



Oversight, Transparency & Administration Subcommittee

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

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

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

Consideration of the following bill(s):

HB 227 Workers' Compensation Benefits for First Responders by Willhite, Plasencia
HB 261 Pub. Rec. and Meetings/Elder Abuse Fatality Review Teams by Watson, B.
HB 309 Fire Safety by Antone
HB 709 Voting Systems by Drake
HB 761 Pub. Rec./Voters and Voter Registration by Stevenson
HB 791 Regulatory Reform by Diaz, M.
HB 1109 State Emergency Communications and Warning System by Stark
HB 1215 Inspectors General by Richardson
HB 1285 Florida Business Corporation Act by Albritton
HB 1317 Pub. Rec./Autopsy Records by Jacobs
CS/HB 1397 Hardee County Economic Development District, Hardee County by Local, Federal & Veterans Affairs Subcommittee, Albritton
HB 1437 Employment Services for Persons with Disabilities by Abruzzo



Workshop on the following:

HB 665 Retirement by Clemons
HB 695 Firefighters by Latvala, Fitzenhagen

NOTICE FINALIZED on 01/26/2018 4:18PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 227 Workers' Compensation Benefits for First Responders
SPONSOR(S): Willhite and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 376

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

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay certain compensation or furnish certain benefits if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment. Current law establishes the conditions under which a mental or nervous injury is compensated under workers' compensation laws. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a mental or nervous injury occurring as a manifestation of a compensable physical injury must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury.

Although mental or nervous injuries are generally not compensable under workers' compensation laws, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. However, while medical treatment is covered, first responders without an accompanying physical injury may not receive indemnity benefits.

The bill revises workers' compensation standards to provide indemnity benefits for a mental or nervous injury of a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic, whether or not such injury is accompanied by a physical injury requiring medical treatment, if:

- The mental or nervous injury resulted while the individual was acting within the course of his or her employment and such individual witnessed a murder, suicide, fatal injury, or child death or arrived on a scene where mass casualties were suffered;
- The first responder begins mental health treatment within 15 days after the incident giving rise to the mental or nervous injury that occurred; and
- The mental or nervous injury is demonstrated by clear and convincing medical evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.¹ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,² or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.³

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁴ An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.⁵

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., establishes the conditions under which a mental or nervous injury is compensated under workers' compensation laws. Generally, mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a mental or nervous injury occurring as a manifestation of a compensable physical injury must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than 6 months after the employee reaches maximum medical improvement.

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.⁶

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.⁷ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,⁸ up to the maximum weekly benefit established by law.⁹ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹⁰

¹ Section 440.09(1), F.S.

² Section 440.38, F.S.

³ Section 627.311(5)(a), F.S.

⁴ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

⁵ Section 440.09(1), F.S.

⁶ Section 440.13(2)(a), F.S.

⁷ Section 440.12(1), F.S.

⁸ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

⁹ Section 440.15(1)-(4), F.S.

¹⁰ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016). In addition, s. 440.15(4)(e), F.S., specifies that temporary partial disability benefits are payable for 104 weeks; however, the First DCA applied the holding in

- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.¹¹
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for five years.¹²

Compensability for Mental or Nervous Injuries of First Responders

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders that provide benefits and standards for determining benefits for employment-related accidents and injuries of first responders. The term "first responder" is defined as a law enforcement officer,¹³ a firefighter,¹⁴ or an emergency medical technician or paramedic¹⁵ employed by state or local government.¹⁶ Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.¹⁷

Although mental or nervous injuries are generally not compensable under workers' compensation laws, Florida law provides that medical benefits for first responders who experience a mental or nervous injury without an accompanying physical injury are compensable. However, while medical treatment is covered, first responders without an accompanying physical injury may not receive indemnity benefits.¹⁸

Post-Traumatic Stress Disorder

The American Psychiatric Association provides diagnostic criteria for mental disorders, including post-traumatic stress disorder (PTSD) in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*.¹⁹ PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.²⁰ A diagnosis of PTSD requires exposure to an upsetting traumatic event. However, exposure could be indirect rather than first hand.²¹ Symptoms generally begin within the first three months after the trauma, although there may be a delay of months or even years before the criteria for the diagnosis are met.²²

Westphal to these benefits, found the limitation unconstitutional, and reverted the limitation back to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA).

¹¹ Section 440.15(3), F.S.

¹² Section 440.15(1), F.S.

¹³ The term "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10, F.S.

¹⁴ The term "firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. Section 633.102, F.S.

¹⁵ The term "emergency medical technician" means a person who is certified by the Department of Health to perform basic life support. The term "paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support. Section 401.23, F.S.

¹⁶ Chapter 2007-1, L.O.F.

¹⁷ Section 112.1815, F.S.

¹⁸ Section 112.1815(2)(a)3., F.S.

¹⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition (2013). Commonly referred to as DSM-5.

²⁰ American Psychiatric Association, *What is Posttraumatic Stress Disorder?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited Jan. 26, 2017).

²¹ *Id.*

²² DSM-5, *supra*, note 19 at 276.

The DSM-5 estimates approximately 8.7 percent of the U.S. population will develop PTSD in their lifetime.²³ Twelve-month prevalence among U.S adults is approximately 3.5 percent. Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.²⁴ A 2016 report estimated 20 percent of firefighters and paramedics had PTSD.²⁵ Preexisting mental health conditions may be exacerbated and new mental health conditions may occur due to extremely emotionally and physically demanding working conditions.²⁶ A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.²⁷

Effect of the Bill

The bill revises workers' compensation standards to provide indemnity benefits for a mental or nervous injury of a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic, whether or not such injury is accompanied by a physical injury requiring medical treatment, if:

- The mental or nervous injury resulted while the individual was acting within the course of his or her employment and such individual witnessed a murder, suicide, fatal injury, or child death or arrived on a scene where mass casualties were suffered;
- The first responder begins mental health treatment within 15 days after the incident giving rise to the mental or nervous injury that occurred; and
- The mental or nervous injury is demonstrated by clear and convincing medical evidence by a licensed psychiatrist to meet the criteria for PTSD as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

B. SECTION DIRECTORY:

Section 1. amends s. 112.1815, F.S., relating to firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. amends s. 440.093, F.S., relating to mental and nervous injuries.

Section 3. provides an effective date of July 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.

²³ DSM-5, *supra*, note 19, at 276.

²⁴ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

²⁵ Fauzeyya Rahman, *New study estimates 20 percent of firefighters and paramedics have PTSD*, EMS1.COM NEWS Aug. 17, 2016, available at <https://www.ems1.com/health-and-wellness/articles/117387048-New-study-estimates-20-percent-of-firefighters-paramedics-have-PTSD/>.

²⁶ Johns Hopkins Public Health Preparedness Programs, *First Responders, Mental Health Services, and the Law*, Apr. 25, 2013, available at https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-publics-health/research/FirstResp_MHSvcs.pdf.

²⁷ Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRE RESCUE NEWS, Mar. 19, 2017, available at <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/>.

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:

The bill may have an indeterminate negative fiscal impact on the private sector as a result of higher costs in some workers' compensation claims.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the state and local governments because they may incur higher claim costs for workers' compensation claims.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires workers' compensation indemnity benefits to be paid to first responders for a mental or nervous injury; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because all similarly situated state and local government employers of first responders are required to provide the indemnity benefits. However, for this exception to apply, the bill must declare that it fulfills an important state interest.

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 workers' compensation benefits for
 3 first responders; amending s. 112.1815, F.S.; deleting
 4 certain limitations relating to workers' compensation
 5 benefits for first responders; amending s. 440.093,
 6 F.S.; providing that law enforcement officers,
 7 firefighters, emergency medical technicians, and
 8 paramedics are entitled to benefits under the Workers'
 9 Compensation Law for mental or nervous injuries,
 10 whether or not such injuries are accompanied by
 11 physical injuries requiring medical treatment, under
 12 specified circumstances; providing an effective date.

13

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

15

16 Section 1. Paragraph (a) of subsection (2) of section
 17 112.1815, Florida Statutes, is amended to read:

18 112.1815 Firefighters, paramedics, emergency medical
 19 technicians, and law enforcement officers; special provisions
 20 for employment-related accidents and injuries.—

21 (2)(a) For the purpose of determining benefits under this
 22 section relating to employment-related accidents and injuries of
 23 first responders, the following shall apply:

24 1. An injury or disease caused by the exposure to a toxic
 25 substance is not an injury by accident arising out of employment

26 | unless there is a preponderance of the evidence establishing
 27 | that exposure to the specific substance involved, at the levels
 28 | to which the first responder was exposed, can cause the injury
 29 | or disease sustained by the employee.

30 | 2. Any adverse result or complication caused by a smallpox
 31 | vaccination of a first responder is deemed to be an injury by
 32 | accident arising out of work performed in the course and scope
 33 | of employment.

34 | 3. A mental or nervous injury involving a first responder
 35 | and occurring as a manifestation of a compensable injury must be
 36 | demonstrated by clear and convincing evidence. ~~For a mental or~~
 37 | ~~nervous injury arising out of the employment unaccompanied by a~~
 38 | ~~physical injury involving a first responder, only medical~~
 39 | ~~benefits under s. 440.13 shall be payable for the mental or~~
 40 | ~~nervous injury. However, payment of indemnity as provided in s.~~
 41 | ~~440.15 may not be made unless a physical injury arising out of~~
 42 | ~~injury as a first responder accompanies the mental or nervous~~
 43 | ~~injury.~~ Benefits for a first responder are not subject to any
 44 | limitation on temporary benefits under s. 440.093 or the 1-
 45 | percent limitation on permanent psychiatric impairment benefits
 46 | under s. 440.15(3)(c).

47 | Section 2. Section 440.093, Florida Statutes, is amended
 48 | to read:

49 | 440.093 Mental and nervous injuries.—

50 | (1) Except as provided in subsection (4):

51 (a) A mental or nervous injury due to stress, fright, or
 52 excitement only is not an injury by accident arising out of the
 53 employment.

54 (b) ~~Nothing in~~ This section may not ~~shall~~ be construed to
 55 allow for the payment of benefits under this chapter for mental
 56 or nervous injuries without an accompanying physical injury
 57 requiring medical treatment.

58 (c) A physical injury resulting from mental or nervous
 59 injuries unaccompanied by physical trauma requiring medical
 60 treatment is ~~shall~~ not ~~be~~ compensable under this chapter.

61 (2) Mental or nervous injuries occurring as a
 62 manifestation of an injury compensable under this chapter shall
 63 be demonstrated by clear and convincing medical evidence by a
 64 licensed psychiatrist meeting criteria established in the most
 65 recent edition of the Diagnostic and Statistical Manual of
 66 Mental Disorders published by the American Psychiatric
 67 Association. Except as provided in subsection (4), the
 68 compensable physical injury must be and remain the major
 69 contributing cause of the mental or nervous condition and the
 70 compensable physical injury as determined by reasonable medical
 71 certainty must be at least 50 percent responsible for the mental
 72 or nervous condition as compared to all other contributing
 73 causes combined. Compensation is not payable for the mental,
 74 psychological, or emotional injury arising out of depression
 75 from being out of work or losing employment opportunities,

76 | resulting from a preexisting mental, psychological, or emotional
 77 | condition or due to pain or other subjective complaints that
 78 | cannot be substantiated by objective, relevant medical findings.

79 | (3) Subject to the payment of permanent benefits under s.
 80 | 440.15, in no event shall temporary benefits for a compensable
 81 | mental or nervous injury be paid for more than 6 months after
 82 | the date of maximum medical improvement for the injured
 83 | employee's physical injury or injuries, which shall be included
 84 | in the period of 104 weeks as provided in s. 440.15(2) and (4).
 85 | Mental or nervous injuries are compensable only in accordance
 86 | with the terms of this section.

87 | (4) A law enforcement officer, firefighter, emergency
 88 | medical technician, or paramedic is entitled to receive benefits
 89 | under this chapter for a mental or nervous injury, whether or
 90 | not such injury is accompanied by a physical injury requiring
 91 | medical treatment, if:

92 | (a) The mental or nervous injury resulted while the law
 93 | enforcement officer, firefighter, emergency medical technician,
 94 | or paramedic was acting within the course of his or her
 95 | employment as described in s. 440.091 and the law enforcement
 96 | officer, firefighter, emergency medical technician, or paramedic
 97 | witnessed a murder, suicide, fatal injury, or child death or
 98 | arrived on a scene where mass casualties were suffered;

99 | (b) The law enforcement officer, firefighter, emergency
 100 | medical technician, or paramedic begins mental health treatment

101 within 15 days after the incident in paragraph (a) giving rise
102 to the mental or nervous injury that occurred; and

103 (c) The mental or nervous injury is demonstrated by clear
104 and convincing medical evidence by a licensed psychiatrist to
105 meet the criteria for posttraumatic stress disorder as described
106 in the most recent edition of the Diagnostic and Statistical
107 Manual of Mental Disorders published by the American Psychiatric
108 Association.

109 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 Willhite offered the following:
 4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (2) of section
 8 112.1815, Florida Statutes, is amended, and subsection (5) is
 9 added to that section to read:

10 112.1815 Firefighters, paramedics, emergency medical
 11 technicians, and law enforcement officers; special provisions
 12 for employment-related accidents and injuries.-

13 (2) (a) For the purpose of determining benefits under this
 14 section relating to employment-related accidents and injuries of
 15 first responders, the following shall apply:



Amendment No.

16 1. An injury or disease caused by the exposure to a toxic
17 substance is not an injury by accident arising out of employment
18 unless there is a preponderance of the evidence establishing
19 that exposure to the specific substance involved, at the levels
20 to which the first responder was exposed, can cause the injury
21 or disease sustained by the employee.

22 2. Any adverse result or complication caused by a smallpox
23 vaccination of a first responder is deemed to be an injury by
24 accident arising out of work performed in the course and scope
25 of employment.

26 3. A mental or nervous injury involving a first responder
27 and occurring as a manifestation of a compensable injury must be
28 demonstrated by clear and convincing evidence. ~~For a mental or~~
29 ~~nervous injury arising out of the employment unaccompanied by a~~
30 ~~physical injury involving a first responder, only medical~~
31 ~~benefits under s. 440.13 shall be payable for the mental or~~
32 ~~nervous injury. However, payment of indemnity as provided in s.~~
33 ~~440.15 may not be made unless a physical injury arising out of~~
34 ~~injury as a first responder accompanies the mental or nervous~~
35 ~~injury.~~ Benefits for a first responder are not subject to any
36 limitation on temporary benefits under s. 440.093 or the 1-
37 percent limitation on permanent psychiatric impairment benefits
38 under s. 440.15(3)(c).



Amendment No.

39 (5) An employing agency of a first responder must provide
40 educational training related to mental health awareness,
41 prevention, mitigation, and treatment.

42 Section 2. Section 440.093, Florida Statutes, is amended
43 to read:

44 440.093 Mental and nervous injuries.—

45 (1) Except as provided in subsection (4) and (5):

46 (a) A mental or nervous injury due to stress, fright, or
47 excitement only is not an injury by accident arising out of the
48 employment.

49 (b) ~~Nothing in~~ This section may not shall be construed to
50 allow for the payment of benefits under this chapter for mental
51 or nervous injuries without an accompanying physical injury
52 requiring medical treatment.

