 final order. Unless waived, a copy of the order shall be
 621 delivered or mailed to each party or the party's attorney of
 622 record at the address of record. Each notice shall inform the
 623 recipient of any administrative hearing or judicial review that
 624 is available under this section, s. 120.57, or s. 120.68; shall
 625 indicate the procedure which must be followed to obtain the

626 hearing or judicial review; and shall state the time limits
 627 which apply.

628 (b) In all proceedings pursuant to this chapter conducted
 629 before the division, any document filed with the division by a
 630 party represented by an attorney shall be filed electronically
 631 through the division's website. Any document filed with the
 632 division by a party not represented by an attorney shall,
 633 whenever possible, be filed electronically through the
 634 division's website. The division shall serve all such documents
 635 on all parties of record electronically through the division's
 636 website. The parties are relieved of any requirement to serve
 637 other parties who are registered for electronic filing when they
 638 file documents electronically with the division.

639 Section 8. Subsection (11) of section 120.80, Florida
 640 Statutes, is amended to read:

641 120.80 Exceptions and special requirements; agencies.—

642 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~
 643 ~~120.52(16)~~, the enlistment, organization, administration,
 644 equipment, maintenance, training, and discipline of the militia,
 645 National Guard, organized militia, and unorganized militia, as
 646 provided by s. 2, Art. X of the State Constitution, are not
 647 rules as defined by this chapter.

648 Section 9. Paragraph (c) of subsection (1) of section
 649 120.81, Florida Statutes, is amended to read:

650 120.81 Exceptions and special requirements; general

651 areas.—

652 (1) EDUCATIONAL UNITS.—

653 (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any
 654 tests, test scoring criteria, or testing procedures relating to
 655 student assessment which are developed or administered by the
 656 Department of Education pursuant to s. 1003.4282, s. 1008.22, or
 657 s. 1008.25, or any other statewide educational tests required by
 658 law, are not rules.

659 Section 10. Paragraph (a) of subsection (1) of section
 660 420.9072, Florida Statutes, is amended to read:

661 420.9072 State Housing Initiatives Partnership Program.—
 662 The State Housing Initiatives Partnership Program is created for
 663 the purpose of providing funds to counties and eligible
 664 municipalities as an incentive for the creation of local housing
 665 partnerships, to expand production of and preserve affordable
 666 housing, to further the housing element of the local government
 667 comprehensive plan specific to affordable housing, and to
 668 increase housing-related employment.

669 (1)(a) In addition to the legislative findings set forth
 670 in s. 420.6015, the Legislature finds that affordable housing is
 671 most effectively provided by combining available public and
 672 private resources to conserve and improve existing housing and
 673 provide new housing for very-low-income households, low-income
 674 households, and moderate-income households. The Legislature
 675 intends to encourage partnerships in order to secure the

676 benefits of cooperation by the public and private sectors and to
 677 reduce the cost of housing for the target group by effectively
 678 combining all available resources and cost-saving measures. The
 679 Legislature further intends that local governments achieve this
 680 combination of resources by encouraging active partnerships
 681 between government, lenders, builders and developers, real
 682 estate professionals, advocates for low-income persons, and
 683 community groups to produce affordable housing and provide
 684 related services. Extending the partnership concept to encompass
 685 cooperative efforts among small counties as defined in s.
 686 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities
 687 is specifically encouraged. Local governments are also intended
 688 to establish an affordable housing advisory committee to
 689 recommend monetary and nonmonetary incentives for affordable
 690 housing as provided in s. 420.9076.

691 Section 11. Subsection (7) of section 420.9075, Florida
 692 Statutes, is amended to read:

693 420.9075 Local housing assistance plans; partnerships.—

694 (7) The moneys deposited in the local housing assistance
 695 trust fund shall be used to administer and implement the local
 696 housing assistance plan. The cost of administering the plan may
 697 not exceed 5 percent of the local housing distribution moneys
 698 and program income deposited into the trust fund. A county or an
 699 eligible municipality may not exceed the 5-percent limitation on
 700 administrative costs, unless its governing body finds, by

701 resolution, that 5 percent of the local housing distribution
 702 plus 5 percent of program income is insufficient to adequately
 703 pay the necessary costs of administering the local housing
 704 assistance plan. The cost of administering the program may not
 705 exceed 10 percent of the local housing distribution plus 5
 706 percent of program income deposited into the trust fund, except
 707 that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,
 708 and eligible municipalities receiving a local housing
 709 distribution of up to \$350,000 may use up to 10 percent of
 710 program income for administrative costs.

711 Section 12. Paragraph (d) of subsection (1) of section
 712 443.091, Florida Statutes, is amended to read:

713 443.091 Benefit eligibility conditions.—

714 (1) An unemployed individual is eligible to receive
 715 benefits for any week only if the Department of Economic
 716 Opportunity finds that:

717 (d) She or he is able to work and is available for work.
 718 In order to assess eligibility for a claimed week of
 719 unemployment, the department shall develop criteria to determine
 720 a claimant's ability to work and availability for work. A
 721 claimant must be actively seeking work in order to be considered
 722 available for work. This means engaging in systematic and
 723 sustained efforts to find work, including contacting at least
 724 five prospective employers for each week of unemployment
 725 claimed. The department may require the claimant to provide

726 proof of such efforts to the one-stop career center as part of
 727 reemployment services. A claimant's proof of work search efforts
 728 may not include the same prospective employer at the same
 729 location in 3 consecutive weeks, unless the employer has
 730 indicated since the time of the initial contact that the
 731 employer is hiring. The department shall conduct random reviews
 732 of work search information provided by claimants. As an
 733 alternative to contacting at least five prospective employers
 734 for any week of unemployment claimed, a claimant may, for that
 735 same week, report in person to a one-stop career center to meet
 736 with a representative of the center and access reemployment
 737 services of the center. The center shall keep a record of the
 738 services or information provided to the claimant and shall
 739 provide the records to the department upon request by the
 740 department. However:

741 1. Notwithstanding any other provision of this paragraph
 742 or paragraphs (b) and (e), an otherwise eligible individual may
 743 not be denied benefits for any week because she or he is in
 744 training with the approval of the department, or by reason of s.
 745 443.101(2) relating to failure to apply for, or refusal to
 746 accept, suitable work. Training may be approved by the
 747 department in accordance with criteria prescribed by rule. A
 748 claimant's eligibility during approved training is contingent
 749 upon satisfying eligibility conditions prescribed by rule.

750 2. Notwithstanding any other provision of this chapter, an

751 otherwise eligible individual who is in training approved under
 752 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
 753 determined ineligible or disqualified for benefits due to
 754 enrollment in such training or because of leaving work that is
 755 not suitable employment to enter such training. As used in this
 756 subparagraph, the term "suitable employment" means work of a
 757 substantially equal or higher skill level than the worker's past
 758 adversely affected employment, as defined for purposes of the
 759 Trade Act of 1974, as amended, the wages for which are at least
 760 80 percent of the worker's average weekly wage as determined for
 761 purposes of the Trade Act of 1974, as amended.

762 3. Notwithstanding any other provision of this section, an
 763 otherwise eligible individual may not be denied benefits for any
 764 week because she or he is before any state or federal court
 765 pursuant to a lawfully issued summons to appear for jury duty.

766 4. Union members who customarily obtain employment through
 767 a union hiring hall may satisfy the work search requirements of
 768 this paragraph by reporting daily to their union hall.

769 5. The work search requirements of this paragraph do not
 770 apply to persons who are unemployed as a result of a temporary
 771 layoff or who are claiming benefits under an approved short-time
 772 compensation plan as provided in s. 443.1116.

773 6. In small counties as defined in s. 120.52(20) ~~s.~~
 774 ~~120.52(19)~~, a claimant engaging in systematic and sustained
 775 efforts to find work must contact at least three prospective

776 | employers for each week of unemployment claimed.

777 | 7. The work search requirements of this paragraph do not
778 | apply to persons required to participate in reemployment
779 | services under paragraph (e).

780 | Section 13. 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 Moraitis offered the following:

Amendment (with title amendment)

Remove lines 75-596 and insert:

Section 2. Paragraph (i) of subsection (1), subsection
(3), and paragraph (a) of subsection (7) of section 120.54,
Florida Statutes, are amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
EMERGENCY RULES.—

(i)1. A rule may incorporate material by reference but
only as the material exists on the date the rule is adopted. For
purposes of the rule, changes in the material are not effective
unless the rule is amended to incorporate the changes.



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17 2. An agency rule that incorporates by specific reference
18 another rule of that agency automatically incorporates
19 subsequent amendments to the referenced rule unless a contrary
20 intent is clearly indicated in the referencing rule. A notice of
21 amendments to a rule that has been incorporated by specific
22 reference in other rules of that agency must explain the effect
23 of those amendments on the referencing rules.

24 3. In rules adopted after December 31, 2010, and rules
25 repromulgated after December 31, 2018, material may not be
26 incorporated by reference unless:

27 a. The material has been submitted in the prescribed
28 electronic format to the Department of State and the full text
29 of the material can be made available for free public access
30 through an electronic hyperlink from the rule making the
31 reference in the Florida Administrative Code; or

32 b. The agency has determined that posting the material on
33 the Internet for purposes of public examination and inspection
34 would constitute a violation of federal copyright law, in which
35 case a statement to that effect, along with the address of
36 locations at the Department of State and the agency at which the
37 material is available for public inspection and examination,
38 must be included in the notice required by subparagraph (3)(a)1.

39 4. A rule may not be amended by reference only. Amendments
40 must set out the amended rule in full in the same manner as
41 required by the State Constitution for laws.



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42 5. Notwithstanding any contrary provision in this section,
43 when an adopted rule of the Department of Environmental
44 Protection or a water management district is incorporated by
45 reference in the other agency's rule to implement a provision of
46 part IV of chapter 373, subsequent amendments to the rule are
47 not effective as to the incorporating rule unless the agency
48 incorporating by reference notifies the committee and the
49 Department of State of its intent to adopt the subsequent
50 amendment, publishes notice of such intent in the Florida
51 Administrative Register, and files with the Department of State
52 a copy of the amended rule incorporated by reference. Changes in
53 the rule incorporated by reference are effective as to the other
54 agency 20 days after the date of the published notice and filing
55 with the Department of State. The Department of State shall
56 amend the history note of the incorporating rule to show the
57 effective date of such change. Any substantially affected person
58 may, within 14 days after the date of publication of the notice
59 of intent in the Florida Administrative Register, file an
60 objection to rulemaking with the agency. The objection shall
61 specify the portions of the rule incorporated by reference to
62 which the person objects and the reasons for the objection. The
63 agency shall not have the authority under this subparagraph to
64 adopt those portions of the rule specified in such objection.
65 The agency shall publish notice of the objection and of its



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66 action in response in the next available issue of the Florida
67 Administrative Register.

68 6. The Department of State may adopt by rule requirements
69 for incorporating materials pursuant to this paragraph.

70 (3) ADOPTION PROCEDURES.—

71 (a) Notices.—

72 1. Prior to the adoption, amendment, or repeal of any rule
73 other than an emergency rule, an agency, upon approval of the
74 agency head, shall give notice of its intended action, setting
75 forth a short, plain explanation of the purpose and effect of
76 the proposed action; the full text of the proposed rule or
77 amendment and a summary thereof; a reference to the grant of
78 rulemaking authority pursuant to which the rule is adopted; and
79 a reference to the section or subsection of the Florida Statutes
80 or the Laws of Florida being implemented or interpreted. The
81 notice must include a summary of the agency's statement of the
82 estimated regulatory costs, if one has been prepared, based on
83 the factors set forth in s. 120.541(2); a statement that any
84 person who wishes to provide the agency with information
85 regarding the statement of estimated regulatory costs, or to
86 provide a proposal for a lower cost regulatory alternative as
87 provided by s. 120.541(1), must do so in writing within 21 days
88 after publication of the notice; and a statement as to whether,
89 based on the statement of the estimated regulatory costs or
90 other information expressly relied upon and described by the



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91 agency if no statement of regulatory costs is required, the
92 proposed rule is expected to require legislative ratification
93 pursuant to s. 120.541(3). The notice must state the procedure
94 for requesting a public hearing on the proposed rule. Except
95 when the intended action is the repeal of a rule, the notice
96 must include a reference both to the date on which and to the
97 place where the notice of rule development that is required by
98 subsection (2) appeared.

99 2. The notice shall be published in the Florida
100 Administrative Register not less than 28 days prior to the
101 intended action. The proposed rule, including all material
102 proposed to be incorporated by reference, shall be available for
103 inspection and copying by the public at the time of the
104 publication of notice. After December 31, 2018, material
105 proposed to be incorporated by reference in the notice required
106 by this paragraph shall be made available in the manner
107 prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

108 3. The notice shall be mailed to all persons named in the
109 proposed rule and to all persons who, at least 14 days prior to
110 such mailing, have made requests of the agency for advance
111 notice of its proceedings. The agency shall also give such
112 notice as is prescribed by rule to those particular classes of
113 persons to whom the intended action is directed.

114 4. The adopting agency shall file with the committee, at
115 least 21 days prior to the proposed adoption date, a copy of



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116 each rule it proposes to adopt; a copy of any material
117 incorporated by reference in the rule; a detailed written
118 statement of the facts and circumstances justifying the proposed
119 rule; a copy of any statement of estimated regulatory costs that
120 has been prepared pursuant to s. 120.541; a statement of the
121 extent to which the proposed rule relates to federal standards
122 or rules on the same subject; and the notice required by
123 subparagraph 1.

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

125 1. Statement of estimated regulatory costs.—Before the
126 adoption, amendment, or repeal of any rule other than an
127 emergency rule, an agency is encouraged to prepare a statement
128 of estimated regulatory costs of the proposed rule, as provided
129 by s. 120.541. However, an agency must prepare a statement of
130 estimated regulatory costs of the proposed rule, as provided by
131 s. 120.541, if:

132 a. The proposed rule will have an adverse impact on small
133 business; or

134 b. The proposed rule is likely to directly or indirectly
135 increase regulatory costs in excess of \$200,000 in the aggregate
136 in this state within 1 year after the implementation of the
137 rule.

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

139 a. Each agency, before the adoption, amendment, or repeal
140 of a rule, shall consider the impact of the rule on small



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141 businesses as defined by s. 288.703 and the impact of the rule
142 on small counties or small cities as defined by s. 120.52.
143 Whenever practicable, an agency shall tier its rules to reduce
144 disproportionate impacts on small businesses, small counties, or
145 small cities to avoid regulating small businesses, small
146 counties, or small cities that do not contribute significantly
147 to the problem the rule is designed to address. An agency may
148 define "small business" to include businesses employing more
149 than 200 persons, may define "small county" to include those
150 with populations of more than 75,000, and may define "small
151 city" to include those with populations of more than 10,000, if
152 it finds that such a definition is necessary to adapt a rule to
153 the needs and problems of small businesses, small counties, or
154 small cities. The agency shall consider each of the following
155 methods for reducing the impact of the proposed rule on small
156 businesses, small counties, and small cities, or any combination
157 of these entities:

158 (I) Establishing less stringent compliance or reporting
159 requirements in the rule.

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

162 (III) Consolidating or simplifying the rule's compliance
163 or reporting requirements.



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164 (IV) Establishing performance standards or best management
165 practices to replace design or operational standards in the
166 rule.

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

169 b.(I) If the agency determines that the proposed action
170 will affect small businesses as defined by the agency as
171 provided in sub-subparagraph a., the agency shall send written
172 notice of the rule to the rules ombudsman in the Executive
173 Office of the Governor at least 28 days before the intended
174 action.

175 (II) Each agency shall adopt those regulatory alternatives
176 offered by the rules ombudsman in the Executive Office of the
177 Governor and provided to the agency no later than 21 days after
178 the rules ombudsman's receipt of the written notice of the rule
179 which it finds are feasible and consistent with the stated
180 objectives of the proposed rule and which would reduce the
181 impact on small businesses. When regulatory alternatives are
182 offered by the rules ombudsman in the Executive Office of the
183 Governor, the 90-day period for filing the rule in subparagraph
184 (e)2. is extended for a period of 21 days. The agency shall
185 provide notice to the committee of any regulatory alternative
186 offered to the agency pursuant to this sub-subparagraph at least
187 21 days before filing the rule for adoption.



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188 (III) If an agency does not adopt all alternatives offered
189 pursuant to this sub-subparagraph, it shall, before rule
190 adoption or amendment and pursuant to subparagraph (d)1., file a
191 detailed written statement with the committee explaining the
192 reasons for failure to adopt such alternatives. Within 3 working
193 days after the filing of such notice, the agency shall send a
194 copy of such notice to the rules ombudsman in the Executive
195 Office of the Governor.

196 (c) Hearings.-

197 1. If the intended action concerns any rule other than one
198 relating exclusively to procedure or practice, the agency shall,
199 on the request of any affected person received within 21 days
200 after the date of publication of the notice of intended agency
201 action, give affected persons an opportunity to present evidence
202 and argument on all issues under consideration. The agency may
203 schedule a public hearing on the rule and, if requested by any
204 affected person, shall schedule a public hearing on the rule.
205 When a public hearing is held, the agency must ensure that staff
206 are available to explain the agency's proposal and to respond to
207 questions or comments regarding the rule. If the agency head is
208 a board or other collegial body created under s. 20.165(4) or s.
209 20.43(3)(g), and one or more requested public hearings is
210 scheduled, the board or other collegial body shall conduct at
211 least one of the public hearings itself and may not delegate
212 this responsibility without the consent of those persons



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213 requesting the public hearing. Any material pertinent to the
214 issues under consideration submitted to the agency within 21
215 days after the date of publication of the notice or submitted to
216 the agency between the date of publication of the notice and the
217 end of the final public hearing shall be considered by the
218 agency and made a part of the record of the rulemaking
219 proceeding.

220 2. Rulemaking proceedings shall be governed solely by the
221 provisions of this section unless a person timely asserts that
222 the person's substantial interests will be affected in the
223 proceeding and affirmatively demonstrates to the agency that the
224 proceeding does not provide adequate opportunity to protect
225 those interests. If the agency determines that the rulemaking
226 proceeding is not adequate to protect the person's interests, it
227 shall suspend the rulemaking proceeding and convene a separate
228 proceeding under the provisions of ss. 120.569 and 120.57.
229 Similarly situated persons may be requested to join and
230 participate in the separate proceeding. Upon conclusion of the
231 separate proceeding, the rulemaking proceeding shall be resumed.

232 (d) Modification or withdrawal of proposed rules.-

233 1. After the final public hearing on the proposed rule, or
234 after the time for requesting a hearing has expired, if the rule
235 has not been changed from the rule as previously filed with the
236 committee, or contains only technical changes, the adopting
237 agency shall file a notice to that effect with the committee at



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238 least 7 days prior to filing the rule for adoption. Any change,
239 other than a technical change that does not affect the substance
240 of the rule, must be supported by the record of public hearings
241 held on the rule, must be in response to written material
242 submitted to the agency within 21 days after the date of
243 publication of the notice of intended agency action or submitted
244 to the agency between the date of publication of the notice and
245 the end of the final public hearing, or must be in response to a
246 proposed objection by the committee. In addition, when any
247 change is made in the a proposed rule text or any material
248 incorporated by reference, other than a technical change, the
249 adopting agency shall provide a copy of a notice of change by
250 certified mail or actual delivery to any person who requests it
251 in writing no later than 21 days after the notice required in
252 paragraph (a). The agency shall file the notice of change with
253 the committee, along with the reasons for the change, and
254 provide the notice of change to persons requesting it, at least
255 21 days prior to filing the rule for adoption. The notice of
256 change shall be published in the Florida Administrative Register
257 at least 21 days prior to filing the rule for adoption. This
258 subparagraph does not apply to emergency rules adopted pursuant
259 to subsection (4). After December 31, 2018, material proposed to
260 be incorporated by reference in the notice required by this
261 subparagraph shall be made available in the manner prescribed by
262 sub-subparagraph (1)(i)3.a. or (1)(i)3.b.



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263 2. After the notice required by paragraph (a) and prior to
264 adoption, the agency may withdraw the rule in whole or in part.

265 3. After adoption and before the rule becomes effective, a
266 rule may be modified or withdrawn only in the following
267 circumstances:

268 a. When the committee objects to the rule;

269 b. When a final order, which is not subject to further
270 appeal, is entered in a rule challenge brought pursuant to s.
271 120.56 after the date of adoption but before the rule becomes
272 effective pursuant to subparagraph (e)6.;

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

277 d. When the committee notifies the agency that an
278 objection to the rule is being considered, in which case the
279 rule may be modified to extend the effective date by not more
280 than 60 days.

281 4. The agency shall give notice of its decision to
282 withdraw or modify a rule in the first available issue of the
283 publication in which the original notice of rulemaking was
284 published, shall notify those persons described in subparagraph
285 (a)3. in accordance with the requirements of that subparagraph,
286 and shall notify the Department of State if the rule is required
287 to be filed with the Department of State.



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

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

292 1. If the adopting agency is required to publish its rules
293 in the Florida Administrative Code, the agency, upon approval of
294 the agency head, shall file with the Department of State three
295 certified copies of the rule it proposes to adopt; one copy of
296 any material incorporated by reference in the rule, certified by
297 the agency; a summary of the rule; a summary of any hearings
298 held on the rule; and a detailed written statement of the facts
299 and circumstances justifying the rule. Agencies not required to
300 publish their rules in the Florida Administrative Code shall
301 file one certified copy of the proposed rule, and the other
302 material required by this subparagraph, in the office of the
303 agency head, and such rules shall be open to the public.