53 (c) A physical injury resulting from mental or nervous
54 injuries unaccompanied by physical trauma requiring medical
55 treatment is shall not be compensable under this chapter.

56 (2) Mental or nervous injuries occurring as a
57 manifestation of an injury compensable under this chapter shall
58 be demonstrated by clear and convincing medical evidence by a
59 licensed psychiatrist meeting criteria established in the Fifth
60 ~~most recent~~ Edition of the Diagnostic and Statistical Manual of
61 Mental Disorders published by the American Psychiatric
62 Association. Except as provided in subsections (4) and (5), the
63 compensable physical injury must be and remain the major



Amendment No.

64 contributing cause of the mental or nervous condition and the
65 compensable physical injury as determined by reasonable medical
66 certainty must be at least 50 percent responsible for the mental
67 or nervous condition as compared to all other contributing
68 causes combined. Compensation is not payable for the mental,
69 psychological, or emotional injury arising out of depression
70 from being out of work or losing employment opportunities,
71 resulting from a preexisting mental, psychological, or emotional
72 condition or due to pain or other subjective complaints that
73 cannot be substantiated by objective, relevant medical findings.

74 (3) Subject to the payment of permanent benefits under s.
75 440.15, in no event shall temporary benefits for a compensable
76 mental or nervous injury be paid for more than 6 months after
77 the date of maximum medical improvement for the injured
78 employee's physical injury or injuries, which shall be included
79 in the period of 104 weeks as provided in s. 440.15(2) and (4).
80 Mental or nervous injuries are compensable only in accordance
81 with the terms of this section.

82 (4) A law enforcement officer, firefighter, emergency
83 medical technician, or paramedic who entered service before July
84 1, 2018, is entitled to receive benefits under this chapter for
85 a mental or nervous injury, whether or not such injury is
86 accompanied by a physical injury requiring medical treatment,
87 if:



Amendment No.

88 (a) The mental or nervous injury resulted from the law
89 enforcement officer, firefighter, emergency medical technician,
90 or paramedic acting within the course of his or her employment
91 as described in s. 440.091 and the law enforcement officer,
92 firefighter, emergency medical technician, or paramedic
93 witnessed a murder, suicide, fatal injury, child death, or mass
94 killing as defined in 28 U.S.C. s. 530C, or treated or
95 transported a deceased child or the victim of a murder, suicide,
96 or fatal injury; and

97 (b) The mental or nervous injury is demonstrated by clear
98 and convincing medical evidence by a licensed psychiatrist to
99 meet the criteria for posttraumatic stress disorder as described
100 in the Diagnostic and Statistical Manual of Mental Disorders,
101 Fifth Edition, published by the American Psychiatric Association
102 and the diagnosis must have occurred within two years of when
103 the law enforcement officer, firefighter, emergency medical
104 technician, or paramedic witnessed a murder, suicide, fatal
105 injury, child death, or mass killing, or treated or transported
106 a deceased child or the victim of a murder, suicide, or fatal
107 injury.

108 (5) A law enforcement officer, firefighter, emergency
109 medical technician, or paramedic who entered service on or after
110 July 1, 2018, is entitled to receive benefits under this chapter
111 for a mental or nervous injury, whether or not such injury is



Amendment No.

112 accompanied by a physical injury requiring medical treatment,
113 if:

114 (a) The law enforcement officer, firefighter, emergency
115 medical technician, or paramedic successfully passes a pre-
116 employment mental health examination, which failed to reveal any
117 diagnosis of posttraumatic stress disorder. However, this
118 subsection does not apply if the prospective employer fails to
119 provide the pre-employment mental health examination;

120 (b) The mental or nervous injury resulted from the law
121 enforcement officer, firefighter, emergency medical technician,
122 or paramedic acting within the course of his or her employment
123 as described in s. 440.091 and the law enforcement officer,
124 firefighter, emergency medical technician, or paramedic
125 witnessed a murder, suicide, fatal injury, child death, or mass
126 killing as defined in 28 U.S.C. s. 530C, or treated or
127 transported a deceased child or the victim of a murder, suicide,
128 or fatal injury; and

129 (c) The mental or nervous injury is demonstrated by clear
130 and convincing medical evidence by a licensed psychiatrist to
131 meet the criteria for posttraumatic stress disorder as described
132 in the Diagnostic and Statistical Manual of Mental Disorders,
133 Fifth Edition, published by the American Psychiatric Association
134 and the diagnosis must have occurred within two years of when
135 the law enforcement officer, firefighter, emergency medical
136 technician, or paramedic witnessed a murder, suicide, fatal



Amendment No.

137 injury, child death, or mass killing, or treated or transported
138 a deceased child or the victim of a murder, suicide, or fatal
139 injury.

140 (6) A law enforcement officer, firefighter, emergency
141 medical technician, or paramedic is not entitled to benefits
142 under subsection (4) or (5) if a claim for benefits is not made
143 prior to or within 180 days after leaving employment with the
144 employing agency.

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

146



147 -----

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

149 Remove everything before the enacting clause and insert:
150 An act relating to workers' compensation benefits for first
151 responders; amending s. 112.1815, F.S.; deleting certain
152 limitations relating to workers' compensation benefits for
153 first responders; requiring employers to provide certain
154 education training; amending s. 440.093, F.S.; providing
155 that law enforcement officers, firefighters, emergency
156 medical technicians, and paramedics are entitled to
157 benefits under the Workers' Compensation Law for mental or
158 nervous injuries, whether or not such injuries are
159 accompanied by physical injuries requiring medical
160 treatment, under specified circumstances; providing an
161 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Pub. Rec. and Meetings/Elder Abuse Fatality Review Teams
SPONSOR(S): Watson
TIED BILLS: HB 259 **IDEN./SIM. BILLS:** SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N	Gilani	Brazzell
2) Oversight, Transparency & Administration Subcommittee		Hoffman 	Harrington 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation. Abuse can have significant physical and emotional effects on an older adult and can lead to premature death. Approximately 1 in 10 seniors is abused each year, and incidents of elder abuse are reported in 1 out of every 23 cases. Research suggests that elder abuse is underreported because the most common perpetrators of elder abuse are relatives, friends and neighbors, and home care aides, and victims fear retribution from or trust their perpetrators.

HB 259 (2018), which is tied to this bill, authorizes the creation of a multidisciplinary, multiagency elder abuse fatality review team (EA-FRT) in each judicial circuit. Each EA-FRT may review closed cases from its judicial circuit where the death of an elderly person was alleged or found to be caused by, or related to, abuse. An EA-FRT may consist of representatives from public and private entities that deal with the study, treatment, investigation, or prevention of elder abuse, including but not limited to law enforcement agencies, health and social services agencies, healthcare practitioners, and nonprofit organizations. In a review of an elderly person's death alleged or found to have been caused by, or related to, abuse or neglect, an EA-FRT may obtain records and information pertaining to the elderly person and the surrounding circumstances of his or her death. Specifically, an EA-FRT may obtain public records from criminal justice agencies and the medical examiner's office, as well as information otherwise publicly available or voluntarily supplied by the victim's family. HB 259 also authorizes an EA-FRT to obtain confidential and exempt records from the Department of Children and Families.

This bill creates a public records exemption for information contained in a record created by an elder abuse fatality review team that reveals the identity of an elder abuse victim. Specifically, the bill makes such information confidential and exempt from public disclosure. In addition, the bill provides that confidential or exempt information obtained by a review team retains its status when held by an elder abuse fatality review team. The bill also creates an exemption from public meetings requirements for portions of meetings wherein a elder abuse fatality review team discusses confidential or exempt information or information revealing the identity of an elder abuse victim.

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

The bill may have a minimal fiscal impact on the state. See Fiscal Comments.

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 public record and public meeting exemptions; thus, it require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. 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.¹ The public also has a right to notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify 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.⁴ 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.⁵

The Legislature may create an exemption to public records or open meetings requirements.⁶ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.⁹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Section 119.011(12), F.S., defines "public record" as 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. Section 119.011(2), F.S. defines "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public under s. 11.0431, F.S.

⁵ 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 provide 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.

⁶ FLA. CONST., art. I, s. 24(c).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ S. 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

⁹ S. 119.15(3), F.S.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁰ The identifiable public purpose must be compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption; or
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.¹²

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.¹³ However, records designated as exempt may be disclosed under certain circumstances and does not impose a secrecy requirement which bars a custodian from displaying a public record entirely of his or her own volition.¹⁴

Elder Abuse

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.¹⁵ In Florida, over 920,000 senior citizens are medically underserved, and over 1.5 million suffer from one or more disabilities.¹⁶ Approximately 1 in 10 seniors is abused each year in the United States, and incidents of elder abuse are underreported, with local authorities being notified in 1 out of every 23 cases.¹⁷ Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.¹⁸ Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.¹⁹

Elder abuse occurs in community settings, such as private homes, as well as in institutional settings like nursing homes and other long-term care facilities. Prevalent forms of abuse are financial exploitation,

¹⁰ S. 119.15(6)(b), F.S.

¹¹ S. 119.15(6)(b), F.S.

¹² S. 119.15(6)(b), F.S.

¹³ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991) (holding active criminal investigative information exempt from the requirement that public records be made available for public inspection, but does not prohibit the showing of such information).

¹⁵ NATIONAL CENTER ON ELDER ABUSE, *What are the Risk Factors?*, <https://ncea.acl.gov/whatwedo/research/statistics.html#risk> (last visited Jan. 25, 2018); *see also* Xing Qi Dong et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, *JAMA INTERN MED.* 173:10 at 911-917 (2013), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1675876>.

¹⁶ DEPARTMENT OF ELDER AFFAIRS, *2016 Profile of Elder Floridians*, http://elderaffairs.state.fl.us/doea/pubs/stats/County_2016_projections/Counties/Florida.pdf (last visited Jan. 25, 2018).

¹⁷ U.S. DEPARTMENT OF JUSTICE, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (last visited Jan. 25, 2018). *See also*, Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 AM. J. PUB. HEALTH, at 292-297 (Feb. 2010), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/>.

¹⁸ U.S. DEPARTMENT OF JUSTICE, *supra*; *See also*, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 *JAMA* at 428-432 (1998), available at: <https://jamanetwork.com/journals/jama/fullarticle/187817>.

¹⁹ U.S. DEPARTMENT OF JUSTICE, *supra*; *See also*, Xing Qi Dong, *supra*.

neglect, emotional or psychological abuse, and physical abuse; however, an elder abuse victim will often experience multiple forms of abuse at the same time.²⁰ The most common perpetrators of elder abuse are relatives, followed by friends and neighbors, and then home care aides.²¹ Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their abusers.²² Elder abuse deaths are more likely to go undetected because an elder death is expected to occur, given age or infirmity, more so than other deaths due to abuse such as a child death or a death involving domestic violence.²³ Experts believe this may be why elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.²⁴

Florida's Existing Fatality Review Systems

Currently, Florida has child abuse death review (CADR) committees and domestic violence fatality review teams (DV-FRTs), which are multidisciplinary teams at the state and local levels.²⁵ These teams review the circumstances of child deaths reported to the Department of Children and Families' (DCF) central abuse hotline and fatal or near-fatal incidents of domestic violence and suicide, respectively.²⁶ Their purpose is to identify gaps in the systems serving these populations and make recommendations to prevent abuse-related deaths.²⁷

Sections 383.402(5) and 741.316(2), F.S., respectively, allow CADR committees and DV-FRTs to obtain confidential or exempt information or other sensitive information, including the identity of victims or surviving family members. The Legislature has granted both of these fatality review systems exemptions from the public records and meetings requirements. Specifically, records obtained or created by a CADR committee which contain information revealing the identity of a child abuse victim or the identity of a surviving family member are confidential and exempt from public disclosure.²⁸ Similarly, s. 383.412(3), F.S., permits closure of portions of a CADR committee meeting wherein this confidential and exempt information is discussed.

Records created by a DV-FRT which contain information revealing the identity of a domestic violence victim or the identity of any surviving children are confidential and exempt from public disclosure.²⁹ Additionally, if these review teams obtain records that are otherwise confidential or exempt, they retain their status when held by the review teams and are not subject to public disclosure.³⁰ If any of this information is discussed during a DV-FRT meeting, then that portion of the meeting is exempt from public meeting requirements.³¹

HB 259 (2018) - Elder Abuse Fatality Review Teams

HB 259 (2018), which is tied to this bill, authorizes the creation of a multidisciplinary, multiagency elder abuse fatality review team (EA-FRT) in each judicial circuit. Each EA-FRT may review closed cases

²⁰ NATIONAL CENTER ON ELDER ABUSE, *Challenges in Elder Abuse Research*, <https://ncea.acl.gov/whatwedo/research/statistics.html> (last visited Jan. 25, 2018).

²¹ *Id.*

²² CENTER FOR DISEASE CONTROL AND PREVENTION, *Understanding Elder Abuse, Fact Sheet 2016*, <https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf> (last visited Jan. 25, 2018).

²³ U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, *Elder Justice Roundtable Report: Medical Forensic Issues Concerning Abuse and Neglect*, October 18, 2000, p. 8, available at: <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited Jan. 25, 2018).

²⁴ *Id.* at 7-10.

²⁵ S. 383.402(1), F.S.; ss. 741.316(1)-(2), F.S.

²⁶ S. 383.402(1), F.S.; S. 741.316(2), F.S.

²⁷ S. 383.402(1), F.S.

²⁸ S. 383.412(2), F.S.

²⁹ S. 741.3165(1)(b), F.S.

³⁰ S. 741.3165(1)(a), F.S.

³¹ S. 741.3165(2), F.S.

from its judicial circuit where the death of an elderly person was alleged or found to be caused by, or related to, abuse.

An EA-FRT may consist of representatives from public and private entities that deal with the study, treatment, investigation, or prevention of elder abuse, including but not limited to law enforcement agencies, health and social services agencies, healthcare practitioners, and nonprofit organizations.

In a review of an elderly person's death alleged or found to have been caused by, or related to, abuse or neglect, an EA-FRT may obtain records and information pertaining to the elderly person and the surrounding circumstances of his or her death. Specifically, an EA-FRT may obtain public records from criminal justice agencies and the medical examiner's office, as well as information otherwise publicly available or voluntarily supplied by the victim's family. HB 259 also authorizes an EA-FRT to obtain confidential and exempt records from the DCF's adult protective investigations.

These records may contain confidential or exempt information or information that reveals the identity of the victim. EA-FRTs may also create new records containing this information or discuss this information during their review meetings.³²

Adult Protective Services Records

Chapter 415, F.S., creates the state's Adult Protective Services system under DCF. DCF protects vulnerable adults,³³ including elders, from abuse, neglect, and exploitation³⁴ through mandatory reporting and investigation of suspected abuse. This includes deaths allegedly due to abuse or neglect. During the investigation of a death, DCF obtains, among other things, medical records, the death certificate, the autopsy report, and any related law enforcement investigations and criminal records. In order to protect the rights of the vulnerable adult or related individuals, s. 415.107, F.S., makes confidential and exempt all records created by these reports and investigations involving vulnerable adults. HB 259 narrows this exemption, granting EA-FRTs access to these records.