304 2. A rule may not be filed for adoption less than 28 days
305 or more than 90 days after the notice required by paragraph (a),
306 until 21 days after the notice of change required by paragraph
307 (d), until 14 days after the final public hearing, until 21 days
308 after a statement of estimated regulatory costs required under
309 s. 120.541 has been provided to all persons who submitted a
310 lower cost regulatory alternative and made available to the
311 public, or until the administrative law judge has rendered a
312 decision under s. 120.56(2), whichever applies. When a required



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313 notice of change is published prior to the expiration of the
314 time to file the rule for adoption, the period during which a
315 rule must be filed for adoption is extended to 45 days after the
316 date of publication. If notice of a public hearing is published
317 prior to the expiration of the time to file the rule for
318 adoption, the period during which a rule must be filed for
319 adoption is extended to 45 days after adjournment of the final
320 hearing on the rule, 21 days after receipt of all material
321 authorized to be submitted at the hearing, or 21 days after
322 receipt of the transcript, if one is made, whichever is latest.
323 The term "public hearing" includes any public meeting held by
324 any agency at which the rule is considered. If a petition for an
325 administrative determination under s. 120.56(2) is filed, the
326 period during which a rule must be filed for adoption is
327 extended to 60 days after the administrative law judge files the
328 final order with the clerk or until 60 days after subsequent
329 judicial review is complete.

330 3. At the time a rule is filed, the agency shall certify
331 that the time limitations prescribed by this paragraph have been
332 complied with, that all statutory rulemaking requirements have
333 been met, and that there is no administrative determination
334 pending on the rule.

335 4. At the time a rule is filed, the committee shall
336 certify whether the agency has responded in writing to all
337 material and timely written comments or written inquiries made



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338 on behalf of the committee. The department shall reject any rule
339 that is not filed within the prescribed time limits; that does
340 not comply with all statutory rulemaking requirements and rules
341 of the department; upon which an agency has not responded in
342 writing to all material and timely written inquiries or written
343 comments; upon which an administrative determination is pending;
344 or which does not include a statement of estimated regulatory
345 costs, if required.

346 5. If a rule has not been adopted within the time limits
347 imposed by this paragraph or has not been adopted in compliance
348 with all statutory rulemaking requirements, the agency proposing
349 the rule shall withdraw the rule and give notice of its action
350 in the next available issue of the Florida Administrative
351 Register.

352 6. The proposed rule shall be adopted on being filed with
353 the Department of State and become effective 20 days after being
354 filed, on a later date specified in the notice required by
355 subparagraph (a)1., on a date required by statute, or upon
356 ratification by the Legislature pursuant to s. 120.541(3). Rules
357 not required to be filed with the Department of State shall
358 become effective when adopted by the agency head, on a later
359 date specified by rule or statute, or upon ratification by the
360 Legislature pursuant to s. 120.541(3). If the committee notifies
361 an agency that an objection to a rule is being considered, the
362 agency may postpone the adoption of the rule to accommodate

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363 review of the rule by the committee. When an agency postpones
364 adoption of a rule to accommodate review by the committee, the
365 90-day period for filing the rule is tolled until the committee
366 notifies the agency that it has completed its review of the
367 rule.

368

369 For the purposes of this paragraph, the term "administrative
370 determination" does not include subsequent judicial review.

371 (7) PETITION TO INITIATE RULEMAKING.—

372 (a) Any person regulated by an agency or having
373 substantial interest in an agency rule may petition an agency to
374 adopt, amend, or repeal a rule or to provide the minimum public
375 information required by this chapter. The petition shall specify
376 the proposed rule and action requested. The agency shall file a
377 copy of the petition with the committee. Not later than 30
378 calendar days following the date of filing a petition, the
379 agency shall initiate rulemaking proceedings under this chapter,
380 otherwise comply with the requested action, or deny the petition
381 with a written statement of its reasons for the denial.

382 Section 3. Paragraph (a) of subsection (1) of section
383 120.541, Florida Statutes, is amended to read:

384 120.541 Statement of estimated regulatory costs.—

385 (1) (a) Within 21 days after publication of the notice
386 required under s. 120.54(3)(a), a substantially affected person
387 may submit to an agency a good faith written proposal for a



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388 lower cost regulatory alternative to a proposed rule which
389 substantially accomplishes the objectives of the law being
390 implemented. The agency shall provide a copy of any proposal for
391 a lower cost regulatory alternative to the committee at least 21
392 days before filing the rule for adoption. The proposal may
393 include the alternative of not adopting any rule if the proposal
394 explains how the lower costs and objectives of the law will be
395 achieved by not adopting any rule. If such a proposal is
396 submitted, the 90-day period for filing the rule is extended 21
397 days. Upon the submission of the lower cost regulatory
398 alternative, the agency shall prepare a statement of estimated
399 regulatory costs as provided in subsection (2), or shall revise
400 its prior statement of estimated regulatory costs, and either
401 adopt the alternative or provide a statement of the reasons for
402 rejecting the alternative in favor of the proposed rule.

403 Section 4. Section 120.5435, Florida Statutes, is created to
404 read:

405 120.5435 Repromulgation of rules.—

406 (1) It is the intent of the Legislature that each agency
407 shall periodically review its rules for consistency with the
408 powers and duties granted by its enabling statutes. If an agency
409 determines after review that substantive changes to update a
410 rule are not required, such agency shall repromulgate the rule
411 to reflect the date of the review.



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412 (2) Before repromulgation of the rule, an agency shall,
413 upon approval by the agency head:

414 (a) Publish a notice of repromulgation in the Florida
415 Administrative Register. A notice of repromulgation is not
416 required to include the text of the rule being promulgated.

417 (b) File the rule for repromulgation with the Department
418 of State. A rule may not be filed for repromulgation less than
419 28 days or more than 90 days after the publication of the notice
420 required by paragraph (a).

421 (3) The agency shall file a notice of repromulgation with
422 the committee at least 14 days before filing the rule for
423 repromulgation. At the time the rule is filed for
424 repromulgation, the committee shall certify whether the agency
425 has responded in writing to all material and timely written
426 comments or written inquiries made on behalf of the committee.

427 (4) If the rule is not filed for repromulgation within the
428 time limit imposed by paragraph (2)(b), the agency shall
429 withdraw the rule for repromulgation and give notice of the
430 withdrawal in the next available issue of the Florida
431 Administrative Register.

432 (5) A repromulgated rule is not subject to challenge as a
433 proposed rule pursuant to s. 120.56(2).

434 (6) The hearing requirements of s. 120.54 do not apply to
435 repromulgation of a rule.



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436 (7) (a) The agency, upon approval of the agency head or his
437 or her designee, shall file with the Department of State three
438 certified copies of the repromulgated rule it proposes to adopt
439 and one certified copy of any material incorporated by reference
440 in the rule.

441 (b) The repromulgated rule shall be adopted upon filing
442 with the Department of State and becomes effective 20 days after
443 being filed.

444 (c) The Department of State shall update the history note
445 of the rule in the Florida Administrative Code to reflect the
446 effective date of the repromulgated rule.

447 (8) The Department of State shall adopt rules to implement
448 this section by December 31, 2018.

449 Section 5. Paragraphs (a) and (c) of subsection (1) of
450 section 120.55, Florida Statutes, are amended to read:

451 120.55 Publication.—

452 (1) The Department of State shall:

453 (a)1. Through a continuous revision and publication
454 system, compile and publish electronically, on a website managed
455 by the department, the "Florida Administrative Code." The
456 Florida Administrative Code shall contain all rules adopted by
457 each agency, citing the grant of rulemaking authority and the
458 specific law implemented pursuant to which each rule was
459 adopted, all history notes as authorized in s. 120.545(7),
460 complete indexes to all rules contained in the code, and any



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461 other material required or authorized by law or deemed useful by
462 the department. The electronic code shall display each rule
463 chapter currently in effect in browse mode and allow full text
464 search of the code and each rule chapter. The department may
465 contract with a publishing firm for a printed publication;
466 however, the department shall retain responsibility for the code
467 as provided in this section. The electronic publication shall be
468 the official compilation of the administrative rules of this
469 state. The Department of State shall retain the copyright over
470 the Florida Administrative Code.

471 2. Rules general in form but applicable to only one school
472 district, community college district, or county, or a part
473 thereof, or state university rules relating to internal
474 personnel or business and finance shall not be published in the
475 Florida Administrative Code. Exclusion from publication in the
476 Florida Administrative Code shall not affect the validity or
477 effectiveness of such rules.

478 3. At the beginning of the section of the code dealing
479 with an agency that files copies of its rules with the
480 department, the department shall publish the address and
481 telephone number of the executive offices of each agency, the
482 manner by which the agency indexes its rules, a listing of all
483 rules of that agency excluded from publication in the code, and
484 a statement as to where those rules may be inspected.



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485 4. Forms shall not be published in the Florida
486 Administrative Code; but any form which an agency uses in its
487 dealings with the public, along with any accompanying
488 instructions, shall be filed with the committee before it is
489 used. Any form or instruction which meets the definition of
490 "rule" provided in s. 120.52 shall be incorporated by reference
491 into the appropriate rule. The reference shall specifically
492 state that the form is being incorporated by reference and shall
493 include the number, title, and effective date of the form and an
494 explanation of how the form may be obtained. Each form created
495 by an agency which is incorporated by reference in a rule notice
496 of which is given under s. 120.54(3)(a) after December 31, 2007,
497 must clearly display the number, title, and effective date of
498 the form and the number of the rule in which the form is
499 incorporated.

500 5. After December 31, 2018, the department shall require
501 all material incorporated by reference in any part of an adopted
502 rule and in any part of a repromulgated rule ~~allow adopted rules~~
503 ~~and material incorporated by reference~~ to be filed in the manner
504 prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b.
505 ~~electronic form as prescribed by department rule.~~ When a rule is
506 filed for adoption or repromulgation with incorporated material
507 in electronic form, the department's publication of the Florida
508 Administrative Code on its website must contain a hyperlink from
509 the incorporating reference in the rule directly to that

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510 material. The department may not allow hyperlinks from rules in
511 the Florida Administrative Code to any material other than that
512 filed with and maintained by the department, but may allow
513 hyperlinks to incorporated material maintained by the department
514 from the adopting agency's website or other sites.

515 6. The Department of State shall include the date of any
516

517 -----

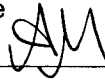
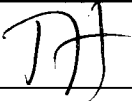
518 **T I T L E A M E N D M E N T**

519 Remove lines 4-5 and insert:

520 amending s. 120.54, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 977 Retirement of Instructional Personnel and Administrative Personnel
SPONSOR(S): Fine
TIED BILLS: IDEN./SIM. BILLS: SB 1240

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore 	Harrington 
2) Appropriations Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits for employees of the state and county government agencies, district school boards, state colleges, and universities and it also serves as the retirement plan for participating employees of the cities and independent hospitals and special districts that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan.

In addition to the two primary plans, some eligible members have the choice of participating in optional retirement programs. All membership classes in the FRS Pension Plan may participate in the Deferred Retirement Option Program (DROP), which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years. Certain instructional personnel may participate in DROP for up to three years beyond the initial five-year period. While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.

The bill provides that effective July 1, 2018, instructional personnel who are authorized to extend DROP participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employer. For those employees who have already extended DROP on or before July 1, 2018, the member's DROP participation may be extended through the last day of the last calendar month of that school year. The employer must notify the division of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

In addition, administrative personnel in grades K-12 who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred.

The bill may have a negative fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹

The FRS is a multiple-employer, contributory plan² governed by the Florida Retirement System Act.³ As of June 30, 2017, the FRS provides retirement income benefits to 637,643 active members,⁴ 406,374 retired members and beneficiaries, and 32,233 members of the Deferred Retirement Option Program (DROP).⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 173 cities and 266 independent hospitals and special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:⁷

- Regular Class⁸ consists of 555,716 members (87.15 percent of the membership);
- Special Risk Class⁹ includes 71,612 members (11.23 percent);
- Special Risk Administrative Support Class¹⁰ has 93 members (.01 percent);
- Elected Officers' Class¹¹ has 2,167 members (0.34 percent); and
- Senior Management Service Class¹² has 8,028 members (1.27 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

¹ *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017*, at 33. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited January 19, 2018) [hereinafter *Annual Report*].

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.

³ Chapter 121, F.S.

⁴ As of June 30, 2017, the FRS Pension Plan, which is a defined benefit plan, had 520,014 members, and the investment plan, which is a defined contribution plan, had 117,629 members. *Annual Report*, *supra* note 1, at 144.

⁵ *Id.*

⁶ Florida Retirement System Participating Employers for Plan Year 2017-18, prepared by the Department of Management Services, Division of Retirement, Revised February 2017, at 8. A copy of the document can be found online at: <https://www.rol.frs.state.fl.us/forms/part-emp.pdf> (last visited January 19, 2018).

⁷ *Annual Report*, *supra* note 1, at 147.

⁸ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁹ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics, and emergency technicians, among others. Section 121.0515, F.S.

¹⁰ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the FRS. Section 121.0515(8), F.S.

¹¹ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹² The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan; and
- The investment plan, which is a defined contribution plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the pension plan. The earliest that any member could participate in the investment plan was July 1, 2002.

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹³ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁴

A member vests immediately in all employee contributions paid to the investment plan.¹⁵ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁶ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁷

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member's account varies by class as follows:

Membership Class	Percentage of Gross Compensation
Regular Class	6.30%
Special Risk Class	14.00%
Special Risk Administrative Support Class	7.95%
Elected Officers' Class	
• Justices and Judges	13.23%
• County Elected Officers	11.34%
• Others	9.38%
Senior Management Service Class	7.67%

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).¹⁸ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members initially enrolled on or after July

¹³ Section 121.4501(8), F.S.

¹⁴ Section 4(e), Art. IV, Fla. Const.

¹⁵ Section 121.4501(6)(a), F.S.

¹⁶ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹⁷ Section 121.591, F.S.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²¹ The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%, 1.63%, 1.65%, 1.68% ²²
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%, 1.63%, 1.65%, 1.68% ²³
Elected Officers' Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²⁴ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁵ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁶

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.²⁷ However, members who are instructional personnel employed by the Florida School for the Deaf and Blind and authorized by the Board of Trustees of the Florida School for the Deaf and Blind, who are instructional personnel as defined in s. 1012.01(2)(a)-(d), F.S., in grades K-12 and authorized by the district school superintendent, or who are instructional personnel as defined in s. 1012.01(2), F.S., employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, may participate in DROP for up to three years beyond the initial five-year period.²⁸ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.²⁹

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.³⁰

Effect of the Bill

The bill provides that effective July 1, 2018, instructional personnel who are authorized to extend DROP participation beyond the 60-month period must have a termination date that is the last day of the last calendar month of the school year within the DROP extension granted by the employer. For those employees who have already extended DROP on or before July 1, 2018, the member's DROP

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.091(1)(a)1., F.S.

²³ Section 121.0515(8)(a), F.S.

²⁴ Section 121.021(29)(a)1., F.S.

²⁵ Section 121.021(29)(b)1., F.S.

²⁶ Section 121.021(29)(a)2. and (b)2., F.S.

²⁷ Section 121.091(13)(a) and (b), F.S.

²⁸ Section 121.091(13)(b), F.S.

²⁹ If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

³⁰ See s. 121.4501(2)(k) and (4)(f), F.S.

participation may be extended through the last day of the last calendar month of that school year. The employer must notify the division of the change in termination date and the additional period of DROP participation for the affected instructional personnel.

In addition, administrative personnel in grades K-12 who have a DROP termination date on or after July 1, 2018, may be authorized to extend DROP participation beyond the initial 60 calendar month period if the administrative personnel's termination date is before the end of the school year. Such administrative personnel may have DROP participation extended until the last day of the last calendar month of the school year in which their original DROP termination date occurred.

B. SECTION DIRECTORY:

Section 1. amends s. 121.091, F.S., revising limitations on the maximum length of participation in DROP for certain instructional personnel and administrative personnel.

Section 2. provides a statement of important state interest.

Section 3. provides that the bill is effective on July 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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill authorizes certain school instructional personnel and administrative personnel to extend the length of their participation in DROP. As such, the fiscal impact on this bill will depend on the number of school employees who elect to extend their participation in DROP. Such participation will increase the retirement costs incurred by the school boards. However, such extension is optional and within the discretion of the employer.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

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 retirement of instructional
 3 personnel and administrative personnel; amending s.
 4 121.091, F.S.; revising limitations on the maximum
 5 length of participation in the Deferred Retirement
 6 Option Program for certain instructional personnel and
 7 administrative personnel; requiring an employer to
 8 notify the Division of Retirement of the Department of
 9 Management Services regarding any change in
 10 termination date and program participation for each
 11 affected member; providing a statement of important
 12 state interest; providing an effective date.

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

15
 16 Section 1. Paragraph (b) of subsection (13) of section
 17 121.091, Florida Statutes, is amended to read:

18 121.091 Benefits payable under the system.—Benefits may
 19 not be paid under this section unless the member has terminated
 20 employment as provided in s. 121.021(39)(a) or begun
 21 participation in the Deferred Retirement Option Program as
 22 provided in subsection (13), and a proper application has been
 23 filed in the manner prescribed by the department. The department
 24 may cancel an application for retirement benefits when the
 25 member or beneficiary fails to timely provide the information

26 and documents required by this chapter and the department's
 27 rules. The department shall adopt rules establishing procedures
 28 for application for retirement benefits and for the cancellation
 29 of such application when the required information or documents
 30 are not received.

31 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
 32 subject to this section, the Deferred Retirement Option Program,
 33 hereinafter referred to as DROP, is a program under which an
 34 eligible member of the Florida Retirement System may elect to
 35 participate, deferring receipt of retirement benefits while
 36 continuing employment with his or her Florida Retirement System
 37 employer. The deferred monthly benefits shall accrue in the
 38 Florida Retirement System on behalf of the member, plus interest
 39 compounded monthly, for the specified period of the DROP
 40 participation, as provided in paragraph (c). Upon termination of
 41 employment, the member shall receive the total DROP benefits and
 42 begin to receive the previously determined normal retirement
 43 benefits. Participation in the DROP does not guarantee
 44 employment for the specified period of DROP. Participation in
 45 DROP by an eligible member beyond the initial 60-month period as
 46 authorized in this subsection shall be on an annual contractual
 47 basis for all participants.

48 (b) Participation in DROP.—Except as provided in this
 49 paragraph, an eligible member may elect to participate in DROP
 50 for a period not to exceed a maximum of 60 calendar months.

51 1.a. An eligible member may elect to participate in DROP
 52 for a period not to exceed a maximum of 60 calendar months.
 53 However, members who are instructional personnel employed by the
 54 Florida School for the Deaf and the Blind and authorized by the
 55 Board of Trustees of the Florida School for the Deaf and the
 56 Blind, who are instructional personnel as defined in s.
 57 1012.01(2)(a)-(d) in grades K-12 and authorized by the district
 58 school superintendent, or who are instructional personnel as
 59 defined in s. 1012.01(2)(a) employed by a developmental research
 60 school and authorized by the school's director, or if the school
 61 has no director, by the school's principal, may participate in
 62 DROP for up to 36 calendar months beyond the 60-month period.
 63 Effective July 1, 2018, instructional personnel who are
 64 authorized to extend DROP participation beyond the 60-month
 65 period must have a termination date that is the last day of the
 66 last calendar month of the school year within the DROP extension
 67 granted by the employer. If, on July 1, 2018, the member's DROP
 68 participation has already been extended for the maximum 36
 69 calendar months and the extension period concludes before the
 70 end of the school year, the member's DROP participation may be
 71 extended through the last day of the last calendar month of that
 72 school year. The employer shall notify the division of the
 73 change in termination date and the additional period of DROP
 74 participation for the affected instructional personnel.
 75 b. Administrative personnel in grades K-12, as defined in

76 s. 1012.01(3), who have a DROP termination date on or after July
 77 1, 2018, may be authorized to extend DROP participation beyond
 78 the initial 60 calendar month period if the administrative
 79 personnel's termination date is before the end of the school
 80 year. Such administrative personnel may have DROP participation
 81 extended until the last day of the last calendar month of the
 82 school year in which their original DROP termination date
 83 occurred if a date other than the last day of the last calendar
 84 month of the school year is designated. The employer shall
 85 notify the division of the change in termination date and the
 86 additional period of DROP participation for the affected
 87 administrative personnel.

- 88 2. Upon deciding to participate in DROP, the member shall
 89 submit, on forms required by the division:
- 90 a. A written election to participate in DROP;
 - 91 b. Selection of DROP participation and termination dates
 92 that satisfy the limitations stated in paragraph (a) and
 93 subparagraph 1. The termination date must be in a binding letter
 94 of resignation to the employer establishing a deferred
 95 termination date. The member may change the termination date
 96 within the limitations of subparagraph 1., but only with the
 97 written approval of the employer;
 - 98 c. A properly completed DROP application for service
 99 retirement as provided in this section; and
 - 100 d. Any other information required by the division.

101 3. The DROP participant is a retiree under the Florida
 102 Retirement System for all purposes, except for paragraph (5)(f)
 103 and subsection (9) and ss. 112.3173, 112.363, 121.053, and
 104 121.122. DROP participation is final and may not be canceled by
 105 the participant after the first payment is credited during the
 106 DROP participation period. However, participation in DROP does
 107 not alter the participant's employment status, and the member is
 108 not deemed retired from employment until his or her deferred
 109 resignation is effective and termination occurs as defined in s.
 110 121.021.

111 4. Elected officers are eligible to participate in DROP
 112 subject to the following:

113 a. An elected officer who reaches normal retirement date
 114 during a term of office may defer the election to participate
 115 until the next succeeding term in that office. An elected
 116 officer who exercises this option may participate in DROP for up
 117 to 60 calendar months or no longer than the succeeding term of
 118 office, whichever is less.

119 b. An elected or a nonelected participant may run for a
 120 term of office while participating in DROP and, if elected,
 121 extend the DROP termination date accordingly; however, if such
 122 additional term of office exceeds the 60-month limitation
 123 established in subparagraph 1., and the officer does not resign
 124 from office within such 60-month limitation, the retirement and
 125 the participant's DROP is null and void as provided in sub-

126 | subparagraph (c)5.d.

127 | c. An elected officer who is dually employed and elects to
 128 | participate in DROP must terminate all employment relationships
 129 | as provided in s. 121.021(39) for the nonelected position within
 130 | the original 60-month period or maximum participation period as
 131 | provided in subparagraph 1. For DROP participation ending:

132 | (I) Before July 1, 2010, the officer may continue
 133 | employment as an elected officer as provided in s. 121.053. The
 134 | elected officer shall be enrolled as a renewed member in the
 135 | Elected Officers' Class or the Regular Class, as provided in ss.
 136 | 121.053 and 121.122, on the first day of the month after
 137 | termination of employment in the nonelected position and
 138 | termination of DROP. Distribution of the DROP benefits shall be
 139 | made as provided in paragraph (c).

140 | (II) On or after July 1, 2010, the officer may continue
 141 | employment as an elected officer but must defer termination as
 142 | provided in s. 121.053.

143 | Section 2. The Legislature finds that a proper and
 144 | legitimate state purpose is served when employees and retirees
 145 | of the state and its political subdivisions, and the dependents,
 146 | survivors, and beneficiaries of such employees and retirees, are
 147 | extended the basic protections afforded by governmental
 148 | retirement systems. These persons must be provided benefits that
 149 | are fair and adequate and that are managed, administered, and
 150 | funded in an actuarially sound manner, as required by s. 14,

HB 977



2018

151 Article X of the State Constitution and part VII of chapter 112,
152 Florida Statutes. Therefore, the Legislature determines and
153 declares that this act fulfills an important state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1037 Pub. Rec./Public Guardians/Employees with Fiduciary Responsibility
SPONSOR(S): Children, Families & Seniors Subcommittee; Gruters and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee		Toliver 	Harrington 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Guardianship is a concept whereby a “guardian” acts on behalf of a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. Individuals who need guardianship may have dementia, Alzheimer’s disease, a developmental disability, chronic illness, or other conditions that cause functional limitations.

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians; it was renamed the Office of the Public and Professional Guardians in 2016. A public guardian may serve “an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.” A public guardian is considered a professional guardian for purposes of regulation, education, and registration.

The bill creates a public records exemption for the identifying and location information of current and former public guardians, employees with fiduciary responsibility, and their spouses and children. 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 persons.

The bill provides for retroactive application of the public record exemption and 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 does not have a fiscal impact on state or local governments.

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:

Background

Guardianship

Guardianship is a concept whereby a “guardian”¹ acts on behalf of a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity.² There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.³ A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.⁴

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.⁵ Individuals who need guardianship may have dementia, Alzheimer’s disease, a developmental disability, chronic illness, or other conditions that cause functional limitations.⁶

Fiduciary Relationship

A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.⁷ The relationship between a guardian and his or her ward is a fiduciary one.⁸ The guardian, as fiduciary, must:

- Act within the scope of the authority granted by the court and as provided by law;
- Act in good faith;
- Not act in a manner contrary to the ward's best interests under the circumstances; and
- Use any special skills or expertise the guardian possesses when acting on behalf of the ward.⁹

Additionally, s. 744.446, F.S., states that there is a fiduciary relationship between the guardian and the ward and that such relationship may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary. As such, the guardian must act in the best interest of the ward and carry out his or her responsibilities in an informed and considered manner.

¹ Section 744.102(9), F.S.

² Section 744.102(22), F.S.

³ Section 744.2005(2), F.S.

⁴ Section 744.102(17), F.S.

⁵ Section 744.102(12), F.S.

⁶ *Lighting the Way to Guardianship and Other Decision-Making Alternatives: A Manual for Individuals and Families*, Florida Developmental Disabilities Council, Inc, (2010), available at https://www.fddc.org/sites/default/files/file/publications/Guardianship%20Family%20Manual_0.pdf (last visited January 20, 2018).

⁷ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

⁸ Section 744.361(1), F.S. Additionally, Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship. *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁹ Section 744.361(2)-(5), F.S.

Office of the Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.¹⁰ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the Department of Elder Affairs to the Office of Public and Professional Guardians (OPPG) and expanded the OPPG's responsibilities.¹¹

A public guardian may serve "an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian."¹² A public guardian may be an appointee of the OPPG or a contract employee of a nonprofit corporation.¹³ There are 17 public guardianship programs, with offices located in all 20 judicial circuits in the state.¹⁴

A public guardian is considered a professional guardian for purposes of regulation, education, and registration.¹⁵ Rule 58M-2.001(1)(c), F.A.C., defines "employee with fiduciary responsibility" as an employee of a professional guardian who has the ability to direct any withdrawal or investments from a ward's banking or investment accounts, supervises the care of the ward under the supervision of the guardian, or who makes any health care decision on behalf of the ward, as well as an employee of a professional guardian who has in-person contact with the Ward more than five times in any 30-day period.

Public guardians annually serve an approximate 3,500 wards statewide, frequently serving as the legally appointed representative for vulnerable persons with disabilities.¹⁶ Public guardians may serve wards who are a behavioral risk to the public guardian.¹⁷ Additionally, the court may have appointed the public guardian because family, friends, or support staff in the ward's life had abused, neglected, or exploited the ward.¹⁸ In some instances wards themselves, disgruntled friends and family of the ward, or persons who previously exploited the ward will threaten the public guardian.¹⁹ OPPG has had numerous reports from public guardians that guardians and their staff have been personally threatened and at times were fearful of their safety.²⁰

Currently, the names, home addresses, telephone numbers, dates of birth, and places of employment of public guardians, employees with fiduciary responsibility, and their spouses and children, as well as the names and locations of schools and day care facilities of their children are subject to release pursuant to a public records request.

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.²¹ 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.²² The public also has a right to notice of, and access to meetings of any collegial public body of

¹⁰ Chapter 99-277 L.O.F.

¹¹ Chapter 2016-40, L.O.F.

¹² Section 744.2007(1), F.S.

¹³ Section 744.2006, F.S.

¹⁴ DEPARTMENT OF ELDER AFFAIRS, *Florida Public Guardian Programs*, http://elderaffairs.state.fl.us/doea/spgo_public.php (last visited January 20, 2018).

¹⁵ Section 744.102(17), F.S.

¹⁶ Department of Elder Affairs, Agency Analysis of 2018 House Bill 1037 (Jan. 9, 2018), p.6 (on file with Children, Families, and Seniors Subcommittee staff).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ FLA. CONST., art. I, s. 24.

²² FLA. CONST., art. I, s. 24(a).

the executive branch of state government or of any local government.²³ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²⁴

Florida law specifies the conditions under which public access must be provided to government records and meetings.²⁵ The Public Records Act²⁶ guarantees every person's right to inspect and copy any state or local government public record. The Sunshine Law²⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.²⁸

The Legislature may create an exemption to public records or open meetings requirements.²⁹ An exemption must specifically state the public necessity justifying the exemption³⁰ and must be tailored to accomplish the stated purpose of the law.³¹ 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.³²

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.³³ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.³⁴ The Legislature must reenact the exemption in order to save it from repeal.³⁵

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 necessary³⁶ 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.³⁷

²³ FLA. CONST., art. I, s. 24(b).

²⁴ FLA. CONST., art. I, s. 24(b).

²⁵ Chapter 119, F.S.

²⁶ *Id.*

²⁷ Section 286.011, F.S.

²⁸ Section 286.011(1)-(2), F.S.

²⁹ FLA. CONST., art. I, s. 24(c).

³⁰ FLA. CONST., art. I, s. 24(c).

³¹ FLA. CONST., art. I, s. 24(c).

³² 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).

³³ S. 119.15, F.S.

³⁴ Section 119.15(3), F.S.

³⁵ *Id.*

³⁶ Section 119.15(6)(b), F.S.

³⁷ *Id.*

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.³⁸

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.⁴⁰

Effect of Proposed Changes

The bill exempts from public records requirements the home addresses, telephone numbers, dates of birth, places of employment, and photographs of:

- Current or former public guardians and employees with fiduciary responsibility, and
- Spouses and children of the above persons.

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 persons.

The bill defines an "employee with fiduciary responsibility" as an employee of a public guardian who:

- Has the ability to direct any withdrawals or investments made from a ward's banking or investment accounts;
- Under the supervision of the guardian, supervises the care of the ward; or
- Makes any health care decision, as defined in s. 765.101, F.S.,⁴¹ on behalf of the ward.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that public guardians may be at risk of harm by a disgruntled ward. The bill includes examples of how public guardians have been threatened and injured by their wards. The bill finds that the release of identifying and location information of current and former public guardians and employees with fiduciary responsibility, and their family members places them in danger of physical and emotional harm from disgruntled individuals who may act inappropriately or seek revenge due to actions taken by public guardians. It also states 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.

Lastly, the bill provides for retroactive application of the public record exemption.⁴²

³⁸ *Id.*

³⁹ FLA. CONST., art. I, s. 24(c).

⁴⁰ Section 119.15(7), F.S.

⁴¹ Section 765.101, F.S., defines "health care decision" to mean one of following: Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives; the decision to apply for private, public, government, or veterans' benefits to defray the cost of health care; the right of access to health information of the principal reasonably necessary for a health care surrogate or proxy to make decisions involving health care and to apply for benefits; or the decision to make an anatomical gift pursuant to part V of ch. 765, F.S. .

⁴² The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438, 441 (Fla. 2001).

B. SECTION DIRECTORY:

Section 1: Creates s. 744.21031, F.S., relating to public records exemption.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, 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 requires a public necessity statement, which it includes.

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 of certain identifying information of public guardians and employees with fiduciary responsibility 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Children, Families, and Seniors Subcommittee adopted an amendment that defined the term “employee with fiduciary responsibility” as an employee of a public guardian who:

- Has the ability to direct any withdrawals or investments made from a ward’s banking or investment accounts;
- Under the supervision of the guardian, supervises the care of the ward; or
- Makes any health care decision, as defined in s. 765.101, F.S., on behalf of the ward.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.

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A bill to be entitled
 An act relating to public records; creating s.
 744.21031, F.S.; providing an exemption from public
 records requirements for certain identifying and
 location information of current or former public
 guardians, employees with fiduciary responsibility,
 and the spouses and children thereof; providing a
 definition of the term "employee with fiduciary
 responsibility"; 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. Section 744.21031, Florida Statutes, is created
 to read:

744.21031 Public records exemption.—The home addresses,
 telephone numbers, dates of birth, places of employment, and
 photographs of current or former public guardians and employees
 with fiduciary responsibility; the names, home addresses,
 telephone numbers, dates of birth, and places of employment of
 the spouses and children of such persons; and the names and
 locations of schools and day care facilities attended by the
 children of such persons are exempt from s. 119.07(1) and s.

26 | 24(a), Art. I of the State Constitution. As used in this
 27 | section, the term "employee with fiduciary responsibility" means
 28 | an employee of a public guardian who has the ability to direct
 29 | any withdrawals or investments made from a ward's banking or
 30 | investment accounts; who, under the supervision of the guardian,
 31 | supervises the care of the ward; or who makes any health care
 32 | decision, as defined in s. 765.101, on behalf of the ward. This
 33 | exemption applies to information held by an agency before, on,
 34 | or after July 1, 2018. This section is subject to the Open
 35 | Government Sunset Review Act in accordance with s. 119.15 and
 36 | shall stand repealed on October 2, 2023, unless reviewed and
 37 | saved from repeal through reenactment by the Legislature.

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

42 | (a) The home addresses, telephone numbers, dates of birth,
 43 | places of employment, and photographs of current or former
 44 | public guardians and employees with fiduciary responsibility.

45 | (b) The names, home addresses, telephone numbers, dates of
 46 | birth, and places of employment of spouses and children of such
 47 | guardians and employees with fiduciary responsibility.

48 | (c) The names and locations of schools and day care
 49 | facilities attended by the children of such guardians and
 50 | employees with fiduciary responsibility.

51 (2) The Legislature finds that the release of such
 52 identifying and location information might place current or
 53 former public guardians and employees with fiduciary
 54 responsibility and their family members in danger of physical
 55 and emotional harm from disgruntled individuals who react
 56 inappropriately to actions taken by the public guardians and
 57 employees with fiduciary responsibility. Public guardians and
 58 employees with fiduciary responsibility provide a valuable
 59 service to the community by helping some of the state's most
 60 vulnerable residents who lack the physical or mental capacity to
 61 take care of most aspects of their own personal affairs. Public
 62 guardians and employees with fiduciary responsibility help those
 63 who lack a willing and qualified family member or friend and do
 64 not have the income or assets to pay a professional guardian.

65 (3) Despite the value of this service, however, some
 66 persons, including a public guardian's own wards, become
 67 disgruntled with the assistance provided or the decisions a
 68 public guardian or an employee with fiduciary responsibility
 69 makes, which can result in a guardian or an employee with
 70 fiduciary responsibility or the family members of the guardian
 71 or the employee with fiduciary responsibility becoming potential
 72 targets for an act of revenge. Wards have harassed their public
 73 guardians with threats of incarceration, violence, and death
 74 through voicemail messages and social media. Wards have also
 75 left voicemail messages threatening to kill themselves and

76 others, as well as the public guardian. In the course of their
77 duties, public guardians have also been subject to being
78 physically assaulted.

79 (4) After a public guardian or an employee with fiduciary
80 responsibility concludes his or her service, the risk continues
81 because a disgruntled individual may wait until such time to
82 commit an act of revenge. The harm that may result from the
83 release of a public guardian's or an employee with fiduciary
84 responsibility's personal identifying and location information
85 outweighs any public benefit that may be derived from the
86 disclosure of the information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1055 Pub. Rec./Addiction Treatment Facility Personnel
SPONSOR(S): DuBose
TIED BILLS: **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N	Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee		Hoffman <i>MH</i>	Harrington <i>JH</i>
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse prevention, treatment, and recovery. DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and ch. 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.

- Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.
- Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
- Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.

The bill exempts from public record requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of addiction treatment facilities. The bill also exempts from public record requirements the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of the above persons. Additionally, the bill exempts from public record requirements the names and locations of schools and day care facilities attended by the children of those persons.

The bill defines an addiction treatment facility as a county government, or agency thereof, that is licensed pursuant to s. 397.401, F.S., and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26), F.S.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.³ Substance abuse causes physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

A diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁵ The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁶

Substance Abuse Treatment

In the early 1970s, the federal government furnished grants for states to develop continuums of care for individuals and families affected by substance abuse.⁷ The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).⁸ In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").⁹ The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.¹⁰

¹ WORLD HEALTH ORGANIZATION, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Jan. 19, 2018).

² SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Jan. 19, 2018).

³ NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Jan. 19, 2018).

⁴ *Id.*

⁵ *Supra*, note 2.

⁶ *Id.*

⁷ Florida Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with Children Families and Seniors Subcommittee staff).

⁸ *Id.*

⁹ Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

¹⁰ These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

Substance Abuse Treatment Service Regulation

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and ch. 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention, intervention, and clinical treatment services.¹¹

Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.¹² Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices.¹³

Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.¹⁴

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.¹⁵ "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility,
- Day or night treatment,
- Day or night treatment with community housing,
- Detoxification,
- Intensive inpatient treatment,
- Intensive outpatient treatment,
- Medication-assisted treatment for opiate addiction,
- Outpatient treatment, and
- Residential treatment.¹⁶

Certain individuals receiving substance abuse treatment may have a criminal or violent history. About 54 percent of state prisoners and 61 percent of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.¹⁷ Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.¹⁸

¹¹ S. 397.311(25), F.S.

¹² S. 397.311(26)(c), F.S.

¹³ Department of Children and Families, *Substance Abuse: Prevention*, <http://www.myflfamilies.com/service-programs/substance-abuse/prevention>, (last visited Jan. 19, 2018). These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments

¹⁴ S. 397.311(26)(b), F.S.

¹⁵ S. 397.311(25), F.S.

¹⁶ S. 397.311(25)(a), F.S.

¹⁷ Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, available at <https://www.bjs.gov/content/pub/pdf/dudasppi0709.pdf> (last visited Jan. 19, 2018).

¹⁸ *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE ON DRUG ABUSE, available at https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited Jan. 19, 2018).

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.¹⁹ 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.²⁰ 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.²¹ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.²²

Florida law specifies the conditions under which public access must be provided to government records and meetings. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record.²³ The Sunshine Law requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.²⁴

The Legislature may create an exemption to public records or open meetings requirements.²⁵ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.²⁶ 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.²⁷

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.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment.²⁹ The Legislature must reenact the exemption in order to save it from repeal.³⁰

¹⁹ FLA. CONST., art. I, s. 24.

²⁰ FLA. CONST., art. I, s. 24(a).

²¹ FLA. CONST., art. I, s. 24(b).

²² FLA. CONST., art. I, s. 24(b).

²³ Ch. 119, F.S.; "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(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.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ 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).

²⁸ S. 119.15, F.S. An exemption is considered to be substantially amended if it is 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.

²⁹ S. 119.15(3), F.S.

³⁰ *Id.*

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 necessary³¹ 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.³²

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.³³

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁴ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.³⁵

Effect of Proposed Changes

The bill 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, nurses, and clinical employees of addiction treatment facilities, and
- Spouses and children of the above persons.

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 persons.

The bill defines an addiction treatment facility as a county government, or agency thereof, that is licensed pursuant to s. 397.401, F.S., and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26), F.S. The bill would not apply to any facility that is not owned by a county government or an agency thereof.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the named employees of addiction treatment facilities and their family members may be in danger of physical or emotional harm from disgruntled individuals with substance use and mental health disorders who react inappropriately and violently. The bill finds that the named employees of addiction treatment facilities and their family members may become a target of an act of revenge. It also states 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.

³¹ S. 119.15(6)(b), F.S.

³² *Id.*

³³ *Id.*

³⁴ FLA. CONST., art. I, s. 24(c).

³⁵ S. 119.15(7), F.S.

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 inspecting 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on local governments because staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, local governments 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 local governments.

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 employees of addiction treatment facilities 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:

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.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying and
 5 location information of current or former directors,
 6 managers, supervisors, nurses, and clinical employees
 7 of an addiction treatment facility, and the spouses
 8 and children thereof; providing a definition;
 9 providing for future legislative review and repeal of
 10 the exemption; requiring such personnel to submit a
 11 specified written request to a custodial agency to
 12 maintain the exempt status of such information in
 13 certain circumstances; providing for retroactive
 14 application; providing a statement of public
 15 necessity; providing an effective date.

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

18
 19 Section 1. Paragraph (d) of subsection (4) of section
 20 119.071, Florida Statutes, is amended to read:

21 119.071 General exemptions from inspection or copying of
 22 public records.—

23 (4) AGENCY PERSONNEL INFORMATION.—

24 (d)1. For purposes of this paragraph, the term "telephone
 25 numbers" includes home telephone numbers, personal cellular

26 | telephone numbers, personal pager telephone numbers, and
 27 | telephone numbers associated with personal communications
 28 | devices.

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

49 | b. The home addresses, telephone numbers, dates of birth,
 50 | and photographs of current or former nonsworn investigative

51 personnel of the Department of Financial Services whose duties
 52 include the investigation of fraud, theft, workers' compensation
 53 coverage requirements and compliance, other related criminal
 54 activities, or state regulatory requirement violations; the
 55 names, home addresses, telephone numbers, dates of birth, and
 56 places of employment of the spouses and children of such
 57 personnel; and the names and locations of schools and day care
 58 facilities attended by the children of such personnel are exempt
 59 from s. 119.07(1) and s. 24(a), Art. I of the State
 60 Constitution. This sub-subparagraph is subject to the Open
 61 Government Sunset Review Act in accordance with s. 119.15 and
 62 shall stand repealed on October 2, 2021, unless reviewed and
 63 saved from repeal through reenactment by the Legislature.

64 c. The home addresses, telephone numbers, dates of birth,
 65 and photographs of current or former nonsworn investigative
 66 personnel of the Office of Financial Regulation's Bureau of
 67 Financial Investigations whose duties include the investigation
 68 of fraud, theft, other related criminal activities, or state
 69 regulatory requirement violations; the names, home addresses,
 70 telephone numbers, dates of birth, and places of employment of
 71 the spouses and children of such personnel; and the names and
 72 locations of schools and day care facilities attended by the
 73 children of such personnel are exempt from s. 119.07(1) and s.
 74 24(a), Art. I of the State Constitution. This sub-subparagraph
 75 is subject to the Open Government Sunset Review Act in

76 | accordance with s. 119.15 and shall stand repealed on October 2,
 77 | 2022, unless reviewed and saved from repeal through reenactment
 78 | by the Legislature.