Effect of Proposed Changes

The bill creates a public records exemption in s. 415.1103, F.S., for information contained within a record created by an EA-FRT, which reveals the identity of an elder abuse victim. The bill provides that such information is confidential and exempt from the public records requirements. Furthermore, information in a record obtained by an EA-FRT that is otherwise confidential or exempt will retain its confidential or exempt status when held by an EA-FRT. The bill also creates an exemption from the public meeting requirements for portions of an EA-FRT meeting at which members discuss confidential or exempt information or the identity of an elder abuse victim.

The bill provides for repeal of the exemptions on October 2, 2023, in accordance with s. 119.15, F.S., the OGSR, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a public necessity statement as required by the Florida Constitution. The bill finds the exemptions are necessary to protect the identity of an elder abuse victim, and failure to make this information confidential and exempt would hamper open communication and coordination among EA-FRT members that is essential for the success of the review process. The bill asserts that the harm substantially outweighs the public benefit achieved from disclosing this sensitive information.

³² Florida House of Representatives, Analysis of 2018 House Bill 259, p. 1 (Jan. 17, 2018).

³³ A vulnerable adult is a person 18 years of age or older whose ability to perform normal activities of daily living or to provide for his or her own care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging, s. 415.102(28), F.S.

³⁴ S. 415.101(2), F.S.

Additionally, the bill finds closing portions of EA-FRT meetings where this confidential or exempt information is discussed a necessity because failure to do so would defeat the purpose of the public records exemption.

The bill takes effect on the same date that HB 259 (2018) or similar legislation takes effect, if such legislation is adopted in the same legislative session.

B. SECTION DIRECTORY:

Section 1: Amends s. 415.1103, F.S., created by HB 259, relating to elder abuse fatality review teams.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date that is contingent upon the passage of HB 259 or similar legislation.

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 could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal 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 expanded public record or public meeting exemption. The bill creates a public record and public meeting 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 or public meeting exemption. The bill creates new exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 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 creates a public record exemption for portions of EA-FRT records that contain information which reveals an elder abuse victim's identity. The bill also creates a public meeting exemption and closes portions of an EA-FRT meeting where the identity of an elder abuse victim is discussed. Additionally, the bill recognizes that otherwise confidential or exempt records or information will retain their confidential or exempt status when held by an EA-FRT and prohibits an EA-FRT from disclosing such record or information to the public or discussing such information during an open portion of an EA-FRT meeting.

The bill seeks to prevent sensitive personal information concerning victims of elder abuse from being released to the public and asserts that failure to do so would hamper open communication and coordination between the EA-FRT members.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 259 pertains to cases where a death was alleged or found to have been caused by elder abuse. Currently, this bill only makes the identity of "victims" confidential and exempt, but it does not protect the identity of any alleged victims.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 amending s. 415.1103, F.S.; specifying that
 4 information obtained by an elder abuse fatality review
 5 team which is confidential or exempt from public
 6 records requirements retains its protected status;
 7 providing an exemption from public records
 8 requirements for identifying information of an elder
 9 abuse victim in records created by a review team;
 10 providing an exemption from public meetings
 11 requirements for portions of review team meetings at
 12 which confidential or exempt information or the
 13 identity of an elder abuse victim is discussed;
 14 providing for future legislative review and repeal;
 15 providing statements of public necessity; providing a
 16 contingent effective date.

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

19
 20 Section 1. Subsections (10), (11), and (12) are added to
 21 section 415.1103, Florida Statutes, as created by HB 259, to
 22 read:

23 415.1103 Elder abuse fatality review teams.—
 24 (10) (a) Any information that is confidential or exempt
 25 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution

26 and that is obtained by an elder abuse fatality review team
 27 conducting a review under this section retains its confidential
 28 or exempt status when held by an elder abuse fatality review
 29 team.

30 (b) Any information contained in a record created by an
 31 elder abuse fatality review team which reveals the identity of a
 32 victim of elder abuse is confidential and exempt from s.
 33 119.07(1) and s. 24(a), Art. I of the State Constitution.

34 (11) Portions of meetings of an elder abuse fatality
 35 review team at which confidential or exempt information or the
 36 identity of a victim of elder abuse is discussed are exempt from
 37 s. 286.011 and s. 24(b), Art. I of the State Constitution.

38 (12) Subsections (10) and (11) are subject to the Open
 39 Government Sunset Review Act in accordance with s. 119.15 and
 40 shall stand repealed on October 2, 2023, unless reviewed and
 41 saved from repeal through reenactment by the Legislature.

42 Section 2. (1) The Legislature finds that it is a public
 43 necessity that information that is confidential or exempt from
 44 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 45 State Constitution remain confidential or exempt when held by an
 46 elder abuse fatality review team and that any information
 47 contained in a record created by an elder abuse fatality review
 48 team which reveals the identity of a victim of elder abuse be
 49 confidential and exempt from public records requirements.
 50 Otherwise, sensitive personal information concerning victims of


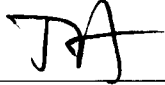
51 elder abuse would be disclosed and open communication and
 52 coordination among the parties involved in the elder abuse
 53 fatality review teams would be hampered. The harm that would
 54 result from the release of such information substantially
 55 outweighs any public benefit that would be achieved by
 56 disclosure.

57 (2) The Legislature further finds that it is a public
 58 necessity that portions of meetings of an elder abuse fatality
 59 review team at which confidential or exempt information or the
 60 identity of a victim of elder abuse is discussed be exempt from
 61 s. 286.011, Florida Statutes, and s. 24(b), Article I of the
 62 State Constitution. The failure to close portions of meetings at
 63 which confidential or exempt information or the identity of a
 64 victim of elder abuse are discussed would defeat the purpose of
 65 the public records exemption. Further, the Legislature finds
 66 that the exemption is narrowly tailored to apply to only certain
 67 portions of meetings of elder abuse fatality review teams to
 68 allow for public oversight.

69 Section 3. This act shall take effect on the same date
 70 that HB 259 or similar legislation takes effect, if such
 71 legislation is adopted in the same legislative session or an
 72 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 309 Fire Safety
SPONSOR(S): Antone and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 394

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

SUMMARY ANALYSIS

The Chief Financial Officer is designated by law as the State Fire Marshal, operating through the Division of State Fire Marshal (division). Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The division is required to establish courses and course examinations to provide the training required to obtain a Firefighter Certificate of Compliance, a Special Certificate of Compliance, and a Volunteer Firefighter Certificate. The division is also responsible for assisting in making a firefighter's place of employment a safer place to work and decreasing the frequency and severity of on-the-job injuries.

The bill requires the division to establish, by rule, courses to provide training for career and volunteer firefighters related to cancer and mental health risks within the fire service. Such training must be a requirement for obtaining a Firefighter Certificate of Compliance, a Volunteer Firefighter Certificate of Completion, or a Special Certificate of Compliance. The training must include cancer and mental health awareness, prevention, mitigation, and treatment as well as lifestyle, environmental, inherited, and occupational risks and must emphasize appropriate behavior, attitude, and cultural changes within the fire service. The bill requires certified firefighters to have such training available to them.

As a qualification for certification, the bill requires a firefighter to be a nonuser of tobacco or tobacco products during his or her career in the fire service, which must be evidenced by a sworn affidavit.

The bill also authorizes the division to adopt rules for providing education and training related to cancer and mental health risks within the fire service.

The bill may have an indeterminate negative fiscal impact on the state. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Fire Marshal

Chapter 633, F.S., governs state law on fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of State Fire Marshal (division).¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

Qualifications and Curriculum Requirements for Firefighters

A person applying for certification as a firefighter must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the division with a current processing fee;
- Have a good moral character;
- Be in good physical condition; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.²

The division is responsible for establishing a Minimum Standards Course and course examination to provide the training required to obtain a Firefighter Certificate of Compliance.³ The division must issue a Firefighter Certificate of Compliance to an individual who does all of the following:

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state that has been determined by the division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Possesses the qualifications described above for certification as a firefighter.⁴

In addition, the division is required to establish a course and a course examination to provide training required to obtain a Special Certificate of Compliance.⁵ A Special Certificate of Compliance only authorizes an individual to serve as an administrative and command head of a fire service provider.⁶ The division must issue a Special Certificate of Compliance to an individual who does all of the following:

- Satisfactorily completes the course established by the division;
- Passes the course examination established by the division; and
- Possesses the qualifications described above for certification as a firefighter.

¹ Section 633.104, F.S.

² Section 633.412, F.S.

³ Section 633.408(1)(a), F.S.

⁴ Section 633.408(4), F.S.

⁵ Section 633.408(1)(b), F.S.

⁶ Section 633.408(6)(b), F.S. The term "fire service provider" means a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services. Section 633.102(13), F.S.

The division is also required to establish a course to provide training required to obtain a Volunteer Firefighter Certificate of Completion.⁷ The division must issue a Volunteer Firefighter Certificate of Completion to any individual who satisfactorily completes the course. The training for a volunteer firefighter requires completion of Part I of the Minimum Standards Course.

Workplace Safety

The division is responsible for assisting in making a firefighter employee's⁸ place of employment a safer place to work and decreasing the frequency and severity of on-the-job injuries. In carrying out these duties, the division is authorized to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by authorizing the enforcement of effective standards, by assisting and encouraging firefighter employers⁹ to maintain safe working conditions, and by providing for education and training in the field of safety.¹⁰

Effect of the Bill

The bill requires the division to establish, by rule, courses to provide training for career and volunteer firefighters related to cancer and mental health risks within the fire service. Such training must be a requirement for obtaining a Firefighter Certificate of Compliance, a Volunteer Firefighter Certificate of Completion, or a Special Certificate of Compliance. The training must include cancer and mental health awareness, prevention, mitigation, and treatment as well as lifestyle, environmental, inherited, and occupational risks and must emphasize appropriate behavior, attitude, and cultural changes within the fire service. The bill requires certified firefighters to have such training available to them.

As a qualification for certification, the bill requires a firefighter to be a nonuser of tobacco or tobacco products during his or her career in the fire service, which must be evidenced by a sworn affidavit.

The bill authorizes the division to adopt rules for providing education and training related to cancer and mental health risks within the fire service.

B. SECTION DIRECTORY:

Section 1. amends s. 633.408, F.S., relating to firefighter and volunteer firefighter training and certification.

Section 2. amends s. 633.412, F.S., relating to firefighters; qualifications for certification.

Section 3. amends s. 633.508, F.S., relating to workplace safety.

Section 4. provides an effective date of July 1, 2018.

⁷ Section 633.408(1)(b), F.S.

⁸ The term "firefighter employee" means a firefighter, volunteer firefighter, or individual providing support services who is engaged in any employment, public or private, under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, responding to or assisting with fire or medical emergencies, regardless of whether on duty, except those appointed under s. 590.02(1)(d). Section 633.504(1), F.S.

⁹ The term "firefighter employer" means the state and all political subdivisions of the state; all public and quasi-public corporations in the state; and a person carrying on any employment for the state, political subdivisions of the state, and public and quasi-public corporations in the state that employs firefighter employees, except those appointed under s. 590.02(1)(d). Section 633.504(2), F.S.

¹⁰ Section 633.508(1) and (2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

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:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the division because the division's Bureau of Fire Standards and Training (BFST) will be required to modify the current curriculum for firefighter and volunteer firefighter training and certification. According to the division, this will result in either an increase in the number of hours to complete the training or the removal of other subject materials from the curriculum. The changes in training will also require the state's certification examinations to be adjusted to address the new topics taught during training. In addition, the BFST may incur staff time and costs for investigation claims of individual firefighters using tobacco products following employment.¹¹

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 requires the division to establish, by rule, courses to provide training for career and volunteer firefighters related to cancer and mental health risks within the fire service. The bill also authorizes the

¹¹ Department of Financial Services, *Agency Analysis for Senate Bill 394* (Oct. 9, 2017) (on file with the Oversight, Transparency & Administration Subcommittee). Senate Bill 394, prior to being amended, was substantively identical to House Bill 309.

division to adopt rules for providing education and training related to cancer and mental health risks within the fire service.

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 fire safety; amending s. 633.408,
 3 F.S.; requiring the Division of State Fire Marshal to
 4 establish specified courses as a part of firefighter
 5 and volunteer firefighter training and certification;
 6 amending s. 633.412, F.S.; revising firefighter
 7 certification requirements; amending s. 633.508, F.S.;
 8 specifying the division's authority to adopt rules for
 9 training related to cancer and mental health risks
 10 within the fire service; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:
 13

14 Section 1. Paragraph (d) is added to subsection (1) of
 15 section 633.408, Florida Statutes, to read:

16 633.408 Firefighter and volunteer firefighter training and
 17 certification.—

18 (1) The division shall establish by rule:

19 (d) Courses to provide training for career and volunteer
 20 firefighters related to cancer and mental health risks within
 21 the fire service. Such training must be a requirement for
 22 obtaining a Firefighter Certificate of Compliance, Volunteer
 23 Firefighter Certificate of Completion, or Special Certificate of
 24 Compliance. The training must include cancer and mental health
 25 awareness, prevention, mitigation, and treatment. The training

26 | must specifically include lifestyle, environmental, inherited,
 27 | and occupational risks, and emphasize appropriate behavior,
 28 | attitude, and cultural changes within the fire service.
 29 | Certified firefighters shall have such training made available
 30 | to them.

31 | Section 2. Subsection (6) of section 633.412, Florida
 32 | Statutes, is amended to read:

33 | 633.412 Firefighters; qualifications for certification.—A
 34 | person applying for certification as a firefighter must:

35 | (6) Be a nonuser of tobacco or tobacco products for at
 36 | least 1 year immediately preceding application and during his or
 37 | her career in the fire service, as evidenced by the sworn
 38 | affidavit of the applicant.

39 | Section 3. Subsection (2) of section 633.508, Florida
 40 | Statutes, is amended to read:

41 | 633.508 Workplace safety; rulemaking authority; division
 42 | authority.—

43 | (2) The division shall have the authority to adopt rules
 44 | for the purpose of ensuring safe working conditions for all
 45 | firefighter employees by authorizing the enforcement of
 46 | effective standards, by assisting and encouraging firefighter
 47 | employers to maintain safe working conditions, and by providing
 48 | for education and training in the field of safety, including
 49 | training related to cancer and mental health risks within the
 50 | fire service. Specifically, the division may by rule adopt the

51 | most current edition of all or any part of subparts C through T
52 | and subpart Z of 29 C.F.R. s. 1910; the National Fire Protection
53 | Association, Inc., Publication 1403, Standard on Live Fire
54 | Training Evolutions, as limited by subsection (6); and ANSI A
55 | 10.4.

56 | Section 4. 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 Antone offered the following:

Amendment (with title amendment)

Remove lines 31-38



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

11 Remove lines 6-7 and insert:
 12 amending s. 633.508, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Voting Systems
SPONSOR(S): Drake
TIED BILLS: IDEN./SIM. BILLS: SB 964

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

SUMMARY ANALYSIS

Currently, the Florida Election Code requires all voting to be by marksense ballot utilizing a marking device for the purpose of designating ballot selections. A "marksense ballot" is a printed sheet of papers, used in conjunction with an electronic vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote. However, persons with disabilities may vote on a device that doesn't utilize marksense ballots. These devices, called voter interface devices, must meet specified voting system accessibility requirements for individuals with disabilities pursuant to the federal Help America Vote Act of 2002 and the Florida Election Code.