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

91 | e. The home addresses, dates of birth, and telephone
 92 | numbers of current or former justices of the Supreme Court,
 93 | district court of appeal judges, circuit court judges, and
 94 | county court judges; the names, home addresses, telephone
 95 | numbers, dates of birth, and places of employment of the spouses
 96 | and children of current or former justices and judges; and the
 97 | names and locations of schools and day care facilities attended
 98 | by the children of current or former justices and judges are
 99 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 100 | Constitution. This sub-subparagraph is subject to the Open

101 Government Sunset Review Act in accordance with s. 119.15 and
 102 shall stand repealed on October 2, 2022, unless reviewed and
 103 saved from repeal through reenactment by the Legislature.

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

116 g. The home addresses, dates of birth, and telephone
 117 numbers 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; the names, home addresses, telephone numbers,
 121 dates of birth, and places of employment of the spouses and
 122 children of general magistrates, special magistrates, judges of
 123 compensation claims, administrative law judges of the Division
 124 of Administrative Hearings, and child support enforcement
 125 hearing officers; and the names and locations of schools and day

126 care facilities attended by the children of general magistrates,
 127 special magistrates, judges of compensation claims,
 128 administrative law judges of the Division of Administrative
 129 Hearings, and child support enforcement hearing officers are
 130 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 131 Constitution. This sub-subparagraph is subject to the Open
 132 Government Sunset Review Act in accordance with s. 119.15 and
 133 shall stand repealed on October 2, 2022, unless reviewed and
 134 saved from repeal through reenactment by the Legislature.

135 h. The home addresses, telephone numbers, dates of birth,
 136 and photographs of current or former human resource, labor
 137 relations, or employee relations directors, assistant directors,
 138 managers, or assistant managers of any local government agency
 139 or water management district whose duties include hiring and
 140 firing employees, labor contract negotiation, administration, or
 141 other personnel-related duties; the names, home addresses,
 142 telephone numbers, dates of birth, and places of employment of
 143 the spouses and children of such personnel; and the names and
 144 locations of schools and day care facilities attended by the
 145 children of such personnel are exempt from s. 119.07(1) and s.
 146 24(a), Art. I of the State Constitution.

147 i. The home addresses, telephone numbers, dates of birth,
 148 and photographs of current or former code enforcement officers;
 149 the names, home addresses, telephone numbers, dates of birth,
 150 and places of employment of the spouses and children of such

151 personnel; and the names and locations of schools and day care
 152 facilities attended by the children of such personnel are exempt
 153 from s. 119.07(1) and s. 24(a), Art. I of the State
 154 Constitution.

155 j. The home addresses, telephone numbers, places of
 156 employment, dates of birth, and photographs of current or former
 157 guardians ad litem, as defined in s. 39.820; the names, home
 158 addresses, telephone numbers, dates of birth, and places of
 159 employment of the spouses and children of such persons; and the
 160 names and locations of schools and day care facilities attended
 161 by the children of such persons are exempt from s. 119.07(1) and
 162 s. 24(a), Art. I of the State Constitution. This sub-
 163 subparagraph is subject to the Open Government Sunset Review Act
 164 in accordance with s. 119.15 and shall stand repealed on October
 165 2, 2022, unless reviewed and saved from repeal through
 166 reenactment by the Legislature.

167 k. The home addresses, telephone numbers, dates of birth,
 168 and photographs of current or former juvenile probation
 169 officers, juvenile probation supervisors, detention
 170 superintendents, assistant detention superintendents, juvenile
 171 justice detention officers I and II, juvenile justice detention
 172 officer supervisors, juvenile justice residential officers,
 173 juvenile justice residential officer supervisors I and II,
 174 juvenile justice counselors, juvenile justice counselor
 175 supervisors, human services counselor administrators, senior

176 human services counselor administrators, rehabilitation
 177 therapists, and social services counselors of the Department of
 178 Juvenile Justice; the names, home addresses, telephone numbers,
 179 dates of birth, and places of employment of spouses and children
 180 of such personnel; and the names and locations of schools and
 181 day care facilities attended by the children of such personnel
 182 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 183 Constitution.

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

194 m. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former investigators or inspectors
 196 of the Department of Business and Professional Regulation; the
 197 names, home addresses, telephone numbers, dates of birth, and
 198 places of employment of the spouses and children of such current
 199 or former investigators and inspectors; and the names and
 200 locations of schools and day care facilities attended by the

201 children of such current or former investigators and inspectors
 202 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 203 Constitution. This sub-subparagraph is subject to the Open
 204 Government Sunset Review Act in accordance with s. 119.15 and
 205 shall stand repealed on October 2, 2022, unless reviewed and
 206 saved from repeal through reenactment by the Legislature.

207 n. The home addresses, telephone numbers, and dates of
 208 birth of county tax collectors; the names, home addresses,
 209 telephone numbers, dates of birth, and places of employment of
 210 the spouses and children of such tax collectors; and the names
 211 and locations of schools and day care facilities attended by the
 212 children of such tax collectors are exempt from s. 119.07(1) and
 213 s. 24(a), Art. I of the State Constitution. This sub-
 214 subparagraph is subject to the Open Government Sunset Review Act
 215 in accordance with s. 119.15 and shall stand repealed on October
 216 2, 2022, unless reviewed and saved from repeal through
 217 reenactment by the Legislature.

218 o. The home addresses, telephone numbers, dates of birth,
 219 and photographs of current or former personnel of the Department
 220 of Health whose duties include, or result in, the determination
 221 or adjudication of eligibility for social security disability
 222 benefits, the investigation or prosecution of complaints filed
 223 against health care practitioners, or the inspection of health
 224 care practitioners or health care facilities licensed by the
 225 Department of Health; the names, home addresses, telephone

226 numbers, dates of birth, and places of employment of the spouses
 227 and children of such personnel; and the names and locations of
 228 schools and day care facilities attended by the children of such
 229 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 230 the State Constitution. This sub-subparagraph is subject to the
 231 Open Government Sunset Review Act in accordance with s. 119.15
 232 and shall stand repealed on October 2, 2019, unless reviewed and
 233 saved from repeal through reenactment by the Legislature.

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

249 q. The home addresses, telephone numbers, dates of birth,
 250 and photographs of current or former emergency medical

251 technicians or paramedics certified under chapter 401; the
 252 names, home addresses, telephone numbers, dates of birth, and
 253 places of employment of the spouses and children of such
 254 emergency medical technicians or paramedics; and the names and
 255 locations of schools and day care facilities attended by the
 256 children of such emergency medical technicians or paramedics are
 257 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 258 Constitution. This sub-subparagraph is subject to the Open
 259 Government Sunset Review Act in accordance with s. 119.15 and
 260 shall stand repealed on October 2, 2021, unless reviewed and
 261 saved from repeal through reenactment by the Legislature.

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

276 saved from repeal through reenactment by the Legislature.
 277 s. The home addresses, telephone numbers, social security
 278 numbers, dates of birth, and photographs of current or former
 279 directors, managers, supervisors, nurses, and clinical employees
 280 of an addiction treatment facility; 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. For purposes of this sub-subparagraph, the term
 287 "addiction treatment facility" means a county government, or
 288 agency thereof, that is licensed pursuant to s. 397.401, and
 289 provides substance abuse prevention, intervention, or clinical
 290 treatment, including any licensed service component described in
 291 s. 397.311(26). This sub-subparagraph is subject to the Open
 292 Government Sunset Review Act in accordance with s. 119.15 and
 293 shall stand repealed on October 2, 2023, unless reviewed and
 294 saved from repeal through reenactment by the Legislature.

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

301 written request for maintenance of the exemption to the
 302 custodial agency.

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

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

310 (a) The home addresses, telephone numbers, social security
 311 numbers, dates of birth, and photographs of current or former
 312 directors, managers, supervisors, nurses, and clinical employees
 313 of an addiction treatment facility.

314 (b) The home addresses, telephone numbers, social security
 315 numbers, photographs, dates of birth, and places of employment
 316 of the spouses and children of personnel identified in paragraph
 317 (a).

318 (c) The names and locations of schools and day care
 319 facilities attended by the children of personnel identified in
 320 paragraph (a).

321 (2) The Legislature finds that the release of such
 322 identifying and location information may place current or former
 323 directors, managers, supervisors, nurses, and clinical employees
 324 of an addiction treatment facility and their family members in
 325 danger of physical and emotional harm from disgruntled

326 individuals who may react inappropriately and violently to
 327 actions taken by such directors, managers, supervisors, nurses,
 328 or clinical employees. Individuals with substance use and mental
 329 health disorders are some of this state's most vulnerable
 330 residents, and such personnel provide these individuals with
 331 valuable services that are supportive, necessary, and
 332 appropriate. Despite the value of these services, some
 333 individuals may become disgruntled with the assistance provided
 334 or the recommendations or decisions such personnel make, which
 335 may result in such personnel or their family members becoming a
 336 target of an act of revenge. The risk continues after such
 337 personnel concludes his or her service because a disgruntled
 338 individual may wait to commit an act of revenge until after such
 339 personnel has concluded his or her service. The harm that may
 340 result from the release of such identifying and location
 341 information outweighs any public benefit that may be derived
 342 from the disclosure of the information. Therefore, the
 343 Legislature finds that the identifying and location information
 344 of directors, managers, supervisors, nurses, or clinical
 345 employees of an addiction treatment facility and their spouses
 346 and children must be held exempt from public records
 347 requirements.

348 Section 3. 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 DuBose offered the following:

Amendment

Remove lines 277-315 and insert:

4
 5
 6 s. The home addresses, telephone numbers, dates of birth,
 7 and photographs of current or former directors, managers,
 8 supervisors, nurses, and clinical employees of an addiction
 9 treatment facility; the home addresses, telephone numbers,
 10 photographs, dates of birth, and places of employment of the
 11 spouses and children of such personnel; and the names and
 12 locations of schools and day care facilities attended by the
 13 children of such personnel are exempt from s. 119.07(1) and s.
 14 24(a), Art. I of the State Constitution. For purposes of this
 15 sub-subparagraph, the term "addiction treatment facility" means
 16



Amendment No.

17 a county government, or agency thereof, that is licensed
18 pursuant to s. 397.401, and provides substance abuse prevention,
19 intervention, or clinical treatment, including any licensed
20 service component described in s. 397.311(26). This sub-
21 paragraph is subject to the Open Government Sunset Review Act
22 in accordance with s. 119.15 and shall stand repealed on October
23 2, 2023, unless reviewed and saved from repeal through
24 reenactment by the Legislature.

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

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

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

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



Amendment No.

42 supervisors, nurses, and clinical employees of an addiction
43 treatment facility.

44 (b) The home addresses, telephone numbers, photographs,
45 dates of birth, and places of employment

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1139 City Pension Fund for Firefighters and Police Officers in the City of Tampa, Hillsborough County

SPONSOR(S): Cruz and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	8 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee		Harrington <i>TH</i>	Harrington <i>TH</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Firefighters and Police Pension Fund (Fund) for the City of Tampa was created by special act in 1933. As of September 30, 2017, the Fund had 1,388 active members, 1,908 retired members, and 186 members in the Deferred Retirement Option Plan. As of October 1, 2016, the Fund had \$1,103,569,405 in total assets and \$17,056,352 in unfunded actuarial accrued liability.

The bill authorizes the City of Tampa to enter into a supplemental contract with every firefighter or police officer who is an active member of the Fund for the City of Tampa on or after the date this act becomes a law or who enters into a pension contract with the city. In addition, the bill provides for an increased benefit for the widows of firefighters and officers who die in the line of duty. The bill adjusts benefits for the children of firefighters and officers who died in the line of duty to reflect this increase. The changes to the pension contract in this act must be made available in a supplemental pension contract to every active firefighter and police officer. In addition, any person who becomes a member of the Fund on or after the date the bill becomes law must, as a condition of the membership into the Fund, sign a pension contract which includes the provisions of this act. The bill also states that provisions of the bill are severable.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act), was adopted by the Legislature to implement the provisions of s. 14, Art. X of the Florida Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It applies to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act is assigned primarily to the Division of Retirement (division), Department of Management Services (DMS).

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.² Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.³ This statement also must be furnished to the division before the local government can agree to the change.⁴ The statement must indicate whether the proposed change complies with s. 14, Art. X of the Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).⁵

Municipal Firefighter and Police Pensions

Chapters 175 and 185, F.S., provide the statutory authority for municipal and special fire control district firefighter pensions and municipal police pensions. These laws were enacted to provide a “uniform retirement system” providing defined benefit plans for firefighters and police officers, and setting standards for operation and funding of these systems. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the retirement trust funds.

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive (access to premium tax revenues) to encourage the establishment of firefighter retirement plans by Florida cities.⁶ Fourteen years later, in 1953, the Legislature enacted ch. 185, F.S., which created a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.⁷

Funding for these pension plans comes from four sources:⁸

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”);
- Employee contributions;

¹ Section 112.62, F.S.

² Art. X, s. 14, Fla. Const.

³ Section 112.63(3), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ See DMS, *Overview, Legislative History of Chapter 175/185 Program*, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited Jan. 8, 2018).

⁷ *Id.*

⁸ Sections 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

- Other revenue sources; and
- Mandatory payments by the city of any extra amount needed to keep the plan solvent.

City of Tampa Firefighters and Police Pension Fund

The Firefighters and Police Pension Fund (Fund) for the City of Tampa originally was created through a special act in 1933⁹ and amended through subsequent acts, most recently in 2017.¹⁰ The provisions of these laws are incorporated into a pension contract and appropriate supplemental pension contracts, which are signed by each individual plan member.

The special act provides for pension plan administration, funding, membership and benefits. The general administration and responsibility for the proper operation of the pension system is vested in a board of trustees consisting of nine persons: three members of the city administration appointed by the mayor, three members of the fire department elected by active and retired firefighters, and three members of the police department elected by active and retired police officers.¹¹

As of September 30, 2017, the Fund had 1,388 active members, 1,908 retired members, and 186 members in the Deferred Retirement Option Plan (DROP).¹² As of October 1, 2016, the Fund had \$1,103,569,405 in total assets and \$17,056,352 in unfunded actuarial accrued liability.¹³ Normal retirement age is 46 years of age for those with at least 10 years of service and any age for those with at least 20 years of service.¹⁴

The Fund currently assumes 8.5 percent annual growth of its assets.¹⁵ During the 2015-16 fiscal year, the Fund saw 13.08 percent growth in the actuarial value of its assets and 22.02 percent growth in the market value of its assets.

Survivor Pensions

The widow or any children of a Fund member who dies in the line of duty may receive a pension if certain qualifications are met.¹⁶

A widow may receive monthly payments equal to 65 percent of the member's final yearly earnings from the date of the member's death. If the member died in the line of duty before October 1, 1969, the widow receives a minimum benefit of \$1,500 per month. If the member was also a member of the General Employees Pension Plan, the widow's benefit is reduced upon reaching Social Security normal retirement age by the amount of the actual Social Security benefit earned by the member during his employment as a firefighter or police officer for the City of Tampa, to the extent the Social Security benefit may be creditable service to the Fund.

The child of a member may receive, for the duration of childhood monthly payments equal to 15 percent of the member's final yearly earnings. The child's benefit is subject to annual limitation on survivor payments to the member's widow and child(ren) of 95 percent of the member's final yearly earnings. A child of a member is not considered a child at the earliest of the date of the child's death, date of marriage, reaching age 18, or reaching age 23 (if a fulltime student). The Fund is authorized to make payments to adopted children; however, stepchildren are expressly excluded.

⁹ Ch. 16721, Laws of Fla. (1933).

¹⁰ Ch. 2017-197, Laws of Fla.

¹¹ Ch. 2011-240, Laws of Fla.

¹² Department of Management Services, *Florida Local Government Retirement Systems 2017 Annual Report*, p. 15 of Appendix F, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last accessed Jan. 8, 2018) (herein DMS Local Government Reports).

¹³ DMS Local Government Reports, p. 18 of Appendix A.

¹⁴ DMS Local Government Reports, p. 64 of Appendix B.

¹⁵ DMS Local Government Reports, p. 20 of Appendix E.

¹⁶ Ch. 16721, Laws of Fla. (1933), s. 8, as amended.

If the widow of a member dies while a child is collecting benefits, the child's allowance increases to 30 percent of the member's final year's earnings for each child, but may not exceed 60 percent of the member's final yearly earnings.

If a member has no widow or children, the member's designated beneficiary may receive payments for 10 years equal to the amount the member would otherwise be entitled to at normal retirement age.

Effect of Proposed Changes

Pursuant to the requirements of chapters 175 and 185, F.S., the bill authorizes the City of Tampa to enter into a supplemental contract with every firefighter or police officer who is an active member of the Fund on or after the date the bill becomes law or who hereafter enters into a pension contract with the City of Tampa.

The bill increases the monthly payment amount a surviving widow may receive upon a member's death from 65 percent of the member's final yearly earnings to 100 percent. The bill provides that this amount is reduced by any benefits received by a member's child(ren), such that the total annual benefits paid by the Fund to do not exceed 100 percent of the member's final yearly earnings. The bill limits the total payments to children at 30 percent of the members' final yearly earning and provides that the Fund may adjust the percent paid to children if the member has more than two children.

The changes to the pension contract must be made available in a supplemental pension contract and an individual is not authorized to select some of said changes and reject other changes. Additionally, any actively employed firefighter or police officer who is entitled to benefits under the Fund will have the opportunity to sign a supplemental pension contract before October 1, 2017. However, any person who becomes a member of the Fund on or after the date the bill becomes law must, as a condition of membership into the Fund, sign a pension contract which includes the provisions of this act, and must make contributions if required as a result of the benefits. Furthermore, the bill approves, ratifies, validates, and confirms the Fund.

Lastly, if the provisions of the act or its application are invalid, the invalidity will not affect other provisions or applications of the act which can be given effect without the invalid provision or application. Provisions of the act are severable.

B. SECTION DIRECTORY:

Section 1: Authorizes the City of Tampa to enter into a supplemental contract with certain firefighters and police officers.

Section 2: Amends ch. 16721, Laws of Fla. (1933), as amended, to revise the formula for survivor benefits for Fund members who die in the line of duty.

Section 3: Provides contract requirements.

Section 4: Confirms the City of Tampa Firefighters and Police Officers Pension Contract.

Section 5: Provides for severability.

Section 6: Provides that the bill is effective upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 10, 2017

WHERE? The *Tampa Bay Times*, a daily newspaper of general circulation in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the City Pension Fund for
 3 Firefighters and Police Officers in the City of Tampa,
 4 Hillsborough County; authorizing the City of Tampa to
 5 enter into a supplemental contract with certain
 6 firefighters and police officers to increase the
 7 amount of pension received by a widow or widower
 8 should a member lose his or her life or later die from
 9 injuries or causes occurring while in the discharge of
 10 duties; confirming in part the City of Tampa
 11 Firefighters and Police Officers Pension Contract;
 12 providing for severability; providing an effective
 13 date.

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

16
 17 Section 1. The City of Tampa is authorized and empowered
 18 to enter into a supplemental contract with each and every
 19 firefighter or police officer who is an active member of the
 20 City Pension Fund for Firefighters and Police Officers in the
 21 City of Tampa on or after the date this act becomes a law or who
 22 hereafter enters into a pension contract with the city.

23 Section 2. Section 8 of the City of Tampa Firefighters and
 24 Police Officers Pension Contract as prescribed by Section 28-17
 25 of the City of Tampa Code [Ordinance No. 4746-A, enacted

26 September 30, 1969], as amended by Section 28-19 of the City of
 27 Tampa Code [Ordinance No. 6038-A, enacted September 17, 1974],
 28 pursuant to chapter 74-613, Laws of Florida, as further amended
 29 by Ordinance No. 89-314, enacted December 21, 1989, and
 30 approved, ratified, validated, and confirmed by chapter 90-391,
 31 Laws of Florida, and as further amended by chapter 92-231, Laws
 32 of Florida, chapter 94-463, Laws of Florida, chapter 98-515,
 33 Laws of Florida, chapter 2000-485, Laws of Florida, Ordinance
 34 No. 2001-133, enacted July 3, 2001, chapter 2001-288, Laws of
 35 Florida, chapter 2002-369, Laws of Florida, Ordinance No. 2003-
 36 22, enacted January 23, 2003, chapter 2004-427, Laws of Florida,
 37 chapter 2007-304, Laws of Florida, chapter 2011-240, Laws of
 38 Florida, chapter 2012-235, Laws of Florida, and chapter 2017-
 39 197, Laws of Florida, is amended to read:

40 Section 8. If any member of either department shall lose
 41 his life or later die from injuries or causes occurring while in
 42 the discharge of his duties, and shall leave a widow or widower,
 43 or child or children under the age of eighteen (18) years, or
 44 age twenty-three (23) if a full-time student, the Board shall
 45 authorize and direct payment of a pension to the widow or
 46 widower and/or child or children, but only in the following
 47 amounts and on the following conditions:

48 (A) To the widow or widower in equal monthly installments
 49 an amount equal to one hundred per centum (100%) ~~sixty-five per~~
 50 ~~centum (65%)~~ of the member's final year's earnings, computed

51 from date of death, until death, less any benefits provided
 52 under paragraph (B) of this section, so that total benefits paid
 53 do not exceed one hundred per centum (100%) of the member's
 54 final year's earnings. For the widow or widower of a firefighter
 55 or police officer killed in the line of duty prior to October 1,
 56 1969, the minimum benefit under this section shall be \$1,500 per
 57 month (Base plus PRAA). For the widow or widower of any member
 58 of this Pension Fund who prior to October 16, 1992, was a member
 59 of Division B of the General Employees Pension Plan as
 60 established by Chapter 81-497, Laws of Florida, as amended, upon
 61 the reaching social security normal retirement age, except as
 62 provided in Section 28(C) of this Contract, the benefit paid to
 63 the widow or widower shall be reduced by an amount equal to the
 64 actual social security benefit earned by the member for
 65 employment as a firefighter or police officer for the City to
 66 the extent that such employment is considered to be creditable
 67 service under this Fund; provided, however, that if the widow or
 68 widower does not receive the member's accrued social security
 69 benefit, there shall be no reduction in benefits paid to such
 70 widow or widower. The effect of such reduction shall be that the
 71 sum of the benefit paid herein and said social security benefit
 72 shall be equal to the amount of the benefit otherwise payable
 73 herein. The widow or widower of each such member shall, upon
 74 demand by the Board, authorize the Social Security
 75 Administration to release any information necessary to calculate

76 such reduction. The Board shall not make any payment for the
 77 benefit payable herein for any period during which such widow or
 78 widower willfully fails or refuses to authorize the release of
 79 such information in the manner and within the time prescribed by
 80 rules adopted by the Board.

81 (B) For each child until he or she shall have reached the
 82 age of eighteen (18) years, or until such child or children
 83 shall die or marry before reaching the age of eighteen (18)
 84 years, or age twenty-three (23) if a full-time student, in equal
 85 monthly installments an amount equal to fifteen per centum (15%)
 86 of the final year's earnings, computed from date of death,
 87 subject to a limitation of a total of one hundred per centum
 88 (100%) ~~ninety-five per centum (95%)~~ of final yearly earnings for
 89 widow or widower and children combined. Equal monthly
 90 installments paid to the child or children in the aggregate
 91 shall not exceed thirty percent per centum (30%) of the member's
 92 final year's earnings, and the fifteen per centum (15%) per
 93 child shall be adjusted in the event of more than two (2)
 94 children. Monthly installment amounts paid to the child or
 95 children shall reduce the widow or widower monthly installments
 96 by the same amount paid to the child or children so that the
 97 total combined annual benefits of the widow or widower and the
 98 child or children do not exceed one hundred per centum (100%) of
 99 the member's final year's earnings. Children's pensions shall
 100 terminate at the earliest of death, ~~or marriage,~~ ~~as well as~~

101 reaching age eighteen (18), or reaching age twenty-three (23) if
 102 a full-time student. Adopted children shall participate. Pension
 103 payments no longer paid to the child or children shall continue
 104 to be paid to the widow or widower.

105 (C) Upon death of the widow or widower, the fifteen per
 106 centum (15%) child allowance shall be increased to thirty per
 107 centum (30%) for each child, and shall be paid in trust to
 108 eligible children, not to exceed a total of sixty per centum
 109 (60%) of member's final earnings.

110 (D) The trusteeship and disbursement of the pension to any
 111 child or children is to be determined by the Board of Trustees.

112 (E) No pension shall be allowed to any stepchild or
 113 stepchildren of a deceased member.

114 (F) In the absence of an eligible surviving spouse or
 115 minor children, to the extent required by the Florida Statutes,
 116 in the event of the death of a member prior to retirement, the
 117 member's designated beneficiary shall be entitled to the
 118 benefits otherwise payable to the member at normal retirement
 119 age for ten (10) years certain.

120 (G) In the case of a surviving widow or widower and a
 121 surviving child as defined in this act, who is in pay status on
 122 October 1, 2018 ~~2012~~, the benefit received shall be increased on
 123 the first payment date after October 1, 2018 ~~2012~~.

124 Section 3. The changes to the pension contract in this act
 125 for firefighters and police officers who are active members of

126 the City Pension Fund for Firefighters and Police Officers in
 127 the City of Tampa on or after the date this act becomes a law
 128 shall be made available in a supplemental pension contract, and
 129 an individual shall not be permitted to select some of said
 130 changes and reject other of said changes. Any firefighter or
 131 police officer who is entitled to benefits under the City
 132 Pension Fund for Firefighters and Police Officers in the City of
 133 Tampa who is actively employed as a firefighter or police
 134 officer in the City of Tampa on or after the date this act
 135 becomes a law shall have the opportunity to sign such
 136 supplemental pension contract before October 1, 2018. However,
 137 any person who becomes a member of the City Pension Fund for
 138 Firefighters and Police Officers in the City of Tampa on or
 139 after the date this act becomes a law shall be required, as a
 140 condition of membership into such pension fund, to sign a
 141 pension contract which includes the provisions of this act, and
 142 shall be required to make contributions if required as a result
 143 of such benefits.

144 Section 4. The City of Tampa Firefighters and Police
 145 Officers Pension Contract as prescribed by Section 28-17 of the
 146 Tampa City Code [Ordinance No. 4746-A, enacted September 30,
 147 1969], as amended by Section 28-19 of the City of Tampa Code
 148 [Ordinance No. 6038-A, enacted September 17, 1974], pursuant to
 149 chapter 74-613, Laws of Florida, as further amended by Ordinance
 150 No. 89-314, enacted December 21, 1989, and approved, ratified,

151 validated, and confirmed by chapter 90-391, Laws of Florida, and
 152 further amended by chapter 92-231, Laws of Florida, chapter 94-
 153 463, Laws of Florida, chapter 98-515, Laws of Florida, chapter
 154 2000-485, Laws of Florida, Ordinance No. 2001-133, enacted July
 155 3, 2001, chapter 2001-288, Laws of Florida, chapter 2002-369,
 156 Laws of Florida, Ordinance No. 2003-22, enacted January 23,
 157 2003, chapter 2004-427, Laws of Florida, chapter 2007-304, Laws
 158 of Florida, chapter 2011-240, Laws of Florida, chapter 2012-235,
 159 Laws of Florida, and chapter 2017-197, Laws of Florida, is in
 160 all other respects approved, ratified, validated, and confirmed.

161 Section 5. If any provision of this act or its application
 162 to any person or circumstance is held to be invalid, the
 163 invalidity shall not affect other provisions or applications of
 164 this act which can be given effect without the invalid provision
 165 or application, and to this end the provisions of this act are
 166 severable.

167 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1141 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; White
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	8 Y, 0 N, As CS	Rivera	Miller
2) Oversight, Transparency & Administration Subcommittee		Harrington <i>TH</i>	Harrington <i>TH</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Firefighters' Relief and Pension Fund of the City of Pensacola (Pensacola Plan) is a local law pension plan established by the Legislature in 1941. As of September 30, 2017, the Pensacola Plan has 88 active members, 168 retired members, and 20 members in the Deferred Retirement Option Program. In 2015, the Legislature required certain local pension plan sponsors to create a defined contribution component within their plans to fund special benefits. Currently, the Pensacola Plan offers a defined benefits plan but does not offer a defined contribution plan.

The bill adds a defined contribution plan component to the Pensacola Plan. The bill does not fund the defined contribution component of the plan if the city and collective bargaining units mutually consent to use the funds for another purpose. The bill affirms that the new defined contribution component of the plan will be a benefit in addition to, and not affecting existing and future benefits offered. The bill provides that any benefits provided to or on behalf of participants in the Pensacola Plan defined contribution component of the plan must be provided through individual accounts in accordance with federal regulations.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Protection of Public Employee Retirement Benefits Act

Florida constitutionally mandates all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, funded in whole or in part by public funds, to provide a retirement or pension benefit increase only if that benefit also provides a funding scheme based on an actuarially sound basis.¹ The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements this mandate and sets minimum standards for operating and funding public employee retirement systems.²

The Department of Management Services (DMS) reviews local government retirement systems for compliance with the Benefits Act, cooperates with local governments on matters of mutual concern, and provides technical assistance on the assessment and revision of local government retirement systems and plans.³

Before a unit of local government can agree to a proposed change in retirement benefits, a statement of actuarial impact of the proposed changes must be issued and provided to the Division of Retirement (Division) of DMS.⁴ The statement must be issued before the adoption of the change by the governing body of the local government and before the last public hearing about the proposed change, and must indicate the proposed change complies with the constitutional mandate and the Benefits Act.⁵

Marvin B. Clayton Firefighters Pension Trust Fund Act

Chapter 175, F.S., provides the statutory authority for municipal and special fire control district firefighter pensions. These laws were enacted to provide a “uniform retirement system” providing defined benefit plans for firefighters and setting standards for operation and funding of these systems. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the retirement trust funds.

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive (access to premium tax revenues) to encourage the establishment of firefighter retirement plans by Florida cities.⁶ Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.⁷

Funding for these pension plans comes from four sources:⁸

- Net proceeds from an excise tax levied by a city upon property insurance companies (known as the “premium tax”);
- Employee contributions;

¹ See art. X, s. 14, Fla. Const. and s. 112.62, F.S.

² Section 112.61, F.S.; see also s. 112.62, F.S. and art. X, s. 14, Fla. Const. Provisions are supplemental to existing laws and local ordinances relating to covered retirement plans but prevail where there is a conflict of law.

³ Section 112.665(1), F.S.

⁴ Sections 112.63(3) and 121.021(4) and (7), F.S.

⁵ Section 112.63(3), F.S.

⁶ See DMS, *Overview, Legislative History of Chapter 175/185 Program*, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited Jan. 8, 2018).

⁷ *Id.*

⁸ Section 175.091(1)(a)-(g), F.S.

- Other revenue sources; and
- Mandatory payments by the city of any extra amount needed to keep the plan solvent.

In 2015, the Legislature, among other matters, required plan sponsors to create a defined contribution component within their plans to fund special benefits:⁹

- By October 1, 2015, for non-collectively bargained service;
- Upon entering into a collective bargaining agreement on or after July 1, 2015; or
- Upon the creation date of a new participating plan.

Participating sponsors are not required to fund the defined contribution component.¹⁰ Chapter 175, F.S., provides for how the insurance premium tax revenues must be used for funding firefighter pension benefits unless the participating sponsor and the majority of the firefighter members, or their collective bargaining representative, mutually consent to use the revenue differently.¹¹

Pensacola Firefighters' Relief and Pension Fund

The Firefighters' Relief and Pension Fund of the City of Pensacola (Pensacola Plan) is a local law pension plan established by the Legislature in 1941.¹² The act governing the Pensacola Plan was most recently amended in 2015.¹³ As of September 30, 2017, the Pensacola Plan has 88 active members, 168 retired members, and 20 members in the Deferred Retirement Option Program.¹⁴ The Pensacola Plan offers a defined benefits plan but does not offer a defined contribution plan.¹⁵

Effect of Proposed Changes

The bill adds a defined contribution plan to the Pensacola Plan to comply with s. 175.351(6), F.S., and receive the premium tax revenue allocated to fund the defined contribution component of the plan. The bill provides the defined contribution plan will not be funded if the city and collective bargaining units mutually consent to use the funds for another purpose. The bill affirms that the defined contribution plan is in addition to, and does not affect existing and future benefits offered by the Pensacola Plan. The bill provides that any benefits provided to or on behalf of participants in the Pensacola Plan defined contribution component of the plan must be provided through individual accounts in accordance with federal regulations.

B. SECTION DIRECTORY:

Section 1. Amends Ch. 21483, Laws of Fla. (1941), as amended, creating a defined contribution plan as required by s. 175.351, F.S.

Section 2. Provides that the act shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? August 17, 2017

WHERE? *Pensacola News Journal*, Escambia County, Florida

⁹ Ch. 2015-39, Laws of Fla., amending s. 175.351(6), F.S.

¹⁰ *Id.*

¹¹ See s. 175.351(1)(b) and (1)(g), F.S.

¹² Ch. 21483, Laws of Fla. (1941).

¹³ Ch. 2015-206, Laws of Fla.

¹⁴ DMS Local Government Reports, p. 12 of Appendix F.

¹⁵ See Ch. 21483, Laws of Fla. (1941), as amended and DMS Local Government Reports, p. J-8 of Appendix J.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deletes language in order to clarify the new plan supplements the city's defined benefit plan and removes unnecessary language.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

1 A bill to be entitled
 2 An act relating to the Firefighters' Relief and
 3 Pension Fund of the City of Pensacola, Escambia
 4 County; amending ch. 21483, Laws of Florida (1941), as
 5 amended; creating a defined contribution plan as
 6 required by general law; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 34 is added to chapter 21483, Laws of
 11 Florida (1941), as amended, to read:

12 Section 34. Defined contribution plan.-

13 (a) Pursuant to s. 175.351, Florida Statutes, a defined
 14 contribution plan is created, to be entitled the Firefighters'
 15 Relief and Pension Fund Defined Contribution Plan. The purpose
 16 of this plan is to receive fifty percent of the insurance
 17 premium tax revenues in excess of the insurance premium tax
 18 revenues received for calendar year 2012. The plan will not be
 19 funded if the city and collective bargaining units come to
 20 mutual consent on an alternative use of the funds. The separate
 21 defined contribution plan shall be in addition to any other
 22 benefits available to the members under the Firefighters' Relief
 23 and Pension Fund, and nothing herein shall in any way affect any
 24 other benefits that now or hereafter exist.

25 (b) Benefits to be provided to or on behalf of
26 participants in the Firefighters' Relief and Pension Fund
27 Defined Contribution Plan shall be provided through individual
28 accounts in accordance with section 401(a) of the Internal
29 Revenue Code and its related regulations.

30 (c) The city shall not be required to levy any additional
31 taxes on its residents or make any other contributions to the
32 Firefighters' Relief and Pension Fund Defined Contribution Plan.

33 (d) Notwithstanding anything herein to the contrary, the
34 Firefighters' Relief and Pension Fund Defined Contribution Plan
35 shall at all times and in all events be construed and
36 interpreted to be a qualified retirement plan within the meaning
37 of section 401(a) of the Internal Revenue Code and its related
38 regulations.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Pub. Rec./Diversion Programs
SPONSOR(S): Ahern
TIED BILLS: CS/HB 1197 **IDEN./SIM. BILLS:** SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Bruno	Sumner
2) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>JH</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1197 (2018), with which this bill is linked, establishes a model adult prearrest diversion program that local entities may, but are not mandated to, adopt. Participation in the prearrest diversion program is in the law enforcement officers' sole discretion. Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service hours and pay restitution to the victim. HB 1197 (2018) requires a prearrest diversion program operator to submit a participant's personal identifying information to the clerk of courts, who must maintain the information in a statewide database. Under current law, there is no public records exemption for the records relating to an adult who participates in a prearrest diversion program.

The bill creates a public records exemption for the personal identifying information of an adult who participates in a prearrest diversion program. Specifically, the exemption protects the personal identifying information held by a law enforcement agency, a program services provider, a clerk of the circuit court, or the entity operating the prearrest diversion program before, on, or after the effective date of this exemption. The exemption does not apply to an adult who fails to complete the prearrest diversion program.

The bill repeals the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature, and includes a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state and local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-third vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. As the bill creates a public record exemption for the personal identifying information of an adult who participates in a prearrest diversion program, it therefore requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide for the exemption of records from the requirements of Article I, section 24(a), by general law,¹ which must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.² A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ (the Act) provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- 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.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Prearrest Diversion Programs

HB 1197 (2018), which is linked to this bill, creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement prearrest diversion programs. HB 1197 creates a model prearrest diversion program for adults that allows a law enforcement officer, at the officer's sole discretion, to offer prearrest diversion to an adult who meets eligibility requirements, as determined by local stakeholders.

Participants in a prearrest diversion program must be provided appropriate assessment, intervention, education, and behavioral health care services. The program must also require the participant to perform community service and pay restitution to the victim. If the participant does not successfully complete the program's requirements, the officer then determines whether there is good cause to arrest the individual for the original offense and, if so, refers the case to the state attorney.

HB 1197 (2018) further requires a diversion program operator to submit a participant's personal identifying information to the clerk of courts, who must maintain the information in a statewide database.

¹ FLA. CONST. art. I, s. 24(c).

² FLA. CONST. art. I, s. 24(c).

³ *Id.*

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

Effect of Proposed Changes

The bill amends s. 904.10, F.S., created by HB 1197 (2018), to create a public records exemption related to adult prearrest diversion programs. Under the bill, the personal identifying information of an adult who participates in a prearrest diversion program is exempt⁷ from the requirements of s. 119.07(1), F.S., and art. I, s. 24(a) of the Florida Constitution. The exemption applies to personal identifying information held by a law enforcement agency, a program services provider, a clerk of the circuit court, or the entity operating the prearrest diversion program before, on, or after the effective date of this exemption.

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

The bill provides a statement of public necessity as required by the Florida Constitution,⁸ specifying that the Legislature finds that the goal of prearrest diversion programs is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record. As such, prearrest diversion program records must be exempt, as disclosure would defeat the program's goal of giving adults who commit misdemeanor offenses a means to avoid the negative consequences of an arrest and prosecution, and disclosure might negatively impact the effectiveness of the program.

The bill is effective on the same date that HB 1197 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1197 provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 901.40, F.S., as created by HB 1197 (2018), relating to prearrest diversion programs.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of the same date that HB 1197 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal impact on state agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt

⁷ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty.*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal impact on local governments because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 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 newly expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public records exemption for the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program which does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s. 901.41,
 3 F.S.; creating an exemption from public records
 4 requirements for the personal identifying information
 5 of adults who participate in a prearrest diversion
 6 program; providing applicability; providing
 7 retroactive application; providing for future review
 8 and repeal of the exemption; providing a statement of
 9 public necessity; providing a contingent effective
 10 date.

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

13
 14 Section 1. Subsection (5) is added to section 901.41,
 15 Florida Statutes, as created by HB 1197, 2018 Regular Session,
 16 to read:

17 901.41 Prearrest diversion programs.—

18 (5) PUBLIC RECORDS EXEMPTION.—The personal identifying
 19 information of an adult participating in a prearrest diversion
 20 program is exempt from s. 119.07(1) and s. 24(a), Art. I of the
 21 State Constitution. The exemption does not apply to the personal
 22 identifying information of an adult who fails to complete the
 23 prearrest diversion program. This exemption applies to personal
 24 identifying information held by a law enforcement agency, a
 25 program services provider, a clerk of the circuit court, or the

26 entity operating the prearrest diversion program before, on, or
 27 after the effective date of this exemption. This subsection is
 28 subject to the Open Government Sunset Review Act in accordance
 29 with s. 119.15 and shall stand repealed on October 2, 2023,
 30 unless reviewed and saved from such repeal through reenactment
 31 by the Legislature.

32 Section 2. The Legislature finds that it is a public
 33 necessity that the personal identifying information of an adult
 34 participating in a prearrest diversion program be exempt from s.
 35 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 36 State Constitution. The exemption does not apply to the personal
 37 identifying information of an adult who fails to complete the
 38 prearrest diversion program. The goal of such programs is to
 39 give a second chance to adults who commit misdemeanor offenses
 40 and allow them the opportunity to avoid having an arrest record.
 41 Such goal would be defeated if the personal identifying
 42 information of such adults were not exempt from disclosure and,
 43 consequently, disclosure of the information would create
 44 negative consequences for these adults. If the public were able
 45 to obtain the personal identifying information of these adults,
 46 the disclosure might adversely impact the prearrest diversion
 47 program. For these reasons, the Legislature finds that it is a
 48 public necessity that the personal identifying information of an
 49 adult who successfully completes a prearrest diversion program
 50 be exempt from public records requirements.



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51 Section 3. This act shall take effect on the same date
52 that HB 1197 or similar legislation takes effect, if such
53 legislation is adopted in the same legislative session or an
54 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1319 Voter Registration Maintenance
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver 	Harrington 
2) Transportation & Tourism Appropriations Subcommittee			
3) Public Integrity & Ethics Committee			

SUMMARY ANALYSIS

The Department of State (Department) is headed by the Secretary of State (Secretary), who serves as Florida's chief election officer. Current law charges the Secretary with a variety of responsibilities in his or her capacity as Florida's chief election officer, including creating and administering a statewide voter registration system. The voter registration system (system) is the official list of registered voters in the state and contains the name and registration information of every legally registered voter in Florida. Voter registration officials, such as supervisors of elections (supervisors), are provided secure access to the system and may update the voter registration information contained in the system. Current law requires supervisors to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process. To help ensure the accuracy of the system, certain state and local agencies, such as the Department of Highway Safety and Motor Vehicles (DHSMV), are required to submit data to the Department to verify the eligibility of registered voters.

The bill requires each supervisor to enter into an agreement with the clerk of the circuit court in their jurisdiction to receive, monthly, change-of-address information and a list of potential jurors who identified themselves as aliens. The bill also requires DHSMV to furnish to the Department a list of persons who identified themselves as aliens. The Department must compare the list received from DHSMV with the information in the system. If the Department determines that a registered voter in the system is an alien, it must provide the name of that voter to the supervisor of the county in which that voter is registered.