The bill expands the use of voter interface devices to all individuals instead of persons with disabilities only. It revises the definition of "marksense ballot" and "marking device" to include voter interface devices.

The bill does not have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Election Code¹ requires certain specifications for voting systems² and ballots.³ The term “ballot” is divided into two sub-categories:

- “Marksense ballots” means that printed sheet of papers, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.⁴
- “Electronic or electromechanical devices” means a ballot that is voted by the process of electronically designating, including by touchscreen, or marking with a marking device⁵ for tabulation by automatic tabulating equipment or data processing equipment.⁶

The Electronic Voting Systems Act (EVS Act)⁷ was established “to authorize the use of electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment.”⁸ The EVS Act requires all voting to be by marksense ballot utilizing a marking device for the purpose of designating ballot selections.⁹ However, persons with disabilities may vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities pursuant to the federal Help America Vote Act of 2002 and s. 101.56062, F.S.¹⁰ The term “voter interface device” means any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.¹¹

The Department of State must publicly examine all makes of electronic or electromechanical voting systems submitted to it and determine whether the systems comply with s. 101.5606, F.S., which establishes requirements for approval of systems.¹² Any person owning or interested in an electronic or electromechanical voting system may submit it to the department for examination.¹³ Each certified voting system must include the capability to install accessible voter interface devices in the system

¹ Chapters 97-106, F.S., are known as The Florida Election Code.

² The term “voting system” is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system’s operation. Section 97.021(44), F.S.

³ Section 101.015(1), F.S., sets the standards for voting systems. The Department of State is required to adopt rules establishing the minimum standards for hardware and software for electronic and electromechanical voting systems. Section 101.015(1), F.S.; *see also* Fla. Admin. Rule 1S-5.001. Sections 101.151 and 101.161, F.S., set the specifications for ballots. The Department of State is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system in accordance with The Florida Election Code. Section 101.151(9), F.S.; *see also* Fla. Admin. Rule 1S-2.032.

⁴ Section 97.021(4)(a), F.S.

⁵ The term “marking device” is defined to mean any approved device for marking a ballot with ink or other substance that will enable the ballot to be tabulated by means of automatic tabulating equipment. Section 101.5603(5), F.S.

⁶ Section 97.021(4)(b), F.S.

⁷ Sections 101.5601-101.5614, F.S., are cited as the “Electronic Voting Systems Act.”

⁸ Section 101.5602, F.S.

⁹ Section 101.56075(1), F.S.

¹⁰ Section 101.56075(2), F.S.

¹¹ Section 97.021(40), F.S.

¹² Section 101.5605(1), F.S.

¹³ Section 101.5605(2)(a), F.S.

configuration that will allow the system to meet certain minimum standards to aid persons with disabilities in the voting process.¹⁴

By 2020, all persons with disabilities must vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under the Help America Vote Act of 2002 and s. 101.56062, F.S.¹⁵

Effect of the Bill

The bill expands the use of voter interface devices to all individuals instead of persons with disabilities only.

The bill revises the definition of "marksense ballot" to include sheets of paper used indirectly to designate the elector's ballot selections through the use of a voter interface device. With respect to any voting system that uses a voter interface device, the bill provides that ss. 101.151, 101.161, 101.2512, 101.2515 101.252, 101.254, F.S., which relate to ballot layout, only apply to the display of candidates and issues on such device.

The bill amends the EVS Act to include voter interface devices within the definition of "marking device," so that all electronic or electromechanical voting systems specified within the EVS Act will include voter interface devices.

B. SECTION DIRECTORY:

Section 1 amends s. 97.021, F.S., relating to definitions applicable to the Florida Election Code.

Section 2 amends s. 101.151, F.S., relating to specifications for ballots.

Section 3 amends s. 101.5603, F.S., relating to definitions applicable to the Electronic Voting System Act.

Section 4 amends s. 101.56075, F.S., relating to voting methods.

Section 5 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.

¹⁴ See s. 101.56062, F.S.

¹⁵ Section 101.56075(3), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies offering voter interface devices may see an increase in requests for such devices due to the authorized expansion of its use.

D. FISCAL COMMENTS:

None.

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 relating to 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 voting systems; amending s. 97.021,
 3 F.S.; revising the definition of the term "marksense
 4 ballots" for purposes of the Florida Election Code;
 5 amending s. 101.151, F.S.; providing applicability of
 6 specified ballot requirements to a voter interface
 7 device; amending ss. 101.5603 and 101.56075, F.S.;
 8 conforming provisions to changes made by the act;
 9 providing an effective date.

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

12
 13 Section 1. Paragraph (a) of subsection (5) of section
 14 97.021, Florida Statutes, is amended to read:

15 97.021 Definitions.—For the purposes of this code, except
 16 where the context clearly indicates otherwise, the term:

17 (5) "Ballot" or "official ballot" when used in reference
 18 to:

19 (a) "Marksense ballots" means that printed sheet of paper,
 20 used in conjunction with an electronic or electromechanical vote
 21 tabulation voting system, containing the names of candidates, ~~or~~
 22 a statement of proposed constitutional amendments or other
 23 questions or propositions submitted to the electorate at any
 24 election, or the selections made by the elector of candidates or
 25 other questions or propositions at an election, on which sheet

26 | of paper an elector casts his or her vote either directly on a
 27 | sheet of paper or indirectly through the use of a voter
 28 | interface device used to designate the elector's ballot
 29 | selections on the sheet of paper.

30 | Section 2. Subsection (10) is added to section 101.151,
 31 | Florida Statutes, to read:

32 | 101.151 Specifications for ballots.—

33 | (10) With respect to any voting system that uses a voter
 34 | interface device to designate the elector's ballot selections on
 35 | a sheet of paper, the provisions of this section, s. 101.161,
 36 | and ss. 101.2512-101.254 that prescribe the ballot layout apply
 37 | only to the display of candidates and issues on the voter
 38 | interface device.

39 | Section 3. Subsection (5) of section 101.5603, Florida
 40 | Statutes, is amended to read:

41 | 101.5603 Definitions relating to Electronic Voting Systems
 42 | Act.—As used in this act, the term:

43 | (5) "Marking device" means any approved device for marking
 44 | a ballot with ink or other substance, including through a voter
 45 | interface device, which will enable the ballot to be tabulated
 46 | by means of automatic tabulating equipment.

47 | Section 4. Subsection (1) of section 101.56075, Florida
 48 | Statutes, is amended to read:

49 | 101.56075 Voting methods.—

50 | (1) Except as provided in subsection (2), all voting shall

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51 | be by marksense ballot using ~~utilizing~~ a marking device for the
52 | purpose of designating ballot selections.


53 | Section 5. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Pub. Rec./Voters and Voter Registration

SPONSOR(S): Stevenson

TIED BILLS: IDEN./SIM. BILLS: SB 532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington 
2) Public Integrity & Ethics Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Voter Registration Act delineates the qualifications and requirements necessary for a person to register to vote in Florida. In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered. A person who is 16 or 17 is allowed to preregister and, if their application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.

Current law requires that certain voter registration information held by an agency remain confidential and exempt from public record requirements. The following voter registration information is protected from disclosure:

- All declinations to register to vote;
- Information relating to the place where a person registered to vote or where a person updated a voter registration; and
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

The bill expands the public record exemption to make the legal residential address, date of birth, telephone number, and email address of a voter or voter registration applicant held by an agency confidential and exempt from public record requirements. However, this confidential and exempt information must be made available to the following entities:

- The individual whose information was made confidential and exempt;
- A canvassing board or an election official in his or her official capacity; and
- A political party or official thereof, a candidate who has filed qualification papers, an elected official, or a registered political committee, for political purposes only.

The bill further provides that all information concerning preregistered voter registration applicants who are 16 or 17 years old is confidential and exempt from public record requirements.

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.

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 exemption and must be no more broad than necessary to accomplish its purpose.²

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 Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:⁴

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

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁵ Specified questions must be considered by the Legislature during the review process.⁶

Voter Registration

The Florida Voter Registration Act⁷ delineates the qualifications and requirements necessary for a person to register to vote in Florida. In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code⁸ and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered.⁹ A person who is 16 or 17 is allowed to preregister and, if their application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.¹⁰

¹ FLA. CONST. art. I, s. 24(c).

² FLA. CONST. art. I, s. 24(c).

³ s. 119.15, F.S.

⁴ s. 119.15(6)(b), F.S.

⁵ s. 119.15(3), F.S.

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

⁷ Part II, ch. 97, F.S.

⁸ Chapters 97-106, F.S., are cited as The Florida Election Code.

⁹ Section 97.041(1)(a), F.S.

¹⁰ Section 97.041(1)(b), F.S.

The Department of State must prescribe by rule a uniform statewide voter registration application.¹¹ The application must be designed to elicit the following information from the applicant:

- The applicant's name, date of birth, address of legal residence;
- E-mail address;
- County of legal residence;
- Race or ethnicity;
- State or country of birth;
- Sex;
- Party affiliation;
- Whether the applicant needs assistance in voting;
- Name and address where last registered;
- Last four digits of the applicant's social security number;
- Florida driver license number or the identification number;
- An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida identification card, or a social security number;
- Telephone number (optional);
- Signature of applicant under penalty for false swearing pursuant to law, by which the person subscribes to the oath and swears that the information contained in the registration application is true;
- Whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored; and
- Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored.¹²

Notwithstanding all the information required to be on the voter registration application, a voter registration will be considered complete if it contains the following information:

- The applicant's name, address of legal residence, and date of birth.
- A mark in the checkbox affirming the applicant is a citizen of the United States.
- The applicant's current and valid Florida driver license number or identification card number or, if the applicant does not have a Florida driver license or identification card, the last four numbers of the applicant's social security number.¹³
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, the applicant has had his or her civil rights restored.
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, the applicant has had his or her right to vote restored.
- The applicant's signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles.¹⁴

¹¹ Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

¹² Section 97.052(2), F.S.

¹³ If an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application. Section 97.053(5)(a)5.b., F.S.

¹⁴ Section 97.053(5)(a), F.S.

Public Record Exemption

Current law requires that certain voter registration information held by an agency¹⁵ remain confidential and exempt¹⁶ from public record requirements.¹⁷ The following voter registration information is protected from disclosure:

- All declinations to register to vote;
- Information relating to the place where a person registered to vote or where a person updated a voter registration; and
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1), F.S.

Effect of the Bill

The bill expands the public record exemption for certain voter registration information to make the legal residential address, date of birth, telephone number, and email address of a voter or voter registration applicant held by an agency confidential and exempt from public record requirements. However, this exempt information must be made available to the following entities:

- The individual whose information was made confidential and exempt;
- A canvassing board or an election official in his or her official capacity; and
- A political party or official thereof, a candidate who has filed qualification papers, an elected official, or a registered political committee, for political purposes only.

The bill further provides that all information concerning preregistered voter registration applicants who are 16 or 17 years old is confidential and exempt from public record requirements.

The bill provides a public necessity statement as required by the State Constitution, specifying that a voter or voter registration applicant's address, date of birth, telephone number, and email address is personal and sensitive and could be misused by a dishonest person to commit identity theft. The public necessity statement also provides that this personal information could result in voter fraud if a person other than the voter requests a vote-by-mail ballot. Additionally, the protection of those persons 16 or 17 years of age who have preregistered to vote is necessary as minors are more vulnerable members of society and, if their personal identifying information is released, their information could be used to solicit, harass, stalk, or intimidate those individuals.

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 97.0585, F.S., relating to public records exemptions for information concerning voters and voter registration applicants.

¹⁵ Section 119.011, 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.

¹⁶ 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).

¹⁷ Section 97.0585, F.S.

Section 2 provides a public necessity statement.

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to 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 public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption for certain information related to voters and voter registration applicants. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

Line 33 should refer to "address of legal residence" instead of "legal residential address" as the former is defined in s. 97.021(3), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 97.0585, F.S.; providing an exemption from public
 4 records requirements for specified information
 5 regarding a voter or voter registration applicant and
 6 information concerning preregistered voter
 7 registration applicants; authorizing disclosure of
 8 confidential and exempt information under certain
 9 circumstances; providing for future legislative review
 10 and repeal; providing a statement of public necessity;
 11 providing an effective date.

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

14
 15 Section 1. Section 97.0585, Florida Statutes, is amended
 16 to read:

17 97.0585 Public records exemption; information regarding
 18 voters and voter registration; confidentiality.—

19 (1) The following information held by an agency as defined
 20 in s. 119.011, and obtained for the purpose of voter
 21 registration, is confidential and exempt from s. 119.07(1) and
 22 s. 24(a), Art. I of the State Constitution and may be used only
 23 for purposes of voter registration, unless disclosure is
 24 authorized under subsection (2):

25 (a) All declinations to register to vote made pursuant to

26 ss. 97.057 and 97.058.

27 (b) Information relating to the place where a person
 28 registered to vote or where a person updated a voter
 29 registration.

30 (c) The social security number, driver license number, and
 31 Florida identification number of a voter registration applicant
 32 or voter.

33 (d) The legal residential address, date of birth,
 34 telephone number, and e-mail address of a voter registration
 35 applicant or voter.

36 (e) All information concerning preregistered voter
 37 registration applicants who are 16 or 17 years of age.

38 (2) A person's information made confidential and exempt
 39 under paragraph (1)(d) shall only be made available to or
 40 reproduced for:

41 (a) The individual whose information was made confidential
 42 and exempt.

43 (b) A canvassing board or an election official in his or
 44 her official capacity.

45 (c) A political party or official thereof, a candidate who
 46 has filed qualification papers, an elected official, or a
 47 registered political committee, for political purposes only.

48 ~~(3)~~ ~~(2)~~ The signature of a voter registration applicant or
 49 a voter is exempt from the copying requirements of s. 119.07(1)
 50 and s. 24(a), Art. I of the State Constitution.

51 (4)~~(3)~~ This section applies to information held by an
 52 agency before, on, or after the effective date of this
 53 exemption.

54 (5) Paragraph (1)(d), paragraph (1)(e), and subsection (2)
 55 are subject to the Open Government Sunset Review Act in
 56 accordance with s. 119.15 and shall stand repealed on October 2,
 57 2023, unless reviewed and saved from repeal through reenactment
 58 by the Legislature.

59 Section 2. (1) The Legislature finds it a public
 60 necessity that the following information held by an agency, and
 61 obtained for the purpose of voter registration, be confidential
 62 and exempt from public records requirements and used only for
 63 purposes of voter registration:

64 (a) The legal residential address, date of birth,
 65 telephone number, and e-mail address of a voter registration
 66 applicant or voter.

67 (b) All information concerning preregistered voter
 68 registration applicants who are 16 or 17 years of age.

69 (2) Information such as a voter registration applicant's
 70 or a voter's legal residential address, date of birth, telephone
 71 number, and e-mail address are personal and sensitive and could
 72 be misused by a dishonest person if placed in the public domain
 73 with the applicant's or the voter's name. By matching a name and
 74 legal residential address, date of birth, telephone number, or
 75 e-mail address, a dishonest person could commit identity theft,

76 which could result in financial harm to a voter registration
 77 applicant or a voter. The potential for harm that results from
 78 unfettered access to a voter registration applicant's or a
 79 voter's legal residential address, date of birth, telephone
 80 number, and e-mail address, accompanied by the person's name,
 81 exceeds any public benefit that may be derived from disclosure
 82 of such information. In addition, such information may be used
 83 for consumer scams, unwanted solicitations, or other forms of
 84 invasive contacts.

85 (3) The Legislature also finds that e-mail addresses are
 86 personal information that could be misused and could result in
 87 voter fraud if released. A voter may request a vote-by-mail
 88 ballot using an e-mail address. Unrestricted access to such e-
 89 mail addresses may enable others to determine which voters are
 90 intending to vote by vote-by-mail ballot and result in the
 91 confiscation and misuse of a mailed vote-by-mail ballot by a
 92 person other than the requesting voter. In addition, collection
 93 of the e-mail address of a voter registration applicant or a
 94 voter would give supervisors of elections the opportunity to
 95 employ the cost-saving measure of electronically transmitting
 96 sample ballots. If a voter registration applicant or a voter
 97 knows that his or her e-mail address is subject to public
 98 disclosure, he or she may be less willing to provide the e-mail
 99 address to the supervisor of elections. Accordingly, the
 100 effective and efficient administration of a government program

101 would be significantly impaired.

102 (4) The Legislature also finds that information concerning
103 preregistered registration applicants who are 16 or 17 years of
104 age could be misused if released. Minors are more vulnerable
105 members of society, and the widespread release of information
106 acquired through preregistration activities may be used to
107 solicit, harass, stalk, or intimidate such individuals. Without
108 such protection, a minor may be less likely to take advantage of
109 preregistering to vote, thus hindering the effective and
110 efficient administration of a program that otherwise encourages
111 greater participation in the democratic process.

112 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 Stevenson offered the following:
 4

Amendment

Remove lines 33-79 and insert:

7 (d) The address of legal residence, date of birth,
 8 telephone number, and e-mail address of a preregistered voter
 9 registration applicant, voter registration applicant, or voter.

10 (2) A person's information made confidential and exempt
 11 under paragraph (1)(d) shall only be made available to or
 12 reproduced for:

13 (a) The individual whose information was made confidential
 14 and exempt.

15 (b) A canvassing board or an election official in his or
 16 her official capacity.



Amendment No.

17 (c) A political party or official thereof, a candidate who
18 has filed qualification papers, an elected official, or a
19 registered political committee, for political purposes only.

20 (3)-(2) The signature of a voter registration applicant or
21 a voter is exempt from the copying requirements of s. 119.07(1)
22 and s. 24(a), Art. I of the State Constitution.

23 (4)-(3) This section applies to information held by an
24 agency before, on, or after the effective date of this
25 exemption.

26 (5) Paragraph (1)(d) and subsection (2) are subject to the
27 Open Government Sunset Review Act in accordance with s. 119.15
28 and shall stand repealed on October 2, 2023, unless reviewed and
29 saved from repeal through reenactment by the Legislature.

30 Section 2. (1) The Legislature finds it a public
31 necessity that the following information held by an agency, and
32 obtained for the purpose of voter registration, be confidential
33 and exempt from public records requirements and used only for
34 purposes of voter registration:

35 (a) The address of legal residence, date of birth,
36 telephone number, and e-mail address of a voter registration
37 applicant or voter.

38 (b) The address of legal residence, date of birth,
39 telephone number, and e-mail address of a preregistered voter
40 registration applicant who is 16 or 17 years of age.



Amendment No.

41 (2) Information such as a voter registration applicant's
42 or a voter's address of legal residence, date of birth,
43 telephone number, and e-mail address are personal and sensitive
44 and could be misused by a dishonest person if placed in the
45 public domain with the applicant's or the voter's name. By
46 matching a name and address of legal residence, date of birth,
47 telephone number, or e-mail address, a dishonest person could
48 commit identity theft, which could result in financial harm to a
49 voter registration applicant or a voter. The potential for harm
50 that results from unfettered access to a voter registration
51 applicant's or a voter's address of legal residence, date of
52 birth, telephone

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 791 Regulatory Reform
SPONSOR(S): Diaz, Jr.
TIED BILLS: IDEN./SIM. BILLS: SB 1268

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

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) 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. Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create" rules. 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 by rulemaking. 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.

The bill creates a Red Tape Reduction Advisory Council (Council) within the Executive Office of the Governor. The Council is required to annually review the Florida Administrative Code (FAC) to determine whether any rules are duplicative, obsolete, especially burdensome to business, or disproportionately affect businesses with fewer than 100 employees or revenue below \$5 million. If the Council finds a rule that meets one or more of these criteria and it can be repealed or amended with minimal impact on public health, safety, and welfare, the Council must recommend repealing or amending the rule. The Council must provide an annual report of its rule recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and to Joint Administrative Procedures Committee (JAPC) for the purposes of publishing the report in the FAC.

The bill requires JAPC to establish a regulatory baseline in the APA. The regulatory baseline is the total number of agency rules that are in effect on January 1, 2019. Once established, a proposed rule may not cause the total number of rules in the FAC to exceed the regulatory baseline. If an agency proposes a rule that would exceed the regulatory baseline, the agency must submit a rule replacement request (RRR). A RRR is a request to create a rule after the establishment of the regulatory baseline by proposing to repeal one of more existing rules to maintain the regulatory baseline. An agency may request that a proposed rule be exempted from the regulatory baseline by submitting an exemption request with the RRR to JAPC. However, JAPC may not approve an exemption request or a RRR that provides fewer than two rules for repeal or replacement until the total number of rules in FAC is 35 percent below the regulatory baseline. JAPC must submit an annual report providing the percentage reduction in the total number of rules compared to the regulatory baseline to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill further requires that each agency's annual regulatory plan identify existing rules that may be appropriate for future repeal to maintain the regulatory baseline.

Lastly, the bill requires JAPC to examine each existing rule for compliance with the APA every four years.

The bill may have an indeterminate fiscal impact on state government. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Rulemaking

The Administrative Procedure Act (APA)¹ 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).

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.¹³ Specifically, JAPC may examine any existing rule and is required to examine each proposed rule and its accompanying material and each emergency rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;

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

- 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, 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.¹⁴

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.¹⁵ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

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.²⁰ 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.²¹ 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.²²

¹⁴ Section 120.545(1), F.S.

¹⁵ Section 120.541(2), F.S.

¹⁶ Section 120.54(3)(b)1., F.S.

¹⁷ Section 120.54(3)(b)1., F.S.

¹⁸ Section 120.541(1)(c), F.S.

¹⁹ Section 120.541(1)(d), F.S.

²⁰ Section 120.74(1), F.S.

²¹ Section 120.74(1)(d), F.S.

²² Section 120.74(2), F.S.

Effect of the Bill

The bill creates a Red Tape Reduction Advisory Council (Council) within the Executive Office of the Governor. The council consists of nine members, who must be residents of the state:

- Five members appointed by the Governor;
- Two members appointed by the President of the Senate; and
- Two members appoint by the Speaker of the House of Representatives.

The members are appointed for four year terms and the bill establishes a method by which the terms are staggered. Members may be reappointed but may not serve on the Council for more than eight consecutive years. The members must elect a chair and vice chair of the Council at the first meeting of the body, which must be held by August 1, 2018. Thereafter the Council must meet at the call of the chair at least quarterly. A majority of the membership of the Council constitutes a quorum. The bill prohibits a member from receiving a commission, fee, or financial benefit in connection with serving on the Council but may be reimbursed for per diem and travel expenses.

The Council is required to annually review the FAC to determine whether any rules are duplicative, obsolete, especially burdensome to business, or disproportionately affect businesses with fewer than 100 employees or revenue below \$5 million. If the Council finds a rule that meets one or more of these criteria and it can be repealed or amended with minimal impact on public health, safety, and welfare, the Council must recommend repealing or amending the rule. The Council must provide an annual report of its rule recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and to JAPC for the purposes of publishing the report in the FAC.

The bill requires JAPC to establish a regulatory baseline. The regulatory baseline is the total number of agency rules that are in effect on January 1, 2019. Once established, a proposed rule may not cause the total number of rules in the FAC to exceed the regulatory baseline. If an agency proposes a rule that would exceed the regulatory baseline, the agency must submit a rule replacement request (RRR). A RRR is a request to create a rule after the establishment of the regulatory baseline by proposing to repeal one or more existing rules to maintain the regulatory baseline. Each RRR must include the proposed rule and the law authorizing it, its purpose, and the rule to be repealed to maintain the regulatory baseline. JAPC must examine each proposed rule and its RRR to determine whether it complies with the APA. JAPC may approve the proposed rule if it complies with the APA and if does not cause the total number of rules to exceed the regulatory baseline. If approved, the proposed rule and the rule repeal will take effect simultaneously.

An agency may request that a proposed rule be exempted from the regulatory baseline by submitting an exemption request with the RRR to JAPC. The exemption request must include a detailed explanation of why the proposed rule should be exempt, including why the rule is necessary to protect public health, safety, and welfare. However, JAPC may not approve an exemption request or a RRR that provides fewer than two rules for repeal or replacement until the total number of rules in FAC is 35 percent below the regulatory baseline. JAPC must submit an annual report providing the percentage reduction in the total number of rules compared to the regulatory baseline to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill requires the Department of State to include in the FAC the regulatory baseline, all changes made to the total number of rules since the establishment of the regulatory baseline, a plain language description of the purpose of each rule, and the report created annually by the Council. The bill further requires that each agency's annual regulatory plan include an identification of existing rules that may be appropriate for future repeal to maintain the regulatory baseline.

Lastly, the bill requires JAPC to examine each existing rule for compliance with the APA every four years.

B. SECTION DIRECTORY:

Section 1 creates s. 14.35, F.S., establishing a Red Tape Reduction Advisory Council.

Section 2 amends s. 120.52, F.S., relating to definitions applicable to the APA.

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

Section 4 amends s. 120.545, F.S., relating to JAPC review of agency rules.

Section 5 creates s. 120.546, F.S., relating to the regulatory baseline.

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

Section 7 amends s. 120.74, F.S., relating to the annual regulatory plan of agencies.

Section 8 amends s. 120.80, F.S., correcting a cross reference.

Section 9 amends s. 120.81, F.S., correcting a cross reference.

Section 10 amends s. 420.9072, F.S., correcting a cross reference.

Section 11 amends s. 420.9075, F.S., correcting a cross reference.

Section 12 amends s. 443.091, F.S., correcting a cross reference.

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:

Indeterminate. The bill may require state agencies expend additional resources in complying with its rule repeal requirements. During the rulemaking process each agency would now be required to take

an additional step of locating a rule to be repealed or requesting an exemption. It is unknown whether this impact can be absorbed into agency's existing budgets.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

The Department of Juvenile Justice has opined that the bill may limit the ability of agencies to receive federal funding if that federal funding is predicated on the agency creating certain rules to comply with federal requirements.²³

The Office of Financial Regulation (OFR) is concerned that the bill's mandatory rule replacement process does not make exceptions for newly created statutory requirements going forward.²⁴ Additionally OFR opined that the Council's quarterly meetings could substantially delay rulemaking.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²³ 2018 Agency Bill Analysis of HB 791, DEPARTMENT OF JUVENILE JUSTICE, on file with the Oversight, Transparency & Administration Subcommittee.

²⁴ 2018 Agency Bill Analysis of HB 791, OFFICE OF FINANCIAL REGULATION, on file with the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled
2 An act relating to regulatory reform; creating s.
3 14.35, F.S.; establishing the Red Tape Reduction
4 Advisory Council within the Executive Office of the
5 Governor; providing for membership and terms;
6 providing for meetings and organization of the
7 council; specifying that members serve without
8 compensation; providing for per diem and travel
9 expenses; specifying required activities of the
10 council; requiring an annual report; amending s.
11 120.52, F.S.; providing definitions; amending s.
12 120.54, F.S.; requiring an agency adopting a rule to
13 submit a rule replacement request to the
14 Administrative Procedures Committee; requiring a rule
15 development or adoption notice to include a rule
16 proposed for repeal; providing that a rule repeal
17 necessary to maintain the regulatory baseline is
18 effective at the same time as the proposed rule;
19 amending s. 120.545, F.S.; requiring the committee to
20 examine rule replacement requests and existing rules;
21 requiring the committee to determine whether a rule
22 replacement request complies with certain
23 requirements; requiring the committee to determine
24 whether adoption of a rule other than an emergency
25 rule will exceed the regulatory baseline; creating s.

26 120.546, F.S.; requiring the Administrative Procedures
 27 Committee to establish a regulatory baseline of agency
 28 rules; providing that a proposed rule may not cause
 29 the total number of rules to exceed the regulatory
 30 baseline; requiring an agency proposing a rule to
 31 submit a rule replacement request to the committee;
 32 authorizing an agency to request an exemption;
 33 providing that a rule replacement request or an
 34 exemption request may not be approved until the
 35 initial regulatory baseline has been reduced by a
 36 specified amount; requiring an annual report; amending
 37 s. 120.55, F.S.; requiring the inclusion of certain
 38 information and a specified report in the Florida
 39 Administrative Code; amending s. 120.74, F.S.;

40 requiring an agency regulatory plan to include
 41 identification of certain rules; amending ss. 120.80,
 42 120.81, 420.9072, 420.9075, and 443.091, F.S.;

43 conforming cross-references; providing an effective
 44 date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Section 14.35, Florida Statutes, is created to
 49 read:

50 14.35 Red Tape Reduction Advisory Council.-

51 (1) ESTABLISHMENT OF THE COUNCIL.—
 52 (a) The Red Tape Reduction Advisory Council, an advisory
 53 council as defined in s. 20.03, is established and
 54 administratively housed within the Executive Office of the
 55 Governor.
 56 (b) The council shall consist of the following nine
 57 members, who must be residents of the state:
 58 1. Five members appointed by the Governor.
 59 2. Two members appointed by the President of the Senate.
 60 3. Two members appointed by the Speaker of the House of
 61 Representatives.
 62 (c) Each member shall be appointed to a 4-year term.
 63 However, for the purpose of achieving staggered terms, the
 64 members initially appointed by the Governor shall each serve a
 65 2-year term. All subsequent appointments shall be for 4-year
 66 terms. A vacancy shall be filled in the same manner as the
 67 original appointment for the remainder of the unexpired term. A
 68 member may be reappointed, except that a member may not serve
 69 more than 8 consecutive years.
 70 (2) MEETINGS; ORGANIZATION.—
 71 (a) The members shall elect a chair and a vice chair at
 72 the first meeting of the council.
 73 (b) The first meeting of the council shall be held by
 74 August 1, 2018. Thereafter, the council shall meet at the call
 75 of the chair at least once per quarter per calendar year.

76 (c) A majority of the members of the council constitutes a
 77 quorum.

78 (d) A member may not receive a commission, fee, or
 79 financial benefit in connection with serving on the council but
 80 may be reimbursed for per diem and travel expenses pursuant to
 81 s. 112.061.