The bill has an indeterminate fiscal impact on state and local government. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of State

The Department of State (Department)¹ is headed by the Secretary of State (Secretary) who serves as Florida's chief election officer. The Secretary is charged with a variety of responsibilities in his or her capacity as Florida's chief election officer, including obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections (supervisors) on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.²

Voter Registration System

The Secretary implements, operates, and maintains the statewide voter registration system (system).³ The system is the official list of registered voters in the state and is required to contain the name and registration information of every legally registered voter in Florida.⁴ Voter registration officials, such as supervisors, are provided secure access to the system and may update the voter registration information contained in the system.⁵ The Department is prohibited from contracting with any other entity for the operation of the system.⁶

Voter Eligibility

Each supervisor is charged with ensuring that each application for voter registration is processed in accordance with the law.⁷ The Florida Election Code sets forth the reasons that a supervisor may deem a voter registration applicant ineligible.⁸ An applicant may be ineligible based on any of the following:

- Failure to complete the voter registration application;
- The applicant is deceased;
- The applicant has been convicted of a felony;
- The applicant has been adjudicated mentally incapacitated;
- The applicant is not 18 years old;
- The applicant is not a United States Citizen;
- The applicant is a fictitious citizen;
- The applicant has provided an address that is not his or her legal residence; or
- The applicant has provided a driver license number, Florida identification number, or the last four digits of a social security number that is not verifiable by the Department.⁹

Voter Registration List Maintenance

Once registered, a voter may only be removed from the system in certain limited circumstances: the voter is deceased, has been convicted of a felony or judged mentally incapacitated, pursuant to a prescribed registration list maintenance activity, or he or she has requested in writing to be removed.¹⁰

¹ Section 20.10(1), F.S.

² Section 97.012, F.S.

³ Section 98.035(1), F.S.

⁴ Section 98.035(2), F.S.

⁵ *Id.*

⁶ Section 98.035(3), F.S.

⁷ Section 98.045(1), F.S.

⁸ *Id.*

⁹ Section 98.045(1)(a)-(i), F.S.

¹⁰ Section 98.045(2)(a), F.S.

Supervisor Voter Registration List Maintenance Activities

Each supervisor, to protect the integrity of the electoral process, is required to conduct voter registration list maintenance at least every odd-numbered year.¹¹ The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the system.¹² The program must be uniform, nondiscriminatory,¹³ and in compliance with federal election law.¹⁴ Each supervisor must incorporate one of the following methods in his or her list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.¹⁵

If a supervisor receives change of address information from one of the methods listed above, jury notices returned to the courts and signed by the voter, the Department of Highway Safety and Motor Vehicles (DHSMV), or from other sources which reveal that a registered voter's legal address might have changed, the supervisor must change the registration records to reflect the new address.¹⁶ The supervisor must then send the registered voter an address change notice.¹⁷ If the supervisor receives information that a registered voter has moved his or her legal residence outside the state, the supervisor must send an address confirmation final notice to the registered voter at his or her new address.¹⁸ Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive.¹⁹ If the voter does not update his or her information by the second general election²⁰ after being designated as inactive, the voter's name shall be removed from the system.²¹

Department Voter Registration List Maintenance Activities

The Department is required to perform voter registration list maintenance activities to ensure the accuracy of the system and records the system holds.²² Specifically, the Department is required to identify duplicate registrations,²³ deceased persons,²⁴ persons adjudicated to be mentally incapacitated,²⁵ persons convicted of a felony,²⁶ and other ineligible voters contained in the system.²⁷

¹¹ Section 98.065(3), F.S.

¹² Section 98.065(3), F.S.

¹³ The term "nondiscriminatory" applies to, and includes persons with disabilities. Section 98.065(1), F.S.

¹⁴ Section 98.065(1), F.S.

¹⁵ Section 98.065(2), F.S.

¹⁶ Section 98.065(4)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 98.065(4)(b), F.S.

¹⁹ Section 98.065(4)(c), F.S.

²⁰ The Florida Constitution requires that a "general election" shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year. FLA. CONST., art. VI, s. 5; *see also* s. 97.021(16), F.S.

²¹ Section 98.065(4)(c), F.S.

²² Section 98.075(1), F.S.

²³ Section 98.075(2), F.S.

²⁴ Section 98.075(3), F.S.

²⁵ Section 98.075(4), F.S.

²⁶ Section 98.075(5), F.S.

²⁷ Section 98.075(6), F.S.

Duty of Agencies to Furnish Information to the Department

Certain agencies are required to submit information to the Department in order to help identify ineligible voters.²⁸ The following chart lists the agencies required to submit information, the information required, and the frequency of the submissions.

Department of Health	Monthly	List containing the name, address, date of birth, social security number, race, and sex of each deceased person 17 years of age or older
Clerk of the Circuit Court	Monthly	<ul style="list-style-type: none"> List of persons adjudicated mentally incapacitated with respect to voting during the preceding calendar month; List of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month; List of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address
Department of Law Enforcement	In a time and manner that enables the Department to meet its obligations under state and federal law	The identity of those persons who have been convicted of a felony who appear in the voter registration records supplied by the system
Florida Commission on Offender Review	Bimonthly	The identity of those persons granted clemency in the preceding month or any updates to prior records which have occurred in the preceding month
Department of Corrections	In a time and a manner that enables the Department to identify registered voters who are convicted felons and to meet its obligations under state and federal law	The identity of those persons who have been convicted of a felony and committed to its custody or placed on community supervision
Department of Highway Safety and Motor Vehicles	Monthly	List of those persons whose names have been removed from the driver license database because they have been licensed in another state

Voter Registration Ineligibility Determinations

Currently, the Department identifies ineligible voters contained in the system,²⁹ the supervisor³⁰ with jurisdiction of that particular voter is then notified of this finding and, after notifying the voter and giving him or her a chance to respond,³¹ makes a final determination regarding the voter's eligibility.³² A person determined to be ineligible by a supervisor may appeal the determination in circuit court.³³

²⁸ Section 98.093, F.S.

²⁹ Section 98.075, F.S.

³⁰ Supervisors are also able to remove the name of a voter based on evidence without the Department having notified them in some circumstances. Section 98.075, F.S.

³¹ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

³² Section 98.075(7), F.S.

³³ Section 98.0755, F.S.

Department of Highway Safety and Motor Vehicles

DHSMV requires proof of identity whenever a person applies for a driver license or an identification card.³⁴ If the applicant is not a U.S. citizen, current law requires that the applicant submit a “valid, unexpired alien registration receipt card (green card)” to satisfy the requirement that he or she provide proof of identity.³⁵

Clerks of the Circuit Courts

A juror in Florida is required to be at least 18 years of age, a citizen of the United States, and a legal resident of the state and of their respective county.³⁶ Each juror must either possess a driver license or identification card issued by DHSMV or have signed an affidavit attesting that he or she meets the qualifications to be a juror.³⁷ Each clerk of circuit court is required to generate a set of juror candidate lists from which potential jurors will be selected.³⁸ The list is derived from two sources: persons who have submitted an affidavit swearing that they meet the qualifications to be a juror, and those persons who have a driver license or identification card issued by DHSMV.³⁹ To obtain the latter, DHSMV is required to submit, on a quarterly basis, to the clerk of the circuit of each county a list of names of persons in that county, who are at least 18 years of age, citizens of the United States, and legal residents of Florida.⁴⁰

Effect of the Bill

The bill requires each supervisor to enter into an agreement with the clerk of the circuit court in their jurisdiction to receive, monthly, change-of-address information and a list of potential jurors who identified themselves as aliens. The bill also requires DHSMV to furnish to the Department a list of persons who identified themselves as aliens. The Department must compare the list received from DHSMV with the information in the system. If the Department determines that a registered voter in the system is an alien, it must provide the name of that voter to the supervisor of the county in which that voter is registered.

B. SECTION DIRECTORY:

Section 1 amends s. 98.065, F.S., relating to registration list maintenance programs.

Section 2 amends s. 98.093, F.S., relating to the duty of officials to furnish information to the Department.

Section 3 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.

³⁴ Sections 322.051 and 322.08, F.S.

³⁵ Sections 322.051(1)(a)3.e. and 322.08(2)(c)5., F.S.

³⁶ Section 40.01, F.S.

³⁷ *Id.*

³⁸ Section 40.011(1), F.S.

³⁹ Section 40.011, F.S.

⁴⁰ Section 40.011(2), F.S.

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:

There is an indeterminate fiscal impact to state and local government. DHSMV is required to furnish a monthly list to the Department under the bill. DHSMV already submits a list monthly to the Department, however, it is unknown whether the cost of preparing and sending over the list required by the bill could be absorbed into that existing process. The bill requires the Clerks of Circuit Courts to submit information to each supervisor. Clerks currently submit some information to the Department. The cost of preparing and sending the information to each supervisor as required by the bill is indeterminate.

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 a law concerning elections.

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 voter registration maintenance;
 3 amending s. 98.065, F.S.; requiring supervisors of
 4 elections to enter into agreements with clerks of the
 5 circuit courts to receive specified information;
 6 amending s. 98.093, F.S.; requiring the Department of
 7 Highway Safety and Motor Vehicles to furnish monthly
 8 to the Department of State a list of persons who
 9 identified themselves as aliens; requiring the
 10 Department of State to compare such list with the
 11 statewide voter registration system and provide the
 12 names of registered voters who are aliens to the
 13 supervisor of elections of the county in which the
 14 voter is registered; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:
 17

18 Section 1. Paragraphs (a), (b), and (c) of subsection (4)
 19 of section 98.065, Florida Statutes, are redesignated as
 20 paragraphs (b), (c), and (d), respectively, and a new paragraph
 21 (a) is added to that subsection to read:

22 98.065 Registration list maintenance programs.—
 23 (4)

24 (a) The supervisor shall enter into an agreement with the
 25 local clerk of the circuit court to receive monthly from such

26 clerk change-of-address information and a list of potential
 27 jurors who identified themselves as aliens, as defined in s.
 28 327.02(2).

29 Section 2. Paragraph (h) is added to subsection (2) of
 30 section 98.093, Florida Statutes, to read:

31 98.093 Duty of officials to furnish information relating
 32 to deceased persons, persons adjudicated mentally incapacitated,
 33 ~~and~~ persons convicted of a felony, and persons identified as
 34 aliens.-

35 (2) To the maximum extent feasible, state and local
 36 government agencies shall facilitate provision of information
 37 and access to data to the department, including, but not limited
 38 to, databases that contain reliable criminal records and records
 39 of deceased persons. State and local government agencies that
 40 provide such data shall do so without charge if the direct cost
 41 incurred by those agencies is not significant.

42 (h) The Department of Highway Safety and Motor Vehicles
 43 shall furnish monthly to the department a list of persons who
 44 identified themselves as aliens, as defined in s. 327.02(2). The
 45 department shall compare the list with the statewide voter
 46 registration system and, if the department determines that a
 47 registered voter is an alien, provide the name of such voter to
 48 the supervisor of elections of the county in which the voter is
 49 registered.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Information Technology
SPONSOR(S): Grant and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>DA</i>
2) Government Operations & Technology Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) in collaboration with the Agency for State Technology (AST) to establish and implement secure and uniform protocols and standards for issuing an optional digital proof of driver license and procure any application programming interface necessary for enabling a private entity to securely manufacture a digital proof of driver license. DHSMV is also required to contract with a private entity to serve as the authorized manufacturer of a digital proof of driver license. AST must designate a private entity as an authorized consumer of digital proofs of driver licenses. Revenue generated from the manufacture or consumption of a digital proof of driver license must be collected at the point of sale or renewal by an authorized manufacturer of digital proofs of driver licenses and such revenue must be shared with the state on a revenue-sharing basis. The bill provides that presenting to a law enforcement officer an electronic device displaying a digital proof of driver license does not constitute consent for the officer to access any additional information on the device other than the digital proof of driver license. Additionally, the person presenting the device to the officer assumes liability resulting in any damage to the device.

The bill specifies that AST's duty to collaborate with the Department of Management Services (DMS) regarding state term contract solicitation only applies to information technology-related solicitations and eliminates the requirement that AST's information technology state contract policy be included in all DMS solicitations and contracts.

The bill removes obsolete provisions relating to the consolidation of agency data centers. The bill allows the state data center to extend service-level agreements with customer entities by up to six months. If the state data center and an existing customer entity execute such an extension, or fail to execute an entirely new agreement before the expiration of the current agreement, the data center must submit a report to the Executive Office of the Governor to explain the specific issues preventing the execution of the agreement and the plan for resolving those issues. The report must be submitted within five days after the date of the extension or 15 days before the expiration of the agreement. Moreover, the bill requires the state data center to plan, design, and conduct testing with information technology resources to implement services within the scope of those services the state data center provides, if cost effective.

Lastly, the bill amends the Uniform Electronic Transaction Act and specifies that the definitions of electronic records and electronic signatures under the act include records and signatures secured through blockchain technology. The bill provides that the use of blockchain technology to secure information while engaged in interstate or foreign commerce does not affect the rights of ownership or use held by the owner of such information unless the terms of the transaction expressly provide for the transfer of such rights.

The bill has an indeterminate fiscal impact on state government. See Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Digital Driver Licenses

Current Situation

Current law provides for the establishment of a digital proof of driver license. Specifically, current law requires the Department of Highway Safety and Motor Vehicles (DHSMV) to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.¹ The statute authorizes DHSMV to contract with one or more private entities to develop a digital proof of driver license system.²

The digital proof of driver license developed by DHSMV or by an entity contracted by DHSMV is required to be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.³ DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.⁴ A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.⁵

Current law also establishes certain penalties for a person who manufactures or possesses a false digital proof of driver license.⁶ Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison,⁷ a fine not to exceed \$5,000,⁸ or under the habitual felony offender statute.⁹
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison.¹⁰

Effect of the Bill

The bill requires DHSMV in collaboration with the Agency for State Technology (AST) to establish and implement secure and uniform protocols and standards for issuing an optional digital proof of driver license and procure any application programming interface necessary for enabling a private entity to securely manufacture a digital proof of driver license. DHSMV is also required to contract with a private entity to serve as the authorized manufacturer of a digital proof of driver license.

The bill requires AST, in collaboration with DHSMV, to maintain and publish on its website the protocols and standards necessary for a private entity to request authorized access to an application programming interface necessary for the private entity to consume a digital proof of driver license. AST is required to timely review or approve a request for access that meet AST's requirements. Upon approval, AST is directed to designate a private entity as an authorized consumer of digital proofs of driver licenses.

¹ Section 322.032(1), F.S.

² Section 322.032(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 322.032(3), F.S.

⁶ Section 322.032(4), F.S.

⁷ Section 775.082, F.S.

⁸ Section 775.083, F.S.

⁹ Section 775.084, F.S.

¹⁰ Section 775.082, F.S.

Revenue generated from the manufacture or consumption of a digital proof of driver license must be collected at the point of sale or renewal by an authorized manufacturer of digital proofs of driver licenses and such revenue must be shared with the state on a revenue-sharing basis. Such authorized manufacturer is responsible for remitting 50 percent of all revenue collected for deposit into the Highway Safety Operating Trust Fund. AST, in collaboration with DSHMV, is required to enter into an agreement with such authorized manufacturer that sets forth permitted uses, terms and conditions, privacy policy, and terms relating to the consumption of a digital proof of driver license.

The bill provides that presenting to a law enforcement officer an electronic device displaying a digital proof of driver license does not constitute consent for the officer to access any additional information on the device other than the digital proof of driver license. Additionally, the person presenting the device to the officer assumes liability resulting in any damage to the device.

Agency for State Technology

Current Situation

AST develops and publishes information technology (I.T.) policy for the management of the state's information technology resources, oversees the state's essential technology projects, and manages the State Data Center.¹¹ AST was established in 2014 within the Department of Management Services (DMS) but is not subject to DMS's control or supervision.¹² AST is headed by an executive director who serves as the state's chief information officer (CIO) and is appointed by the Governor and confirmed by the Senate.

Duties and responsibilities of the AST include:¹³

- Developing and implementing I.T. architecture standards;
- Implementing industry standards and best practices for the State Data Center;
- Providing operational management and oversight of the State Data Center;
- Establishing project management and oversight standards;
- Performing project oversight on I.T. projects with total costs of \$10 million or more;
- Reviewing I.T. purchases over \$250,000 made by state agencies;
- Identifying opportunities for standardization and consolidation of I.T. services that support common business functions;
- Recommending additional consolidations of agency data centers or computing facilities; and
- Performing project oversight on any cabinet agency I.T. project that has a total project cost of \$25 million or more and impacts another agency or agencies.

AST is also required to collaborate with DMS regarding state term contracts.¹⁴ Specifically, AST and DMS are required to collaborate to accomplish the following tasks:

- Establishing an I.T. policy for all I.T. related state contracts and ensuring that the policy is included in all solicitations and contracts which are administratively executed by DMS;
- Evaluating vendor responses for state term contract solicitations and invitations to negotiate;
- Answering vendor questions on state term contract solicitations.¹⁵

Effect of the Bill

The bill specifies that AST's duty to collaborate with DMS regarding state term contract solicitation only applies to I.T. related solicitations and eliminates the requirement that AST's I.T. state contract policy be included in all solicitations and contracts executed by DMS.

¹¹ Section 282.0051, F.S.

¹² Section 20.61, F.S.

¹³ Section 282.0051, F.S.

¹⁴ Section 282.0051(18), F.S.

¹⁵ Section 282.0051(18)(a)-(d), F.S.

State Data Center

Current Situation

In 2014, the Legislature merged two existing primary state data centers to create the State Data Center (SDC). The SDC was established within AST, to provide data center services that are hosted either on premises or externally through a third-party provider.¹⁶ The SDC director is appointed by the executive director of AST. The SDC must comply with all applicable state and federal laws, regulations and policies. The SDC's duties include:

- Developing and implementing a business continuity plan and a disaster recovery plan and annually conducting a live exercise of each plan;
- Maintaining the performance of the SDC;
- Being the custodian of resources and equipment consolidated and located within the SDC; and
- Assuming administrative access rights to resources and equipment consolidated into the SDC.

In addition to the above, the SDC is required to enter into service-level agreements¹⁷ with customer entities¹⁸ to provide the required type and level of services.¹⁹ Each service-level agreement must:

- Have a term not exceeding three years;
- Identify the parties and their roles, duties, and responsibilities under the agreement;
- State the duration of the contract term and specify the conditions for renewal;
- Identify the scope of work;
- Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit;
- Establish the services to be provided;
- Provide a timely billing methodology to recover the cost of services provided to the customer entity;
- Provide a procedure for modifying the service-level agreement based on changes in the type, level, and cost of a service;
- Include a right-to-audit clause;
- Provide that a service-level agreement may be terminated by either party for cause only after giving the other party and the AST notice in writing of the cause for termination and an opportunity for the other party to resolve the identified cause within a reasonable period; and
- Provide for mediation of disputes by the Division of Administrative Hearings.²⁰

AST is required to develop and implement cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to the SDC's applicable customer entities.²¹

Effect of the Bill

The bill removes obsolete provisions relating to the consolidation of agency data centers. The bill allows the SDC to extend service-level agreements with customer entities by up to six months. If the state data center and an existing customer entity execute such an extension, or fail to execute an entirely new agreement before the expiration of the current agreement, the data center must submit a report to the Executive Office of the Governor to explain the specific issues preventing execution of the agreement and the plan for resolving those issues. The report must be submitted within five days after the date of the extension or 15 days before the expiration of the agreement.

¹⁶ Section 282.201, F.S.

¹⁷ Section 282.0041(20), F.S., defines "service-level agreement" to mean a written contract between the SDC and a customer entity which specifies the scope of services provided, service level, the duration of the agreement, the responsible parties, and service costs.

¹⁸ Section 282.0041(5), F.S., defines "customer entity" to mean an entity that obtains services from the SDC.

¹⁹ Section 282.201(2)(d), F.S.

²⁰ *Id.*

²¹ Section 282.0051(11)(b), F.S.

The bill requires the SDC to plan, design, and conduct testing with information technology resources to implement services within the scope of those services the SDC provides, if cost effective.

Uniform Electronic Transaction Act

Current Situation

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and electronic signatures relating to a transaction.²² The act does not apply to transactions to the extent they are governed by:

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code; or
- The Uniform Computer Information Transactions Act.²³

Effect of the Bill

The bill establishes “smart contracts” as legally enforceable electronic contracts within the act. The bill defines “smart contract” to mean an event-driven program that runs on a distributed, decentralized, shared, and replicated ledger and can take custody over and instruct the transfer of assets on that ledger.

The bill creates a definition of “blockchain technology.”²⁴ The term “blockchain technology” means a distributed ledger technology that uses a distributed, decentralized, shared, and replicated ledger, which may be public or private, permissioned or permissionless, and driven by tokenized crypto-economics or tokenless. Additionally, the bill specifies that the data on the ledger must be immutable, auditable, protected with cryptography, and provide an uncensored truth.

The bill specifies that the definitions of electronic records and electronic signatures under the act include records and signatures secured through blockchain technology. The bill provides that the use of blockchain technology to secure information while engaged in interstate or foreign commerce does not affect the rights of ownership or use held by the owner of such information unless the terms of the transaction expressly provide for the transfer of such rights.

B. SECTION DIRECTORY:

Section 1 amends s. 282.0051, F.S., relating to the powers and duties of AST.

Section 2 amends s. 282.201, F.S., relating to the SDC.

Section 3 amends s. 322.032, F.S., relating to digital proof of driver license.

Section 4 amends s. 668.50, F.S., relating to the Uniform Electronic Transaction Act.

Section 5 provides an effective date of July 1, 2018.