82 (3) SCOPE OF ACTIVITIES.—The council shall:

83 (a) Annually review the Florida Administrative Code to
 84 determine whether any rules:

- 85 1. Are duplicative or obsolete.
- 86 2. Are especially burdensome to business within the state.
- 87 3. Disproportionately affect businesses with fewer than
 88 100 employees.
- 89 4. Disproportionately affect businesses with annual
 90 revenue below \$5 million.

91

92 If the council determines that a rule meets at least one of the
 93 criteria in this paragraph and can be repealed or amended with
 94 minimal impact on public health, safety, and welfare, the
 95 council shall recommend repealing or amending the rule.

96 (b) Provide an annual report of the council's
 97 recommendations to the Governor, the President of the Senate,
 98 and the Speaker of the House of Representatives and to the
 99 Administrative Procedures Committee for publication in the
 100 Florida Administrative Code.

101 Section 2. Subsections (16) and (17) of section 120.52,
 102 Florida Statutes, are renumbered as subsections (17) and (18),
 103 respectively, subsections (18) through (22) are renumbered as
 104 subsections (20) through (24), respectively, and new subsections
 105 (16) and (18) are added to that section, to read:

106 120.52 Definitions.—As used in this act:

107 (16) "Regulatory baseline" means the total number of
 108 agency rules that are in effect on January 1, 2019, as
 109 determined by the committee pursuant to s. 120.546(1).

110 (18) "Rule replacement request" means a request by an
 111 agency to create a rule after the establishment of the
 112 regulatory baseline by proposing to repeal one or more existing
 113 rules to maintain the regulatory baseline.

114 Section 3. Paragraphs (b) through (k) of subsection (1) of
 115 section 120.54, Florida Statutes, are redesignated as paragraphs
 116 (c) through (l), respectively, paragraph (a) of subsection (2)
 117 and paragraphs (a) and (e) of subsection (3) are amended, and a
 118 new paragraph (b) is added to subsection (1) of that section, to
 119 read:

120 120.54 Rulemaking.—

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

123 (b) An agency adopting a rule that would otherwise exceed
 124 the regulatory baseline must submit a rule replacement request
 125 to the committee pursuant to s. 120.546(2).

126 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—
 127 (a) Except when the intended action is the repeal of a
 128 rule, agencies shall provide notice of the development of
 129 proposed rules by publication of a notice of rule development in
 130 the Florida Administrative Register before providing notice of a
 131 proposed rule as required by paragraph (3)(a). The notice of
 132 rule development shall indicate the subject area to be addressed
 133 by rule development, provide a short, plain explanation of the
 134 purpose and effect of the proposed rule, cite the specific legal
 135 authority for the proposed rule, identify the rule or rules
 136 proposed to be repealed, if such repeal is necessary to maintain
 137 the regulatory baseline pursuant to s. 120.546(2), and include
 138 the preliminary text of the proposed rules, if available, or a
 139 statement of how a person may promptly obtain, without cost, a
 140 copy of any preliminary draft, if available.

141 (3) ADOPTION PROCEDURES.—
 142 (a) Notices.—
 143 1. Prior to the adoption, amendment, or repeal of any rule
 144 other than an emergency rule, an agency, upon approval of the
 145 agency head, shall give notice of its intended action, setting
 146 forth a short, plain explanation of the purpose and effect of
 147 the proposed action; the full text of the proposed rule or
 148 amendment and a summary thereof; a reference to the grant of
 149 rulemaking authority pursuant to which the rule is adopted; ~~and~~
 150 a reference to the section or subsection of the Florida Statutes

151 or the Laws of Florida being implemented or interpreted; and a
 152 reference to the rule proposed for repeal, if such repeal is
 153 necessary to maintain the regulatory baseline pursuant to s.
 154 120.546(2). The notice must include a summary of the agency's
 155 statement of the estimated regulatory costs, if one has been
 156 prepared, based on the factors set forth in s. 120.541(2); a
 157 statement that any person who wishes to provide the agency with
 158 information regarding the statement of estimated regulatory
 159 costs, or to provide a proposal for a lower cost regulatory
 160 alternative as provided by s. 120.541(1), must do so in writing
 161 within 21 days after publication of the notice; and a statement
 162 as to whether, based on the statement of the estimated
 163 regulatory costs or other information expressly relied upon and
 164 described by the agency if no statement of regulatory costs is
 165 required, the proposed rule is expected to require legislative
 166 ratification pursuant to s. 120.541(3). The notice must state
 167 the procedure for requesting a public hearing on the proposed
 168 rule. Except when the intended action is the repeal of a rule,
 169 the notice must include a reference both to the date on which
 170 and to the place where the notice of rule development that is
 171 required by subsection (2) appeared.

172 2. The notice shall be published in the Florida
 173 Administrative Register not less than 28 days prior to the
 174 intended action. The proposed rule shall be available for
 175 inspection and copying by the public at the time of the

176 publication of notice.

177 3. The notice shall be mailed to all persons named in the
 178 proposed rule and to all persons who, at least 14 days prior to
 179 such mailing, have made requests of the agency for advance
 180 notice of its proceedings. The agency shall also give such
 181 notice as is prescribed by rule to those particular classes of
 182 persons to whom the intended action is directed.

183 4. The adopting agency shall file with the committee, at
 184 least 21 days prior to the proposed adoption date, a copy of
 185 each rule it proposes to adopt; a copy of any material
 186 incorporated by reference in the rule; a detailed written
 187 statement of the facts and circumstances justifying the proposed
 188 rule; a copy of any statement of estimated regulatory costs that
 189 has been prepared pursuant to s. 120.541; a statement of the
 190 extent to which the proposed rule relates to federal standards
 191 or rules on the same subject; and the notice required by
 192 subparagraph 1.

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

194 1. If the adopting agency is required to publish its rules
 195 in the Florida Administrative Code, the agency, upon approval of
 196 the agency head, shall file with the Department of State three
 197 certified copies of the rule it proposes to adopt; one copy of
 198 any material incorporated by reference in the rule, certified by
 199 the agency; a summary of the rule; a summary of any hearings
 200 held on the rule; and a detailed written statement of the facts

201 and circumstances justifying the rule. Agencies not required to
 202 publish their rules in the Florida Administrative Code shall
 203 file one certified copy of the proposed rule, and the other
 204 material required by this subparagraph, in the office of the
 205 agency head, and such rules shall be open to the public.

206 2. A rule may not be filed for adoption less than 28 days
 207 or more than 90 days after the notice required by paragraph (a),
 208 until 21 days after the notice of change required by paragraph
 209 (d), until 14 days after the final public hearing, until 21 days
 210 after a statement of estimated regulatory costs required under
 211 s. 120.541 has been provided to all persons who submitted a
 212 lower cost regulatory alternative and made available to the
 213 public, or until the administrative law judge has rendered a
 214 decision under s. 120.56(2), whichever applies. When a required
 215 notice of change is published prior to the expiration of the
 216 time to file the rule for adoption, the period during which a
 217 rule must be filed for adoption is extended to 45 days after the
 218 date of publication. If notice of a public hearing is published
 219 prior to the expiration of the time to file the rule for
 220 adoption, the period during which a rule must be filed for
 221 adoption is extended to 45 days after adjournment of the final
 222 hearing on the rule, 21 days after receipt of all material
 223 authorized to be submitted at the hearing, or 21 days after
 224 receipt of the transcript, if one is made, whichever is latest.
 225 The term "public hearing" includes any public meeting held by

226 any agency at which the rule is considered. If a petition for an
 227 administrative determination under s. 120.56(2) is filed, the
 228 period during which a rule must be filed for adoption is
 229 extended to 60 days after the administrative law judge files the
 230 final order with the clerk or until 60 days after subsequent
 231 judicial review is complete.

232 3. At the time a rule is filed, the agency shall certify
 233 that the time limitations prescribed by this paragraph have been
 234 complied with, that all statutory rulemaking requirements have
 235 been met, and that there is no administrative determination
 236 pending on the rule.

237 4. At the time a rule is filed, the committee shall
 238 certify whether the agency has responded in writing to all
 239 material and timely written comments or written inquiries made
 240 on behalf of the committee. The department shall reject any rule
 241 that is not filed within the prescribed time limits; that does
 242 not comply with all statutory rulemaking requirements and rules
 243 of the department; upon which an agency has not responded in
 244 writing to all material and timely written inquiries or written
 245 comments; upon which an administrative determination is pending;
 246 or which does not include a statement of estimated regulatory
 247 costs, if required.

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

251 | the rule shall withdraw the rule and give notice of its action
 252 | in the next available issue of the Florida Administrative
 253 | Register.

254 | 6. The proposed rule shall be adopted on being filed with
 255 | the Department of State and become effective 20 days after being
 256 | filed, on a later date specified in the notice required by
 257 | subparagraph (a)1., on a date required by statute, or upon
 258 | ratification by the Legislature pursuant to s. 120.541(3). Rules
 259 | not required to be filed with the Department of State shall
 260 | become effective when adopted by the agency head, on a later
 261 | date specified by rule or statute, or upon ratification by the
 262 | Legislature pursuant to s. 120.541(3). If the committee notifies
 263 | an agency that an objection to a rule is being considered, the
 264 | agency may postpone the adoption of the rule to accommodate
 265 | review of the rule by the committee. When an agency postpones
 266 | adoption of a rule to accommodate review by the committee, the
 267 | 90-day period for filing the rule is tolled until the committee
 268 | notifies the agency that it has completed its review of the
 269 | rule.

270 | 7. If a rule must be repealed to maintain the regulatory
 271 | baseline pursuant to 120.546(2), the repeal shall take effect at
 272 | the same time as the proposed rule takes effect.

273 |
 274 | For the purposes of this paragraph, the term "administrative
 275 | determination" does not include subsequent judicial review.

276 Section 4. Subsection (1) of section 120.545, Florida
 277 Statutes, is amended to read:

278 120.545 Committee review of agency rules.—

279 (1) As a legislative check on legislatively created
 280 authority, the committee shall examine each proposed rule,
 281 except for those proposed rules exempted by s. 120.81(1)(e) and
 282 (2), and its accompanying material, including, but not limited
 283 to, the rule replacement request, and each emergency rule, and,
 284 every 4 years, each ~~may examine any~~ existing rule, for the
 285 purpose of determining whether:

286 (a) The rule is an invalid exercise of delegated
 287 legislative authority.

288 (b) The statutory authority for the rule has been
 289 repealed.

290 (c) The rule reiterates or paraphrases statutory material.

291 (d) The rule is in proper form.

292 (e) The notice given prior to its adoption was sufficient
 293 to give adequate notice of the purpose and effect of the rule.

294 (f) The rule is consistent with expressed legislative
 295 intent pertaining to the specific provisions of law which the
 296 rule implements.

297 (g) The rule is necessary to accomplish the apparent or
 298 expressed objectives of the specific provision of law which the
 299 rule implements.

300 (h) The rule is a reasonable implementation of the law as

301 | it affects the convenience of the general public or persons
 302 | particularly affected by the rule.

303 | (i) The rule could be made less complex or more easily
 304 | comprehensible to the general public.

305 | (j) The rule's statement of estimated regulatory costs
 306 | complies with the requirements of s. 120.541 and whether the
 307 | rule does not impose regulatory costs on the regulated person,
 308 | county, or city which could be reduced by the adoption of less
 309 | costly alternatives that substantially accomplish the statutory
 310 | objectives.

311 | (k) The rule will require additional appropriations.

312 | (l) If the rule is an emergency rule, there exists an
 313 | emergency justifying the adoption of such rule, the agency is
 314 | within its statutory authority, and the rule was adopted in
 315 | compliance with the requirements and limitations of s.
 316 | 120.54(4).

317 | (m) The rule replacement request complies with the
 318 | requirements of s. 120.546(2)(b).

319 | (n) Adoption of the rule will cause the total number of
 320 | rules to exceed the regulatory baseline. This paragraph does not
 321 | apply to an emergency rule.

322 | Section 5. Section 120.546, Florida Statutes, is created
 323 | to read:

324 | 120.546 Regulatory baseline.—

325 | (1) ESTABLISHMENT OF BASELINE.—The committee shall review

326 the Florida Administrative Code to determine the total number of
 327 rules that are in effect and shall use this number to establish
 328 the regulatory baseline by January 1, 2019.

329 (2) LIMITATION ON PROPOSED RULES; RULE REPLACEMENT
 330 REQUEST.—

331 (a) A proposed rule may not cause the total number of
 332 rules to exceed the regulatory baseline.

333 (b) An agency proposing a rule is required to submit a
 334 rule replacement request to the committee. Each rule replacement
 335 request must include the following:

- 336 1. The proposed rule and the law authorizing such rule.
- 337 2. The purpose of the proposed rule.
- 338 3. The rule to be repealed to maintain the regulatory
 339 baseline.

340 (c) The committee shall examine each proposed rule and the
 341 accompanying rule replacement request as provided in s. 120.545.

342 (d) The committee may approve a rule replacement request
 343 only after the proposed rule and the rule replacement request
 344 have been reviewed pursuant to s. 120.545 and the committee
 345 determines that the proposed rule does not cause the total
 346 number of rules to exceed the regulatory baseline.

347 (e) An agency may request an exemption from the
 348 prohibition in paragraph (a) by submitting an exemption request
 349 with the rule replacement request. An exemption request must
 350 include a detailed explanation of why the proposed rule should

351 | be exempt from the prohibition in paragraph (a), including why
 352 | the rule is necessary to protect public health, safety, and
 353 | welfare.

354 | (f) The committee may not approve an exemption request or
 355 | a rule replacement request that provides fewer than two rules
 356 | for repeal or replacement until the total number of rules is 35
 357 | percent below the regulatory baseline.

358 | (3) ANNUAL REPORT.—Beginning November 1, 2019, the
 359 | committee shall submit an annual report providing the percentage
 360 | reduction in the total number of rules compared to the
 361 | regulatory baseline to the Governor, the President of the
 362 | Senate, and the Speaker of the House of Representatives.

363 | Section 6. Paragraph (a) of subsection (1) of section
 364 | 120.55, Florida Statutes, is amended to read:

365 | 120.55 Publication.—

366 | (1) The Department of State shall:

367 | (a)1. Through a continuous revision and publication
 368 | system, compile and publish electronically, on a website managed
 369 | by the department, the "Florida Administrative Code." The
 370 | Florida Administrative Code shall contain the regulatory
 371 | baseline, all changes made to the total number of rules since
 372 | the establishment of the regulatory baseline, all rules adopted
 373 | by each agency, citing the grant of rulemaking authority and the
 374 | specific law implemented pursuant to which each rule was
 375 | adopted, a plain language description of the purpose of each

376 | rule, all history notes as authorized in s. 120.545(7), complete
 377 | indexes to all rules contained in the code, the report provided
 378 | annually by the Red Tape Reduction Advisory Council, and any
 379 | other material required or authorized by law or deemed useful by
 380 | the department. The electronic code shall display each rule
 381 | chapter currently in effect in browse mode and allow full text
 382 | search of the code and each rule chapter. The department may
 383 | contract with a publishing firm for a printed publication;
 384 | however, the department shall retain responsibility for the code
 385 | as provided in this section. The electronic publication shall be
 386 | the official compilation of the administrative rules of this
 387 | state. The Department of State shall retain the copyright over
 388 | the Florida Administrative Code.

389 | 2. Rules general in form but applicable to only one school
 390 | district, community college district, or county, or a part
 391 | thereof, or state university rules relating to internal
 392 | personnel or business and finance shall not be published in the
 393 | Florida Administrative Code. Exclusion from publication in the
 394 | Florida Administrative Code shall not affect the validity or
 395 | effectiveness of such rules.

396 | 3. At the beginning of the section of the code dealing
 397 | with an agency that files copies of its rules with the
 398 | department, the department shall publish the address and
 399 | telephone number of the executive offices of each agency, the
 400 | manner by which the agency indexes its rules, a listing of all

401 rules of that agency excluded from publication in the code, and
 402 a statement as to where those rules may be inspected.

403 4. Forms shall not be published in the Florida
 404 Administrative Code; but any form which an agency uses in its
 405 dealings with the public, along with any accompanying
 406 instructions, shall be filed with the committee before it is
 407 used. Any form or instruction which meets the definition of
 408 "rule" provided in s. 120.52 shall be incorporated by reference
 409 into the appropriate rule. The reference shall specifically
 410 state that the form is being incorporated by reference and shall
 411 include the number, title, and effective date of the form and an
 412 explanation of how the form may be obtained. Each form created
 413 by an agency which is incorporated by reference in a rule notice
 414 of which is given under s. 120.54(3)(a) after December 31, 2007,
 415 must clearly display the number, title, and effective date of
 416 the form and the number of the rule in which the form is
 417 incorporated.

418 5. The department shall allow adopted rules and material
 419 incorporated by reference to be filed in electronic form as
 420 prescribed by department rule. When a rule is filed for adoption
 421 with incorporated material in electronic form, the department's
 422 publication of the Florida Administrative Code on its website
 423 must contain a hyperlink from the incorporating reference in the
 424 rule directly to that material. The department may not allow
 425 hyperlinks from rules in the Florida Administrative Code to any

426 material other than that filed with and maintained by the
 427 department, but may allow hyperlinks to incorporated material
 428 maintained by the department from the adopting agency's website
 429 or other sites.

430 Section 7. Paragraph (d) of subsection (1) of section
 431 120.74, Florida Statutes, is redesignated as paragraph (e),
 432 paragraph (a) of subsection (2) is amended, and a new paragraph
 433 (d) is added to subsection (1) of that section, to read:

434 120.74 Agency annual rulemaking and regulatory plans;
 435 reports.—

436 (1) REGULATORY PLAN.—By October 1 of each year, each
 437 agency shall prepare a regulatory plan.

438 (d) The plan must include an identification of existing
 439 rules that may be appropriate for future repeal to maintain or
 440 reduce the regulatory baseline pursuant to s. 120.546(2).

441 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

442 (a) By October 1 of each year, each agency shall:

443 1. Publish its regulatory plan on its website or on
 444 another state website established for publication of
 445 administrative law records. A clearly labeled hyperlink to the
 446 current plan must be included on the agency's primary website
 447 homepage.

448 2. Electronically deliver to the committee a copy of the
 449 certification required in paragraph (1)(e) ~~(1)(d)~~.

450 3. Publish in the Florida Administrative Register a notice

451 identifying the date of publication of the agency's regulatory
 452 plan. The notice must include a hyperlink or website address
 453 providing direct access to the published plan.

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

456 120.80 Exceptions and special requirements; agencies.—

457 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~
 458 ~~120.52(16)~~, the enlistment, organization, administration,
 459 equipment, maintenance, training, and discipline of the militia,
 460 National Guard, organized militia, and unorganized militia, as
 461 provided by s. 2, Art. X of the State Constitution, are not
 462 rules as defined by this chapter.

463 Section 9. Paragraph (c) of subsection (1) of section
 464 120.81, Florida Statutes, is amended to read:

465 120.81 Exceptions and special requirements; general
 466 areas.—

467 (1) EDUCATIONAL UNITS.—

468 (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any
 469 tests, test scoring criteria, or testing procedures relating to
 470 student assessment which are developed or administered by the
 471 Department of Education pursuant to s. 1003.4282, s. 1008.22, or
 472 s. 1008.25, or any other statewide educational tests required by
 473 law, are not rules.

474 Section 10. Paragraph (a) of subsection (1) of section
 475 420.9072, Florida Statutes, is amended to read:

476 420.9072 State Housing Initiatives Partnership Program.—
 477 The State Housing Initiatives Partnership Program is created for
 478 the purpose of providing funds to counties and eligible
 479 municipalities as an incentive for the creation of local housing
 480 partnerships, to expand production of and preserve affordable
 481 housing, to further the housing element of the local government
 482 comprehensive plan specific to affordable housing, and to
 483 increase housing-related employment.

484 (1)(a) In addition to the legislative findings set forth
 485 in s. 420.6015, the Legislature finds that affordable housing is
 486 most effectively provided by combining available public and
 487 private resources to conserve and improve existing housing and
 488 provide new housing for very-low-income households, low-income
 489 households, and moderate-income households. The Legislature
 490 intends to encourage partnerships in order to secure the
 491 benefits of cooperation by the public and private sectors and to
 492 reduce the cost of housing for the target group by effectively
 493 combining all available resources and cost-saving measures. The
 494 Legislature further intends that local governments achieve this
 495 combination of resources by encouraging active partnerships
 496 between government, lenders, builders and developers, real
 497 estate professionals, advocates for low-income persons, and
 498 community groups to produce affordable housing and provide
 499 related services. Extending the partnership concept to encompass
 500 cooperative efforts among small counties as defined in s.

501 120.52(21) ~~s. 120.52(19)~~, and among counties and municipalities
 502 is specifically encouraged. Local governments are also intended
 503 to establish an affordable housing advisory committee to
 504 recommend monetary and nonmonetary incentives for affordable
 505 housing as provided in s. 420.9076.

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

508 420.9075 Local housing assistance plans; partnerships.—

509 (7) The moneys deposited in the local housing assistance
 510 trust fund shall be used to administer and implement the local
 511 housing assistance plan. The cost of administering the plan may
 512 not exceed 5 percent of the local housing distribution moneys
 513 and program income deposited into the trust fund. A county or an
 514 eligible municipality may not exceed the 5-percent limitation on
 515 administrative costs, unless its governing body finds, by
 516 resolution, that 5 percent of the local housing distribution
 517 plus 5 percent of program income is insufficient to adequately
 518 pay the necessary costs of administering the local housing
 519 assistance plan. The cost of administering the program may not
 520 exceed 10 percent of the local housing distribution plus 5
 521 percent of program income deposited into the trust fund, except
 522 that small counties, as defined in s. 120.52(21) ~~s. 120.52(19)~~,
 523 and eligible municipalities receiving a local housing
 524 distribution of up to \$350,000 may use up to 10 percent of
 525 program income for administrative costs.

526 Section 12. Paragraph (d) of subsection (1) of section
 527 443.091, Florida Statutes, is amended to read:

528 443.091 Benefit eligibility conditions.—

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

532 (d) She or he is able to work and is available for work.
 533 In order to assess eligibility for a claimed week of
 534 unemployment, the department shall develop criteria to determine
 535 a claimant's ability to work and availability for work. A
 536 claimant must be actively seeking work in order to be considered
 537 available for work. This means engaging in systematic and
 538 sustained efforts to find work, including contacting at least
 539 five prospective employers for each week of unemployment
 540 claimed. The department may require the claimant to provide
 541 proof of such efforts to the one-stop career center as part of
 542 reemployment services. A claimant's proof of work search efforts
 543 may not include the same prospective employer at the same
 544 location in 3 consecutive weeks, unless the employer has
 545 indicated since the time of the initial contact that the
 546 employer is hiring. The department shall conduct random reviews
 547 of work search information provided by claimants. As an
 548 alternative to contacting at least five prospective employers
 549 for any week of unemployment claimed, a claimant may, for that
 550 same week, report in person to a one-stop career center to meet

551 with a representative of the center and access reemployment
 552 services of the center. The center shall keep a record of the
 553 services or information provided to the claimant and shall
 554 provide the records to the department upon request by the
 555 department. However:

556 1. Notwithstanding any other provision of this paragraph
 557 or paragraphs (b) and (e), an otherwise eligible individual may
 558 not be denied benefits for any week because she or he is in
 559 training with the approval of the department, or by reason of s.
 560 443.101(2) relating to failure to apply for, or refusal to
 561 accept, suitable work. Training may be approved by the
 562 department in accordance with criteria prescribed by rule. A
 563 claimant's eligibility during approved training is contingent
 564 upon satisfying eligibility conditions prescribed by rule.

565 2. Notwithstanding any other provision of this chapter, an
 566 otherwise eligible individual who is in training approved under
 567 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
 568 determined ineligible or disqualified for benefits due to
 569 enrollment in such training or because of leaving work that is
 570 not suitable employment to enter such training. As used in this
 571 subparagraph, the term "suitable employment" means work of a
 572 substantially equal or higher skill level than the worker's past
 573 adversely affected employment, as defined for purposes of the
 574 Trade Act of 1974, as amended, the wages for which are at least
 575 80 percent of the worker's average weekly wage as determined for

576 | purposes of the Trade Act of 1974, as amended.

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

581 | 4. Union members who customarily obtain employment through
 582 | a union hiring hall may satisfy the work search requirements of
 583 | this paragraph by reporting daily to their union hall.

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

588 | 6. In small counties as defined in s. 120.52(21) ~~s.~~
 589 | ~~120.52(19)~~, a claimant engaging in systematic and sustained
 590 | efforts to find work must contact at least three prospective
 591 | employers for each week of unemployment claimed.

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

595 | Section 13. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1109 State Emergency Communications and Warning System
SPONSOR(S): Stark
TIED BILLS: **IDEN./SIM. BILLS:** SB 1466

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

SUMMARY ANALYSIS

The Division of Emergency Management (DEM) is responsible for administering programs to rapidly apply all available aid to communities stricken by an emergency and is the liaison with federal agencies and other public and private agencies. DEM is responsible for carrying out the State's Emergency Management Act, which includes creating a statewide comprehensive emergency management plan.

DEM is required to establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions. To accomplish this mandate, DEM has created the State Watch Office (SWO), a "24-hour emergency communications center and situational awareness hub" within the State Emergency Operations Center.

The bill requires the system of communications and warning established by DEM, which is operated under the SWO, that warns the state's population and emergency management agencies of a developing emergency situation to have a qualified interpreter in any televised broadcast of a developing weather emergency. The term "qualified interpreter" is defined to mean a person who is certified by the National Registry of Interpreters for the Deaf or the Florida Registry of Interpreters for the Deaf.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of Emergency Management

The Division of Emergency Management (DEM) is established within the Executive Office of the Governor as a separate budget entity.¹ The director of DEM is appointed by and serves at the pleasure of the Governor.² DEM is responsible for administering programs to rapidly apply all available aid to communities stricken by an emergency and is the liaison with federal agencies and other public and private agencies.³ DEM is responsible for carrying out the State's Emergency Management Act,⁴ which includes creating a statewide comprehensive emergency management plan (CEMP).⁵

DEM is required to establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.⁶ To accomplish this mandate, DEM has created the State Watch Office (SWO), a "24-hour emergency communications center and situational awareness hub" within the State Emergency Operations Center (SEOC).⁷ The CEMP sets forth the purposes and goals of the SWO:

The SWO provides the state with a single point to disseminate information and warnings to governmental officials (federal, state and/or local) that a hazardous situation could threaten or has threatened the general welfare, health, safety, and/or property of the state's population. The SWO maintains continuous situational awareness of natural and technological hazards during non-emergency periods as well as in times of emergencies and disasters.⁸

The SWO is equipped with multiple communication networks composed of local, state, and federal emergency communications systems.⁹

State Comprehensive Emergency Management Plan (CEMP)

DEM is required by law to prepare a CEMP.¹⁰ The CEMP serves as the master operations document for Florida and is the framework through which the state handles emergencies and disasters. The CEMP must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters.¹¹

Additionally, each county is required to establish and maintain an emergency management program and develop a county CEMP that is consistent with the state emergency management program and

¹ Section 14.2016, F.S.

² *Id.*

³ *Id.*; s. 252.35(1), F.S.

⁴ Sections 252.31-252.60, F.S., are known as the "State Emergency Management Act."

⁵ Section 252.35(2)(a), F.S.

⁶ Section 252.35(2)(a)6., F.S.,

⁷ 2014 Comprehensive Emergency Management Plan, DIVISION OF EMERGENCY MANAGEMENT, pgs. 25-27, incorporated by reference in FLA. ADMIN. CODE. R. 27P-2.002, available at <https://floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 25, 2018).

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 252.35(2)(a), F.S.

¹¹ *Id.*

state CEMP.¹² Municipalities may also elect to establish an emergency management program and in doing so must comply with the guidelines for a county CEMP.¹³

Emergency Support Function 14 – Public Information

The State Emergency Response Team (SERT) serves as the primary operational mechanism through which state assistance to local governments is managed.¹⁴ To facilitate effective operations, the SERT is organized into 18 groups called Emergency Support Functions (ESF).¹⁵ Each ESF focuses on a specific mission area and is led by a representative from the state agency that best reflects the authorities, resources, and capabilities of the ESF.

ESF 14 (External Affairs) is responsible for the dissemination of information to the media and general public.¹⁶ The Executive Office of the Governor Office of Communications serves as the lead agency in ESF 14. One of their primary functions is to provide clear and consistent direction to citizens before, during, and after a disaster. It is a current practice of ESF 14 to include a qualified interpreter in all televised broadcasts during emergency situations.¹⁷

National Registry of Interpreters for the Deaf

The Registry of Interpreters for the Deaf (RID) is a non-profit organization and national membership organization that advocates for excellence in the delivery of interpretation and transliteration services between people who use sign language and people who use spoken language.¹⁸ RID encourages the growth of the profession through the establishment of a national standard for qualified sign language interpreters and transliterators, ongoing professional development, and adherence to a code of professional conduct.¹⁹

RID currently offers certified, associate, student, supporting, and organizational memberships.²⁰ Certified members of RID must hold the National Interpreter Certification (NIC) or be a Certified Deaf Interpreter (CDI). Associate members must be engaged in interpreting or transliterating and enrolled in a continuing education program.²¹ There are currently 564 RID certified and 299 associate members in Florida.²²

The NIC requires demonstrated general knowledge in the field of interpreting, ethical decision making, and interpreting skills. Candidates earn NIC Certification if they demonstrate professional knowledge

¹² Section 252.38(1)(a), F.S. DEM is required to adopt standards and requirements for county CEMPs, assist local governments in preparing and maintaining their CEMP's, and periodically review local government CEMPs for consistency with the state CEMP and the standards and requirements adopted by the DEM. *See s. 252.35(2)(b), F.S.*

¹³ Section 252.38(2), F.S.

¹⁴ 2014 Comprehensive Emergency Management Plan, DIVISION OF EMERGENCY MANAGEMENT, incorporated by reference in FLA. ADMIN. CODE. R. 27P-2.002, available at <https://floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited Jan. 25, 2018).