²² Section 668.50(2), F.S.

²³ Section 668.50(3), F.S.

²⁴ Blockchain technology is a secure method of creating and entering into electronic transactions: “It’s a shared ledger for recording the history of transaction – that cannot be altered.” *Blockchain 101 Infographic*, IBM, available at <https://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=XI912346USEN&> (last visited 1/20/18).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides for a 50 percent revenue share with the state associated with the manufacturer of a digital proof of driver license. However, the fiscal impact is indeterminate at this time.

2. Expenditures:

The bill has an indeterminate impact on state expenditures relating to the development of protocols and standards for digital driver licenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who wish to obtain a digital proof of driver license will incur costs associated with obtaining such proof, but the cost is unknown at this time.

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 information technology; amending s.
 3 282.0051, F.S.; revising certain powers, duties, and
 4 functions of the Agency for State Technology in
 5 collaboration with the Department of Management
 6 Services; amending s. 282.201, F.S.; authorizing the
 7 state data center within the agency to extend, up to a
 8 specified timeframe, certain service-level agreements;
 9 requiring the state data center to submit a specified
 10 report to the Executive Office of the Governor under
 11 certain circumstances; deleting a requirement for a
 12 service-level agreement to provide a certain
 13 termination notice to the agency; requiring the state
 14 data center to plan, design, and conduct certain
 15 testing, if cost-effective; deleting obsolete
 16 provisions relating to the schedule for consolidations
 17 of agency data centers; conforming provisions to
 18 changes made by the act; amending s. 322.032, F.S.;
 19 directing the Department of Highway Safety and Motor
 20 Vehicles, in collaboration with the Agency for State
 21 Technology, to implement protocols and standards for
 22 issuing an optional digital proof of driver license,
 23 enter into a contract for a specified purpose, and
 24 procure certain interfaces necessary for authorized
 25 private entities to consume a digital proof of driver

26 license; requiring the agency, in collaboration with
 27 the department, to maintain and publish such protocols
 28 and standards; requiring the agency to timely review
 29 and approve all private entity requests for authorized
 30 access to certain interfaces that meet the agency's
 31 requirements; providing that agency approval of such
 32 access designates the approved entity as an authorized
 33 consumer of digital proofs of driver licenses;
 34 providing for revenue sharing between such authorized
 35 manufacturer and the state; requiring deposit of the
 36 state share of such revenue in the Highway Safety
 37 Operating Trust Fund; requiring the agency, in
 38 collaboration with the department, to enter into a
 39 specified agreement with such authorized manufacturer;
 40 requiring that a digital proof of driver license be in
 41 a format that allows law enforcement to verify the
 42 authenticity of such digital proof of driver license;
 43 providing that presenting an electronic device
 44 displaying a digital proof of driver license does not
 45 constitute consent for a law enforcement officer to
 46 access any other information on such device; providing
 47 for the assumption of liability; amending s. 668.50,
 48 F.S.; providing and revising definitions; providing
 49 that a contract may not be denied legal effect or
 50 enforceability solely because it includes a smart

51 contract term; providing that rights of ownership or
 52 use of certain information are not affected by the use
 53 of blockchain technology to secure such information;
 54 providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. Subsection (18) of section 282.0051, Florida
 59 Statutes, is amended to read:

60 282.0051 Agency for State Technology; powers, duties, and
 61 functions.—The Agency for State Technology shall have the
 62 following powers, duties, and functions:

63 (18) In collaboration with the Department of Management
 64 Services:

65 (a) Establish an information technology policy for all
 66 information technology-related state contracts, including state
 67 term contracts for information technology commodities,
 68 consultant services, and staff augmentation services. The
 69 information technology policy must include:

70 1. Identification of the information technology product
 71 and service categories to be included in state term contracts.

72 2. Requirements to be included in solicitations for state
 73 term contracts.

74 3. Evaluation criteria for the award of information
 75 technology-related state term contracts.

76 4. The term of each information technology-related state
77 term contract.

78 5. The maximum number of vendors authorized on each state
79 term contract.

80 (b) Evaluate vendor responses for information technology-
81 related state term contract solicitations and invitations to
82 negotiate.

83 (c) Answer vendor questions on information technology-
84 related state term contract solicitations.

85 (d) Ensure that all information technology-related
86 solicitations by the department are procured and state contracts
87 are managed in accordance with the information technology policy
88 established under ~~pursuant to~~ paragraph (a) ~~is included in all~~
89 ~~solicitations and contracts which are administratively executed~~
90 ~~by the department.~~

91 Section 2. Paragraph (d) of subsection (2) of section
92 282.201, Florida Statutes, is amended, paragraph (g) is added to
93 that subsection, and subsection (4) of that section is amended,
94 to read:

95 282.201 State data center.—The state data center is
96 established within the Agency for State Technology and shall
97 provide data center services that are hosted on premises or
98 externally through a third-party provider as an enterprise
99 information technology service. The provision of services must
100 comply with applicable state and federal laws, regulations, and

101 policies, including all applicable security, privacy, and
 102 auditing requirements.

103 (2) STATE DATA CENTER DUTIES.—The state data center shall:

104 (d) Enter into a service-level agreement with each
 105 customer entity to provide the required type and level of
 106 service or services. If a customer entity fails to execute an
 107 agreement within 60 days after commencement of a service, the
 108 state data center may cease service. A service-level agreement
 109 may not have an original ~~a~~ term exceeding 3 years, but the
 110 service-level agreement may be extended for up to 6 months. If
 111 the state data center and an existing customer entity either
 112 execute an extension or fail to execute a new service-level
 113 agreement before the expiration of an existing service-level
 114 agreement, the state data center must submit a report to the
 115 Executive Office of the Governor within 5 days after the date of
 116 the executed extension or 15 days before the scheduled
 117 expiration date of the service-level agreement, as applicable,
 118 to explain the specific issues preventing execution of a new
 119 service-level agreement and to describe the plan and schedule
 120 for resolving those issues. A service-level agreement, ~~and~~ at a
 121 minimum, must:

- 122 1. Identify the parties and their roles, duties, and
 123 responsibilities under the agreement.
- 124 2. State the duration of the contract term and specify the
 125 conditions for renewal.

- 126 3. Identify the scope of work.
- 127 4. Identify the products or services to be delivered with
128 sufficient specificity to permit an external financial or
129 performance audit.
- 130 5. Establish the services to be provided, the business
131 standards that must be met for each service, the cost of each
132 service, and the metrics and processes by which the business
133 standards for each service are to be objectively measured and
134 reported.
- 135 6. Provide a timely billing methodology to recover the
136 cost of services provided to the customer entity pursuant to s.
137 215.422.
- 138 7. Provide a procedure for modifying the service-level
139 agreement based on changes in the type, level, and cost of a
140 service.
- 141 8. Include a right-to-audit clause to ensure that the
142 parties to the agreement have access to records for audit
143 purposes during the term of the service-level agreement.
- 144 9. Provide that a service-level agreement may be
145 terminated by either party for cause only after giving the other
146 party ~~and the Agency for State Technology~~ notice in writing of
147 the cause for termination and an opportunity for the other party
148 to resolve the identified cause within a reasonable period.
- 149 10. Provide for mediation of disputes by the Division of
150 Administrative Hearings pursuant to s. 120.573.

151 (g) Plan, design, and conduct testing with information
 152 technology resources to implement services within the scope of
 153 the services provided by the state data center, if cost-
 154 effective.

155 (4) ~~SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.-~~

156 ~~(a) Consolidations of agency data centers and computing~~
 157 ~~facilities into the state data center shall be made by the dates~~
 158 ~~specified in this section and in accordance with budget~~
 159 ~~adjustments contained in the General Appropriations Act.~~

160 ~~(b) During the 2013-2014 fiscal year, the following state~~
 161 ~~agencies shall be consolidated by the specified date:~~

162 1. ~~By October 31, 2013, the Department of Economic~~
 163 ~~Opportunity.~~

164 2. ~~By December 31, 2013, the Executive Office of the~~
 165 ~~Governor, to include the Division of Emergency Management except~~
 166 ~~for the Emergency Operation Center's management system in~~
 167 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~
 168 ~~Starke.~~

169 3. ~~By March 31, 2014, the Department of Elderly Affairs.~~

170 4. ~~By October 30, 2013, the Fish and Wildlife Conservation~~
 171 ~~Commission, except for the commission's Fish and Wildlife~~
 172 ~~Research Institute in St. Petersburg.~~

173 (a)(e) The following agency data centers are exempt from
 174 state data center consolidation under this section: the
 175 Department of Law Enforcement, the Department of the Lottery's

176 Gaming System, Systems Design and Development in the Office of
 177 Policy and Budget, the regional traffic management centers as
 178 described in s. 335.14(2) and the Office of Toll Operations of
 179 the Department of Transportation, the State Board of
 180 Administration, state attorneys, public defenders, criminal
 181 conflict and civil regional counsel, capital collateral regional
 182 counsel, and the Florida Housing Finance Corporation.

183 (b)~~(d)~~ A state agency that is consolidating its agency
 184 data center or computing facility into the state data center
 185 must execute a new or update an existing service-level agreement
 186 within 60 days after the commencement of the service. If a state
 187 agency and the state data center are unable to execute a
 188 service-level agreement by that date, the agency shall submit a
 189 report to the Executive Office of the Governor within 5 working
 190 days after that date which explains the specific issues
 191 preventing execution and describing the plan and schedule for
 192 resolving those issues.

193 (c)~~(e)~~ Each state agency consolidating ~~scheduled for~~
 194 ~~consolidation~~ into the state data center shall submit a
 195 transition plan to the Agency for State Technology by July 1 of
 196 the fiscal year before the fiscal year in which the ~~scheduled~~
 197 consolidation will occur. Transition plans must ~~shall~~ be
 198 developed in consultation with the state data center and must
 199 include:

- 200 1. An inventory of the agency data center's resources

201 being consolidated, including all hardware and its associated
 202 life cycle replacement schedule, software, staff, contracted
 203 services, and facility resources performing data center
 204 management and operations, security, backup and recovery,
 205 disaster recovery, system administration, database
 206 administration, system programming, job control, production
 207 control, print, storage, technical support, help desk, and
 208 managed services, but excluding application development, and the
 209 agency's costs supporting these resources.

210 2. A list of contracts in effect, including, but not
 211 limited to, contracts for hardware, software, and maintenance,
 212 which identifies the expiration date, the contract parties, and
 213 the cost of each contract.

214 3. A detailed description of the level of services needed
 215 to meet the technical and operational requirements of the
 216 platforms being consolidated.

217 4. A timetable with significant milestones for the
 218 completion of the consolidation.

219 (d) ~~(f)~~ Each state agency consolidating ~~scheduled for~~
 220 ~~consolidation~~ into the state data center shall submit with its
 221 respective legislative budget request the specific recurring and
 222 nonrecurring budget adjustments of resources by appropriation
 223 category into the appropriate data processing category pursuant
 224 to the legislative budget request instructions in s. 216.023.

225 Section 3. Subsections (1) and (2) of section 322.032,

226 Florida Statutes, are amended to read:

227 322.032 Digital proof of driver license.—

228 (1) (a) The department, in collaboration with the Agency
 229 for State Technology, shall establish and implement ~~begin to~~
 230 ~~review and prepare for the development of a~~ secure and uniform
 231 protocols and standards ~~system~~ for issuing an optional digital
 232 proof of driver license, contract with a private entity to serve
 233 as the authorized manufacturer of a digital proof of driver
 234 license, and procure any application programming interface
 235 necessary for enabling qualified and authorized private entities
 236 to securely consume a digital proof of driver license. ~~The~~
 237 ~~department may contract with one or more private entities to~~
 238 ~~develop a digital proof of driver license system.~~

239 (b) The Agency for State Technology, in collaboration with
 240 the department, shall maintain and publish on its website the
 241 protocols and standards necessary for a private entity to
 242 request authorized access to an application programming
 243 interface necessary for such private entity to consume a digital
 244 proof of driver license. The agency shall timely review requests
 245 for authorized access and must approve all requests by private
 246 entities that meet the agency's requirements. The agency's
 247 approval of a request for authorized access designates the
 248 private entity that made the request as an authorized consumer
 249 of digital proofs of driver licenses.

250 (c) Revenue generated from the manufacture or consumption

251 of a digital proof of driver license must be collected by the
 252 authorized manufacturer of digital proofs of driver licenses and
 253 such revenue must be shared with the state on a revenue-sharing
 254 basis. Such authorized manufacturer is responsible for remitting
 255 50 percent of all revenue collected for deposit into the Highway
 256 Safety Operating Trust Fund. The Agency for State Technology, in
 257 collaboration with the department, shall enter into an agreement
 258 with the authorized manufacturer that provides the permitted
 259 uses, terms and conditions, privacy policy, and uniform
 260 remittance terms relating to the consumption of a digital proof
 261 of driver license.

262 (2) (a) A ~~The digital proof of driver license developed by~~
 263 ~~the department or by an entity contracted by the department~~ must
 264 be in such a format as to allow law enforcement to verify the
 265 authenticity of the digital proof of driver license. The
 266 department may adopt rules to ensure valid authentication of a
 267 digital proof of driver license ~~licenses~~ by law enforcement.

268 (b) The act of presenting to a law enforcement officer an
 269 electronic device displaying a digital proof of driver license
 270 does not constitute consent for the officer to access any
 271 information on the device other than the digital proof of driver
 272 license.

273 (c) The person who presents the device to the officer
 274 assumes liability for any resulting damage to the device.

275 Section 4. Subsection (20) of section 668.50, Florida

276 Statutes, is renumbered as subsection (21), subsection (2) and
 277 paragraph (b) of subsection (7) are amended, and a new
 278 subsection (20) is added to that section, to read:

279 668.50 Uniform Electronic Transaction Act.—

280 (2) DEFINITIONS.—As used in this section:

281 (a) "Agreement" means the bargain of the parties in fact,
 282 as found in their language or inferred from other circumstances
 283 and from rules, regulations, and procedures given the effect of
 284 agreements under provisions of law otherwise applicable to a
 285 particular transaction.

286 (b) "Automated transaction" means a transaction conducted
 287 or performed, in whole or in part, by electronic means or
 288 electronic records, in which the acts or records of one or both
 289 parties are not reviewed by an individual in the ordinary course
 290 in forming a contract, performing under an existing contract, or
 291 fulfilling an obligation required by the transaction.

292 (c) "Blockchain technology" means distributed ledger
 293 technology that uses a distributed, decentralized, shared, and
 294 replicated ledger, which may be public or private, permissioned
 295 or permissionless, and driven by tokenized crypto-economics or
 296 tokenless. The data on the ledger must be immutable, auditable,
 297 protected with cryptography, and provide an uncensored truth.

298 (d) ~~(e)~~ "Computer program" means a set of statements or
 299 instructions to be used directly or indirectly in an information
 300 processing system in order to bring about a certain result.

301 ~~(e)(d)~~ "Contract" means the total legal obligation
 302 resulting from the parties' agreement as affected by this act
 303 and other applicable provisions of law.

304 ~~(f)(e)~~ "Electronic" means relating to technology having
 305 electrical, digital, magnetic, wireless, optical,
 306 electromagnetic, or similar capabilities.

307 ~~(g)(f)~~ "Electronic agent" means a computer program or an
 308 electronic or other automated means used independently to
 309 initiate an action or respond to electronic records or
 310 performances in whole or in part, without review or action by an
 311 individual.

312 ~~(h)(g)~~ "Electronic record" means a record created,
 313 generated, sent, communicated, received, or stored by electronic
 314 means. A record or contract that is secured through blockchain
 315 technology is in an electronic form and is an electronic record.

316 ~~(i)(h)~~ "Electronic signature" means an electronic sound,
 317 symbol, or process attached to or logically associated with a
 318 record and executed or adopted by a person with the intent to
 319 sign the record. A signature that is secured through blockchain
 320 technology is in an electronic form and is an electronic
 321 signature.

322 ~~(j)(i)~~ "Governmental agency" means an executive,
 323 legislative, or judicial agency, department, board, commission,
 324 authority, institution, or instrumentality of this state,
 325 including a county, municipality, or other political subdivision

326 of this state and any other public or private agency, person,
 327 partnership, corporation, or business entity acting on behalf of
 328 any public agency.

329 (k)~~(j)~~ "Information" means data, text, images, sounds,
 330 codes, computer programs, software, databases, or other similar
 331 representations of knowledge.

332 (l)~~(k)~~ "Information processing system" means an electronic
 333 system for creating, generating, sending, receiving, storing,
 334 displaying, or processing information.

335 (m)~~(l)~~ "Person" means an individual, corporation, business
 336 trust, estate, trust, partnership, limited liability company,
 337 association, joint venture, governmental agency, public
 338 corporation, or any other legal or commercial entity.

339 (n)~~(m)~~ "Record" means information that is inscribed on a
 340 tangible medium or that is stored in an electronic or other
 341 medium and is retrievable in perceivable form, including public
 342 records as defined in s. 119.011.

343 (o)~~(n)~~ "Security procedure" means a procedure employed for
 344 the purpose of verifying that an electronic signature, record,
 345 or performance is that of a specific person or for detecting
 346 changes or errors in the information in an electronic record.
 347 The term includes a procedure that requires the use of
 348 algorithms or other codes, identifying words or numbers,
 349 encryption, or callback or other acknowledgment procedures.

350 (p) "Smart contract" means an event-driven program that

351 runs on a distributed, decentralized, shared, and replicated
 352 ledger and can take custody over and instruct the transfer of
 353 assets on that ledger.

354 (q)~~(p)~~ "State" means a state of the United States, the
 355 District of Columbia, Puerto Rico, the United States Virgin
 356 Islands, or any territory or insular possession subject to the
 357 jurisdiction of the United States. The term includes an Indian
 358 tribe or band, or Alaskan native village, which is recognized by
 359 federal law or formally acknowledged by a state.

360 (r)~~(p)~~ "Transaction" means an action or set of actions
 361 occurring between two or more persons relating to the conduct of
 362 business, commercial, insurance, or governmental affairs.

363 (7) LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC
 364 SIGNATURES, AND ELECTRONIC CONTRACTS.—

365 (b) A contract may not be denied legal effect or
 366 enforceability solely because:

367 1. An electronic record was used in the formation of the
 368 contract.

369 2. The contract contains a smart contract term.

370 (20) RIGHTS OF OWNERSHIP OR USE.—Notwithstanding any law,
 371 rule, or regulation to the contrary, the use of blockchain
 372 technology to secure information while engaged in interstate or
 373 foreign commerce does not affect the rights of ownership or use
 374 held by the owner of such information unless the terms of the
 375 transaction expressly provide for the transfer of such rights.

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2018

376

Section 5. 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 Grant, J. offered the following:

Amendment (with title amendment)

Remove lines 91-224



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

Remove lines 6-18 and insert:

Services; amending s. 322.032, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-06 Budgetary Transparency
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1588

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

SUMMARY ANALYSIS

The Florida Constitution requires the Legislature to pass a state budget each year and to prescribe in general law a planning process for such. To that end, the Legislature has created a detailed planning and budgeting process through which agencies and other state entities that are reliant on state funds submit their operating budgets and their budget requests for the forthcoming year. However, some state entities are not reliant on the Legislative appropriations process as they receive their operating income from alternate sources and therefore the operating budgets for such entities are not subject to legislative appropriations. While these entities may be required to comply with certain planning and budget requirements, unlike other state entities funded through the General Appropriations Act (GAA), their budgets are typically not approved by the Legislature.

The bill provides that an entity created by general law or the State Constitution that receives its operating income through an alternative funding source other than the GAA is subject to its provisions. Each applicable entity must prepare and approve an operating budget for each fiscal year pursuant to the budget preparation requirements in ch. 216, F.S. The operating budget, along with any amendments, must be approved at a publicly noticed meeting and must be available on the entity's website at the time the meeting is noticed. Once approved, the operating budget must be submitted to the chairs of the legislative appropriation committees and the Executive Office of the Governor by July 1 of each year. An entity subject to the act must also establish and maintain a website to post information relating to its operations and approved operating budget. The website must include:

- The most recently approved operating budget, to be posted no later than 30 days after adoption.
- Expenditure data.
- Position and rate information for each position.
- Revenue received and amounts disbursed.
- Fixed capital outlay project data.
- Links to state audits or reports regarding the entity's operations.
- Links to program or activity descriptions for which funds may be expended.
- Any contract and contract amendment executed by the entity.
- A video recording of each meeting of the entity's governing body in which the budget is discussed.
- The minutes of each meeting of the entity's governing body.

The bill has an indeterminate fiscal impact on state government. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Legislative Appropriations Process

The Florida Constitution requires the Legislature to pass a state budget each year and to prescribe in general law a planning process for such.¹ To that end, the Florida legislature created ch. 216, F.S., relating to planning and budgeting. Chapter 216, F.S., provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. Chapter 216, F.S., requires state agencies² and state entities funded through the General Appropriations Act (GAA) to follow specific steps in order for their budget requests to be considered. Once the GAA is passed by the Legislature and signed by the Governor, subject to his or her veto or vetoes, it serves as the “original operating budget for operational and fixed capital outlay expenditures.”³

However, some state entities are not reliant on the Legislative appropriations process as they receive their operating income from alternate sources, other than the GAA, and therefore the operating budgets for such entities are not subject to Legislative appropriations. While these entities may be required to comply with portions of ch. 216, F.S.,⁴ unlike other state entities funded through the GAA, their budgets are typically not approved by the Legislature.

Transparency Florida Act

The Transparency Florida Act⁵ (Act) requires specified state fiscal information be made publicly available via a website or management system. The Act requires the Executive Office of the Governor (EOG), in consultation with the appropriations committees of the House of Representatives and Senate, to establish and maintain a website to provide information relating to the approved operating budget for each branch of state government and state agency.⁶ At a minimum, the information must include:

- Disbursement data for each appropriation by the object code associated with the expenditure established within the Florida Accounting Information Resource Subsystem (FLAIR). Expenditure data must include the name of the payee, the date and amount of the expenditure, and the statewide document number.
- For each appropriation, any adjustments, including vetoes, approved supplemental appropriations included in legislation other than the GAA, budget amendments, other actions approved pursuant to ch. 216, F.S.,⁷ and any other adjustments authorized by law.
- The status of spending authority for each appropriation in the approved operating budget, including released, unreleased, reserved, and disbursed balances.
- Position and rate information for positions provided in the GAA.

¹ FLA. CONST., art. III, s. 19(a).

² The term “state agency” or “agency” is defined, for purposes of ch. 216, F.S., to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government [including]... state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms “state agency” or “agency” include the judicial branch. Section 216.011(1)(qq), F.S.

³ Section 216.981(1), F.S.

⁴ The State Board of Administration, for instance, is funded through sources other than the GAA and it is required to “prepare and approve an operating budget each fiscal year consistent with the provisions of chapter 216.” Section 215.44(4), F.S.

⁵ Chapter 2009-74, s. 2, L.O.F. (codified as s. 215.985, F.S.).

⁶ Section 215.985(4), F.S.; see TRANSPARENCY FLORIDA, available at <http://www.transparencyflorida.gov/> (last visited 1/18/18).

⁷ Chapter 216, F.S., provides planning and budgeting requirements.

- Allotments, and current balances of such allotments, for planned expenditures of state appropriations established by state agencies in FLAIR;
- Trust fund balance reports to include cash available, investments, and receipts;
- General revenue fund balance reports to include revenue received and amounts disbursed;
- Fixed capital outlay project data to include original appropriation and disbursements throughout the life of the project;
- A 10-year history of appropriations indicated by state agency;
- Links to state audits or reports related to the expenditure and dispersal of state funds; and
- Links to program or activity descriptions for which funds may be expended.⁸

The EOG, in consultation with the appropriations committees of the House of Representatives and Senate, is required to establish and maintain a website that provides information relating to state fiscal planning.⁹ While the state budget website provides information for *approved* budgets and related data, current law requires the state fiscal planning website to include information submitted prior to the adoption of a budget, including proposals and requests that may never take effect.¹⁰ Data on the state fiscal planning website must be searchable by fiscal year, agency, appropriation category, and keywords.¹¹ In addition, the Act also requires the Office of Policy and Budget in the EOG to ensure that all data added to the website remains accessible to the public for 10 years.¹²

The Department of Management Services must establish and maintain a website providing current information relating to each employee or officer of a state agency, state university, or the State Board of Administration,¹³ regardless of the appropriation category from which the person is paid.¹⁴ For each employee or officer, the information must include, at a minimum, his or her:

- Name and salary or hourly rate of pay.
- Position number, class code, and class title.
- Employing agency and budget entity.¹⁵

The Act requires the Chief Financial Officer (CFO) to establish and maintain a secure contract tracking system, the Florida Accountability Contract Tracking System (FACTS),¹⁶ and make the system available for viewing and downloading by the public through a secure website.¹⁷ State entities are required to upload contracts and formal procurement documents that have been redacted to exclude confidential or exempt information to the FACTS website within 30 days after execution.¹⁸

Effect of the Bill

The bill provides that an entity created by general law or the State Constitution that receives its operating income through an alternative funding source other than the GAA is subject to its provisions. This definition would appear to capture entities such as the State Board of Administration and the Florida Housing Finance Corporation.

⁸ Section 215.985(4)(a), F.S.

⁹ Section 215.985(5), F.S.

¹⁰ *Id.*

¹¹ Section 215.985(5)(b), F.S.

¹² Section 215.985(5)(c), F.S.

¹³ The State Board of Administration is composed of the Governor, the CFO, and the Attorney General (FLA. CONST., art. IV, s. 4(e)). Its duties include, but are not limited to, the management of state investment funds such as the Florida Retirement System Pension Plan and Investment Plan.

¹⁴ Section 215.985(6), F.S.

¹⁵ Section 215.985(6)(a), F.S.

¹⁶ FLORIDA ACCOUNTABILITY CONTRACT TRACKING SYSTEM, available at <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited 1/18/18).

¹⁷ Section 215.985(14), F.S.

¹⁸ *Id.*

Each applicable entity must prepare and approve an operating budget for each fiscal year pursuant to the budget preparation requirements in ch. 216, F.S. The operating budget, along with any amendments, must be approved at a publicly noticed meeting at least 10 days prior to its adoption and must be available on the entity's website at the time the meeting is noticed. Once approved, the operating budget must be submitted to the chairs of the legislative appropriation committees and the EOG by July 1 of each year.

An entity subject to the act must also establish and maintain a website to post information relating to its operations and approved operating budget. The website must contain:

- The most recently approved operating budget, to be posted no later than 30 days after adoption.
- The operating budgets from the previous two fiscal years.
- Expenditure data, which must include:
 - The name of the payee;
 - The date of the expenditure; and
 - The amount of the expenditure.
- Position and rate information for each regularly established position, including the position title, salary or hourly rate of pay.
- Revenue received and amounts disbursed.
- Fixed capital outlay project data.
- Links to state audits or reports regarding the entity's operations.
- Links to program or activity descriptions for which funds may be expended.
- Any contract and contract amendment executed by the entity, to be posted no later than 30 days after its execution.
- A video recording of each meeting of the entity's governing body in which the budget is discussed, to be posted no later than five days after the meeting.
- The minutes of each meeting of the entity's governing body, to be posted no later than three days after the meeting.

B. SECTION DIRECTORY:

Section 1 creates s. 215.9851, F.S., relating to transparency for entities not subject to the legislative appropriations process.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Indeterminate. Depending on whether the entities to which the bill applies have already completed some, or all of the requirements set forth therein, there may be a fiscal impact associated with compliance.

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 budget transparency; creating s.
 3 215.9851, F.S.; specifying procedures to be followed
 4 by certain entities in preparing and approving their
 5 operating budgets; requiring certain budget
 6 information to be submitted to the legislative
 7 appropriations committees; requiring certain entities
 8 to establish and maintain a website; requiring certain
 9 information to be published on the website; providing
 10 an effective date.

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

13
 14 Section 1. Section 215.9851, Florida Statutes, is created
 15 to read:

16 215.9851 Transparency for entities not subject to the
 17 legislative appropriations process; budget and reporting
 18 requirements.-

19 (1) An entity created by general law or the State
 20 Constitution that receives its operating income through funding
 21 sources other than the General Appropriations Act, is subject to
 22 the requirements of this section.

23 (2) (a) The entity must prepare and approve an operating
 24 budget each fiscal year consistent with the requirements for
 25 preparing budgets contained in chapter 216.

26 (b) The entity's operating budget, and any amendments
 27 thereto, must be approved at a meeting that is publicly noticed
 28 at least 10 days before the scheduled date of adoption of the
 29 operating budget or an amendment thereto, and must be made
 30 available on the entity's website at the time of the meeting
 31 notice.

32 (c) The approved operating budget must be submitted to the
 33 chairs of the legislative appropriations committees and the
 34 Executive Office of the Governor annually before July 1.

35 (3) The entity must establish and maintain a website to
 36 post information relating to its operations and approved
 37 operating budget, and any amendments thereto, including:

38 (a) The most recently approved operating budget, which
 39 must be posted on the website no later than 30 days after the
 40 date of adoption and the operating budgets from the previous 2
 41 fiscal years.

42 (b) Expenditure data, which must include the name of the
 43 payee, the date of the expenditure, and the amount of the
 44 expenditure. Such data must be searchable by the name of the
 45 payee and the fiscal year, and must be downloadable in a format
 46 that allows offline analysis.

47 (c) Position and rate information for each regularly
 48 established position, which must include, at a minimum, the
 49 position title and salary or hourly rate of pay.

50 (d) Revenue received and amounts disbursed.

51 (e) Fixed capital outlay project data.

52 (f) Links to state audits or reports about the entity's
 53 operations.

54 (g) Links to program or activity descriptions for which
 55 funds may be expended.

56 (h) Any contract and contract amendment executed by the
 57 entity. The contract must be posted on the website no later than
 58 30 days after the date the contract or amendment is executed.

59 (i) A video recording of each meeting of the entity's
 60 governing body in which the entity's budget is discussed. The
 61 video recording must be posted no later than 5 days after the
 62 meeting date.

63 (j) The minutes of each meeting of the entity's governing
 64 body, which must be posted no later than 3 days after the date
 65 of the meeting.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-07 Public Records/United States Census Bureau
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1078

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Oversight, Transparency & Administration Subcommittee; Toliver; Harrington

SUMMARY ANALYSIS

The U.S. Constitution requires a census be taken every 10 years to determine the number of seats apportioned to each state in the U.S. House of Representatives. The United States Census Bureau (USCB) conducts the decennial census. The Local Update of Census Addresses Program (LUCA) is a program administered by the USCB offered once every 10 years to state and local governments in preparation for the census.

The bill creates a public records exemption for certain address information maintained by the USCB and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the LUCA program:

- USCB address information, including maps showing structure location points;
Agency records that verify addresses; and
Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The public necessity statement provides that without the exemption agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

The bill may have a minimal fiscal impact on the state and local governments.

Article I, s. 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; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

United States Census Bureau

The U.S. Constitution requires a census be taken every 10 years to determine the number of seats apportioned to each state in the U.S. House of Representatives⁸ and, additionally, is relied upon in drawing congressional and state legislative districts. The United States Census Bureau (USCB), amongst other research duties, conducts the decennial census. The decennial census is the comprehensive population and housing count of all 50 states, the District of Columbia, Puerto Rico, and the U.S. islands. The census is critical to the annual distribution of more than \$675 billion in federal funds.⁹ Moreover, information collected during the census is used not only by all levels of government, but also by businesses, non-profits, and policy makers.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ U.S. CONST., art. I, s. 2.

⁹ U.S. Census Bureau, *About the Bureau, U.S. Census Bureau at a Glance*, available at: <https://www.census.gov/about/what/census-at-a-glance.html#censuses> (last visited Jan. 17, 2018).

¹⁰ Patrick R. Potyondy, National Conference of State Legislatures, *LegisBrief: The 2020 Census, What You Need to Know About the 2020 Census* (Nov. 2017), available at: <http://www.ncsl.org/research/redistricting/what-you-need-to-know-about-the-2020-census.aspx> (last visited Jan. 17, 2018).

Federal law protects the confidentiality of all information collected during the census.¹¹

Local Update of Census Addresses Program (LUCA)

LUCA is a program offered once every 10 years to state and local governments by the USCB in preparation for the decennial census.¹² Specifically, LUCA enables states and local entities to update address information on a master list maintained by the LUCA to make the decennial census as accurate as possible. Participants are required to maintain the confidentiality of the information¹³ and must sign a confidentiality agreement.¹⁴

Entities eligible to participate in LUCA are:

- States;
- Counties;
- Cities;
- Townships; and
- Federally recognized tribes with a reservation or off-reservation trust lands.¹⁵

Census 2000 provided the first opportunity for tribal and local governments to access individual residential addresses, rather than block address lists, provided they signed the confidentiality agreement.¹⁶

On June 29, 2017, the United States Census Bureau announced that starting in July of 2017, governments across the country could initiate the process of sharing address information through the 2020 Census Local Update of Census Addresses operation.¹⁷ All entities intending to participate must sign the Confidentiality Agreement Form provided by the LUCA.¹⁸

Public Records Law on United States Census Bureau Address Information

The 2007 Legislature passed a public records exemption¹⁹ for USCB address information.²⁰ The bill made confidential and exempt from disclosure USCB address information held by an agency pursuant to LUCA. Included in the bill was a provision that made the exemption subject to the Open Government Sunset Review Act. As such, the exemption was scheduled to repeal on October 2, 2012, unless the Legislature reviewed and reenacted the exemption by that date. In 2012, the Legislature voted to repeal the public records exemption. The bill analyses of the OGSR stated that the LUCA program, upon which the exemption was based, expired March 31, 2010.²¹ Staff recommended that the exemption be allowed to repeal as there was no longer a need for the exemption. Therefore, the public records exemption repealed on May 4, 2012.²²

¹¹ U.S. Census Bureau, *supra* note 9.

¹² See Census Address List Improvement Act of 1994, Pub. L. No. 103-430 (1994).

¹³ 13 U.S.C. s. 9.

¹⁴ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, Confidentiality and Security Guidelines, available at <https://www2.census.gov/geo/pdfs/partnerships/luca/D-2004.pdf> (last visited Jan. 17, 2018).

¹⁵ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, available at <https://www.census.gov/geo/partnerships/luca.html> (last visited Jan. 17, 2018); see also 13 U.S.C. s. 184.

¹⁶ United States Census Bureau, *The Census Address List Improvement Act of 1994 (P.L. 103-430)(LUCA)*, available at: <https://www.census.gov/geo/partnerships/luca-pl-103-430.html> (last visited Jan. 17, 2018).

¹⁷ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation to Begin* (June 29, 2017), available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-109-luca.html> (last visited Jan. 17, 2018).

¹⁸ The Confidentiality Agreement Form requires signators to agree to keep confidential all information provided through LUCA, including maps that contain structure points showing the location of living quarters. A signature on the form acknowledges recognition that the penalty for a wrongful disclosure is punishable by up to five years in prison and a \$250,000 fine. Further, the signator must agree to destroy or return all materials received from the Census Bureau at the conclusion of LUCA. United States Census 2020, Form D-2005, *Confidentiality Agreement Form, 2020 Census Local Update of Census Addresses Operation (LUCA)* available at <https://www2.census.gov/geo/pdfs/partnerships/luca/D-2005.pdf> (last visited Jan. 17, 2018).

¹⁹ House Bill 7193 (2007).

²⁰ Chapter 2007-250, L.O.F.

²¹ Florida House of Representatives, *Staff Analysis for HB 7013* (2012); Florida Senate, *Staff Analysis for SB 2078* (2012).

²² Chapter 2012-216, L.O.F.; House Bill 7013 (2012).

Effect of the Bill

This bill creates a public records exemption for certain address information maintained by the USCB and held by an agency. Specifically, the bill makes confidential and exempt²³ the following information held by an agency pursuant to LUCA:

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The bill provides a public necessity statement as required by the Florida Constitution. The statement affirms that the LUCA program requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

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

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

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

²³ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

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 a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, 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. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record 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. This bill creates a public record exemption for certain address information maintained by the USCB so that agencies may participate in the LUCA program to make the census as accurate as possible. As such the exemption is not broader than necessary to accomplish its purpose.

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 public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for specified United States
 5 Census Bureau address information held by an agency;
 6 providing an exception to the exemption; authorizing
 7 access to other related confidential or exempt
 8 information; providing for future legislative review
 9 and repeal of the exemption; providing a statement of
 10 public necessity; providing an effective date.

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

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

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

18 (1) AGENCY ADMINISTRATION.—

19 (g)1. United States Census Bureau address information,
 20 including maps showing structure location points, agency records
 21 that verify addresses, and agency records that identify address
 22 errors or omissions, which is held by an agency pursuant to the
 23 Local Update of Census Addresses Program authorized under 13
 24 U.S.C. s. 16, is confidential and exempt from s. 119.07(1) and
 25 s. 24(a), Art. I of the State Constitution.

26 2. Such information may be released to another agency or
 27 governmental entity in the furtherance of its duties and
 28 responsibilities under the Local Update of Census Addresses
 29 Program.

30 3. An agency performing duties and responsibilities under
 31 the Local Update of Census Addresses Program shall have access
 32 to any other confidential or exempt information held by another
 33 agency if such access is necessary in order to perform its
 34 duties and responsibilities under the program.

35 4. This paragraph is subject to the Open Government Sunset
 36 Review Act in accordance with s. 119.15 and shall stand repealed
 37 October 2, 2023, unless reviewed and saved from repeal through
 38 reenactment by the Legislature.

39 Section 2. The Legislature finds that it is a public
 40 necessity that United States Census Bureau address information,
 41 including maps showing structure location points, agency records
 42 that verify addresses, and agency records that identify address
 43 errors or omissions, which is held by an agency be made
 44 confidential and exempt from public records requirements.
 45 Pursuant to the Local Update of Census Addresses Program
 46 authorized under 13 U.S.C. s. 16, United States Census Bureau
 47 address information must be kept confidential. Further, all
 48 individuals directly involved in reviewing such information and
 49 any individuals with access to such information are required to
 50 sign a confidentiality agreement to preserve the confidentiality

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51 of the address information. Without this exemption, agencies
52 would be prevented from participating in the program. As such,
53 the effective and efficient administration of the Local Update
54 of Census Addresses Program would be hindered at the federal
55 level. Further, it could result in a negative fiscal impact on
56 the state. For the foregoing reasons, the Legislature finds that
57 such information must be made confidential and exempt from
58 public records requirements.

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

1 A bill to be entitled
 2 An act relating to the direct purchase of tangible
 3 personal property by contractors; amending s. 212.08,
 4 F.S.; authorizing each governmental entity to allow
 5 specified entities to use its certificate of
 6 entitlement of exemption for certain tangible personal
 7 property; providing procedures for allowing such use;
 8 requiring the letter of authorization to specify
 9 issues regarding risk of damage or loss of property;
 10 providing an effective date.

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

13
 14 Section 1. Paragraphs (b) and (c) of subsection (6) of
 15 section 212.08, Florida Statutes, are amended to read:

16 212.08 Sales, rental, use, consumption, distribution, and
 17 storage tax; specified exemptions.—The sale at retail, the
 18 rental, the use, the consumption, the distribution, and the
 19 storage to be used or consumed in this state of the following
 20 are hereby specifically exempt from the tax imposed by this
 21 chapter.

22 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—

23 (b) The exemption provided under this subsection does not
 24 include sales of tangible personal property made to contractors
 25 employed directly to or as agents of any such government or

26 | political subdivision when such tangible personal property goes
 27 | into or becomes a part of public works owned by such government
 28 | or political subdivision. A determination of whether a
 29 | particular transaction is properly characterized as an exempt
 30 | sale to a government entity or a taxable sale to a contractor
 31 | shall be based upon the substance of the transaction rather than
 32 | the form in which the transaction is cast. However, for sales of
 33 | tangible personal property that go into or become a part of
 34 | public works owned by a governmental entity, other than the
 35 | Federal Government, a governmental entity claiming the exemption
 36 | provided under this subsection shall certify to the dealer and
 37 | the contractor the entity's claim to the exemption by providing
 38 | the dealer and the contractor a certificate of entitlement to
 39 | the exemption for such sales. A governmental entity may
 40 | authorize the contractor or subcontractor to use the
 41 | governmental entity's certificate of entitlement for the direct
 42 | purchase of tangible personal property that will go into or
 43 | become a part of the public works owned by the governmental
 44 | entity. A governmental entity that uses this option must issue a
 45 | letter of authorization to the contractor or subcontractor
 46 | specifying the instances in which the contractor or
 47 | subcontractor may use the governmental entity's certificate of
 48 | entitlement to the exemption. If the department later determines
 49 | that such sales, in which the governmental entity provided the
 50 | dealer and the contractor with a certificate of entitlement to

51 the exemption, were not exempt sales to the governmental entity,
 52 the governmental entity shall be liable for any tax, penalty,
 53 and interest determined to be owed on such transactions.
 54 Possession by a dealer or contractor of a certificate of
 55 entitlement to the exemption from the governmental entity
 56 relieves the dealer from the responsibility of collecting tax on
 57 the sale and the contractor for any liability for tax, penalty,
 58 or interest related to the sale, and the department shall look
 59 solely to the governmental entity for recovery of tax, penalty,
 60 and interest if the department determines that the transaction
 61 was not an exempt sale to the governmental entity. The
 62 governmental entity may not transfer liability for such tax,
 63 penalty, and interest to another party by contract or agreement.

64 (c) The department shall adopt rules for determining
 65 whether a particular transaction is properly characterized as an
 66 exempt sale to a governmental entity or a taxable sale to a
 67 contractor which give special consideration to factors that
 68 govern the status of the tangible personal property before being
 69 affixed to real property. In developing such rules, assumption
 70 of the risk of damage or loss is of paramount consideration in
 71 the determination. If the governmental entity has authorized a
 72 contractor or subcontractor to use the governmental entity's
 73 certificate of entitlement to the exemption as set forth in
 74 paragraph (b), the letter of authorization shall specify the
 75 entity that assumes the risk of damage or loss to such property.

76 | The department shall also adopt, by rule, a certificate of
 77 | entitlement to exemption for use as provided in paragraph (b).
 78 | The certificate shall require the governmental entity to affirm
 79 | that it will comply with the requirements of this subsection and
 80 | the rules adopted under paragraph (b) in order to qualify for
 81 | the exemption and that it acknowledges its liability for any
 82 | tax, penalty, or interest later determined by the department to
 83 | be owed on such transactions.

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