¹⁵ *Id.*

¹⁶ 2014 Comprehensive Emergency Management Plan, Appendix XIV, DIVISION OF EMERGENCY MANAGEMENT, , incorporated by reference in Fla. Admin. Code. R. 27P-2.002, available at https://floridadisaster.org/globalassets/importedpdfs/2014-esf-14-appendix_finalized.pdf (last visited Jan. 25, 2018).

¹⁷ 2018 Agency Bill Analysis for HB 1109, DIVISION OF EMERGENCY MANAGEMENT, on file with the Oversight, Transparency & Administration Subcommittee.

¹⁸ About RID, REGISTRY OF INTERPRETERS FOR THE DEAF, INC. (RID), <https://www.rid.org/about-rid/> (last visited Jan. 25, 2018).

¹⁹ *Id.*

²⁰ Membership, Join/Renew Membership, RID, <https://www.rid.org/membership/join/> (last visited Jan. 25, 2018).

²¹ *Id.*

²² Membership, RID, <https://www.rid.org/membership/> (last visited Jan. 25, 2018).

and skills that meet or exceed the minimum professional standards²³ necessary to perform in a broad range of interpretation and transliteration assignments.²⁴

A CDI has specialized training and experience in the use of gesture, mime, props, drawings and other tools to enhance communication. Holders possess native or near-native fluency in American Sign Language and are recommended for a broad range of assignments where an interpreter who is deaf or hard-of-hearing would be beneficial.²⁵

Florida Registry of Interpreters for the Deaf

The Florida Registry of Interpreters for the Deaf (FRID) is a non-profit corporation that initiates, sponsors, promotes, and executes policies and activities that further the profession of interpreting and transliterating.²⁶ FRID works to improve the professional lives of interpreters and to improve quality and accessibility of interpreting services for the deaf and hard-of-hearing individuals living in Florida.²⁷ Membership options include nationally certified, pre-certified associate, organizational, and supporting memberships.²⁸ FRID members are eligible to apply for testing and monetary scholarships to pursue national certifications such as the NIC and CDI, and other professional development opportunities.²⁹

Beginning in 2012, FRID began a partnership with the DEM, Florida Department of Health, and other emergency management personnel from across the state to discuss interpreting services and to provide training. As part of the training, officials were taught the logistics of having interpreters in public briefings, what information interpreters would need to be successful, and that the interpreter needed to remain visible in the frame at all times.³⁰ DEM and the Executive Office of the Governor currently include a qualified interpreter in all televised broadcasts during emergency situations.³¹

Effect of the Bill

The bill provides that the system of communications and warning established by DEM, which is operated under the SWO, that warns the state's population and emergency management agencies of a developing emergency situation is required to have a qualified interpreter in any televised broadcast of a developing weather emergency. The term "qualified interpreter" is defined to mean a person who is certified by the National Registry of Interpreters for the Deaf or the Florida Registry of Interpreters for the Deaf.

B. SECTION DIRECTORY:

Section 1 amends s. 252.35, F.S., relating to DEM's emergency management powers.

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

²³ RID's Standard Practice Papers articulate the consensus of its membership by outlining standard practices and positions on various interpreting roles and issues. See *Interpreting Resources, Standard Practice Papers*, RID, <https://www.rid.org/about-rid/about-interpreting/standard-practice-papers/> (last visited Jan. 25, 2018).

²⁴ *National Interpreter Certification (NIC)*, RID, <https://www.rid.org/rid-certification-overview/nic-certification/> (last visited Jan. 25, 2018). This credential has been available since 2005.

²⁵ *Certified Deaf Interpreter (CDI)*, RID, <https://www.rid.org/rid-certification-overview/cdi-certification/> (last visited Jan. 25, 2018).

²⁶ *Mission Statement*, FLORIDA REGISTRY OF INTERPRETERS FOR THE DEAF (FRID), <http://www.fridcentral.org/> (last visited Jan. 25, 2018).

²⁷ *About FRID*, FRID, <http://www.fridcentral.org/about-us> (last visited Jan. 25, 2018).

²⁸ *New Member Online Application*, FRID, <http://www.fridcentral.org/apply-online> (last visited Jan. 25, 2018).

²⁹ *FRID Scholarships*, FRID, <http://www.fridcentral.org/scholarships> (last visited Jan. 25, 2018).

³⁰ *FRID's Statement on Hurricane Irma, Manatee County, and Access to Emergency Information for Florida's Deaf Community* (Sept. 28, 2017), FRID, <http://www.fridcentral.org/FRID-Blog/5285203> (last visited Jan. 25, 2018).

³¹ 2018 Agency Bill Analysis for HB 1109, DIVISION OF EMERGENCY MANAGEMENT, on file with the Oversight, Transparency & Administration Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

Comments

DEM maintains that they currently include qualified interpreters in all televised broadcasts during emergency situations.³² However, they note that while the bill will have little to no effect on current procedures, it “would ensure accountability at the state and local level that the interpreter used is qualified and registered with the State of Florida.”³³

³² *Id.*

³³ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the state emergency communications
 3 and warning system; amending s. 252.35, F.S.;
 4 directing the Division of Emergency Management to
 5 require that a qualified interpreter is included in
 6 certain emergency broadcasts; defining the term
 7 "qualified interpreter"; providing an effective date.
 8

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

11 Section 1. Paragraph (a) of subsection (2) of section
 12 252.35, Florida Statutes, is amended to read:

13 252.35 Emergency management powers; Division of Emergency
 14 Management.—

15 (2) The division is responsible for carrying out the
 16 provisions of ss. 252.31-252.90. In performing its duties, the
 17 division shall:

18 (a) Prepare a state comprehensive emergency management
 19 plan, which shall be integrated into and coordinated with the
 20 emergency management plans and programs of the Federal
 21 Government. The division must adopt the plan as a rule in
 22 accordance with chapter 120. The plan shall be implemented by a
 23 continuous, integrated comprehensive emergency management
 24 program. The plan must contain provisions to ensure that the
 25 state is prepared for emergencies and minor, major, and

26 catastrophic disasters, and the division shall work closely with
 27 local governments and agencies and organizations with emergency
 28 management responsibilities in preparing and maintaining the
 29 plan. The state comprehensive emergency management plan shall be
 30 operations oriented and:

31 1. Include an evacuation component that includes specific
 32 regional and interregional planning provisions and promotes
 33 intergovernmental coordination of evacuation activities. This
 34 component must, at a minimum: contain guidelines for lifting
 35 tolls on state highways; ensure coordination pertaining to
 36 evacuees crossing county lines; set forth procedures for
 37 directing people caught on evacuation routes to safe shelter;
 38 establish strategies for ensuring sufficient, reasonably priced
 39 fueling locations along evacuation routes; and establish
 40 policies and strategies for emergency medical evacuations.

41 2. Include a shelter component that includes specific
 42 regional and interregional planning provisions and promotes
 43 coordination of shelter activities between the public, private,
 44 and nonprofit sectors. This component must, at a minimum:
 45 contain strategies to ensure the availability of adequate public
 46 shelter space in each region of the state; establish strategies
 47 for refuge-of-last-resort programs; provide strategies to assist
 48 local emergency management efforts to ensure that adequate
 49 staffing plans exist for all shelters, including medical and
 50 security personnel; provide for a postdisaster communications

51 | system for public shelters; establish model shelter guidelines
52 | for operations, registration, inventory, power generation
53 | capability, information management, and staffing; and set forth
54 | policy guidance for sheltering people with special needs.

55 | 3. Include a postdisaster response and recovery component
56 | that includes specific regional and interregional planning
57 | provisions and promotes intergovernmental coordination of
58 | postdisaster response and recovery activities. This component
59 | must provide for postdisaster response and recovery strategies
60 | according to whether a disaster is minor, major, or
61 | catastrophic. The postdisaster response and recovery component
62 | must, at a minimum: establish the structure of the state's
63 | postdisaster response and recovery organization; establish
64 | procedures for activating the state's plan; set forth policies
65 | used to guide postdisaster response and recovery activities;
66 | describe the chain of command during the postdisaster response
67 | and recovery period; describe initial and continuous
68 | postdisaster response and recovery actions; identify the roles
69 | and responsibilities of each involved agency and organization;
70 | provide for a comprehensive communications plan; establish
71 | procedures for monitoring mutual aid agreements; provide for
72 | rapid impact assessment teams; ensure the availability of an
73 | effective statewide urban search and rescue program coordinated
74 | with the fire services; ensure the existence of a comprehensive
75 | statewide medical care and relief plan administered by the

76 Department of Health; and establish systems for coordinating
 77 volunteers and accepting and distributing donated funds and
 78 goods.

79 4. Include additional provisions addressing aspects of
 80 preparedness, response, recovery, and mitigation as determined
 81 necessary by the division.

82 5. Address the need for coordinated and expeditious
 83 deployment of state resources, including the Florida National
 84 Guard. In the case of an imminent major disaster, procedures
 85 should address predeployment of the Florida National Guard, and,
 86 in the case of an imminent catastrophic disaster, procedures
 87 should address predeployment of the Florida National Guard and
 88 the United States Armed Forces.

89 6. Establish a system of communications and warning to
 90 ensure that the state's population and emergency management
 91 agencies are warned of developing emergency situations and can
 92 communicate emergency response decisions. Such system shall
 93 require that a qualified interpreter is included in any
 94 televised broadcast of a developing weather emergency. As used
 95 in this subparagraph, the term "qualified interpreter" means a
 96 person who is certified by the National Registry of Interpreters
 97 for the Deaf or the Florida Registry of Interpreters for the
 98 Deaf.

99 7. Establish guidelines and schedules for annual exercises
 100 that evaluate the ability of the state and its political

101 subdivisions to respond to minor, major, and catastrophic
 102 disasters and support local emergency management agencies. Such
 103 exercises shall be coordinated with local governments and, to
 104 the extent possible, the Federal Government.


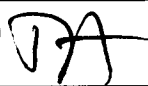
105 8. Assign lead and support responsibilities to state
 106 agencies and personnel for emergency support functions and other
 107 support activities.

108
 109 The complete state comprehensive emergency management plan shall
 110 be submitted to the President of the Senate, the Speaker of the
 111 House of Representatives, and the Governor on February 1 of
 112 every even-numbered year.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1215 Inspectors General
SPONSOR(S): Richardson
TIED BILLS: IDEN./SIM. **BILLS:** SB 1590

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

SUMMARY ANALYSIS

An Office of Inspector General (OIG) is established in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of the Cabinet or the Governor and Cabinet are appointed by the agency head, and inspectors general under the jurisdiction of the Governor are appointed by the Chief Inspector General (CIG). The Office of the CIG is established within the Executive Office of the Governor (EOG), and the CIG provides oversight and monitors the activities of the agency inspectors general under the Governor's jurisdiction. The CIG is appointed by and serves at the pleasure of the Governor.

The bill specifies that the Office of the CIG is housed within the EOG for administrative purposes only. It provides that the office is a separate budget entity not subject to the control, supervision, or direction of the EOG in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

The bill requires the CIG to be confirmed by the Senate and repeals the provision specifying that the CIG serves at the pleasure of the Governor. Instead, the bill provides that the CIG may only be removed from office by the Governor for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. The bill prohibits the Governor from removing the CIG from office for reasons related to the subject of, the scope of, or any conclusions or recommendations made from any audit or investigation undertaken. The bill also specifies that a CIG may not serve for more than 10 years.

The bill specifies that an OIG established within a state agency is a separate budget entity not subject to budgetary control by the state agency, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

The bill may have an insignificant fiscal impact on state government and should have no impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency¹ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor (EOG). The CIG is appointed by and serves at the pleasure of the Governor. The CIG is responsible for monitoring the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.²

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;

¹ Section 20.055(1)(d), F.S., defines the term "state agency" to mean each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

² Section 14.32(2), F.S.

- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,³ or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.⁴

For state agencies under the jurisdiction of the Governor, the inspector general must be appointed by the CIG. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, each agency head must appoint an inspector general.⁵

Effect of the Bill

The bill specifies that the Office of the CIG is housed within the EOG for administrative purposes only. It provides that the office is a separate budget entity not subject to the control, supervision, or direction of the EOG in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

The bill requires the CIG to be confirmed by the Senate and repeals the provision specifying that the CIG serves at the pleasure of the Governor. Instead, the bill provides that the CIG may only be removed from office by the Governor for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. The bill prohibits the Governor from removing the CIG from office for reasons related to the subject of, the scope of, or any conclusions or recommendations made from any audit or investigation undertaken. The bill also specifies that a CIG may not serve for more than 10 years.

The bill specifies that an OIG established within a state agency is a separate budget entity not subject to budgetary control by the state agency, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., relating to the Office of the CIG.

Section 2. amends s. 20.055, F.S., relating to agency inspectors general.

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

³ Section 20.055(1)(a), F.S., defines the term “agency head” to mean the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

⁴ Section 20.055(2), F.S.

⁵ Section 20.055(3)(a)1., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

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:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that the Office of the CIG and an OIG within a state agency is a separate budget entity and is not subject to budgetary control by the EOG or state agency. As such, the bill may have an insignificant fiscal impact on state government expenditures associated with administrative costs for each new budget entity.

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 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 inspectors general; amending s.
 3 14.32, F.S.; specifying that the Office of Chief
 4 Inspector General is a separate budget entity and
 5 housed within the Executive Office of the Governor for
 6 administrative purposes only; requiring that the Chief
 7 Inspector General be subject to Senate confirmation;
 8 providing that the Chief Inspector General may only be
 9 removed from office by the Governor for cause;
 10 providing that the Chief Inspector General may not
 11 serve for more than 10 consecutive years; amending s.
 12 20.055, F.S.; specifying that the office of an agency
 13 inspector general is a separate budget entity from the
 14 state agency in which the office is established;
 15 providing an effective date.

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

18
 19 Section 1. Subsection (1) of section 14.32, Florida
 20 Statutes, is amended to read:

21 14.32 Office of Chief Inspector General.—
 22 (1) ~~There is created in the Executive Office of the~~
 23 ~~Governor~~ The Office of Chief Inspector General is created and
 24 housed within the Executive Office of the Governor for
 25 administrative purposes only. The office is a separate budget

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

26 entity not subject to control, supervision, or direction by the
 27 Executive Office of the Governor in any manner, including, but
 28 not limited to, personnel, purchasing, transactions involving
 29 real or personal property, and budgetary matters. The Chief
 30 Inspector General is responsible for promoting accountability,
 31 integrity, and efficiency in the agencies under the jurisdiction
 32 of the Governor. The Chief Inspector General shall be appointed
 33 by ~~and serve at the pleasure of~~ the Governor and is subject to
 34 confirmation by the Senate. The Chief Inspector General may only
 35 be removed from office by the Governor for cause, including
 36 concerns regarding performance, malfeasance, misfeasance,
 37 misconduct, or failure to carry out his or her duties under this
 38 section. The Governor may not remove the Chief Inspector General
 39 from office for reasons related to the subject of, the scope of,
 40 or any conclusions or recommendations made from any audit or
 41 investigation undertaken. However, upon a change in Governors or
 42 reelection of the Governor, the Governor shall appoint, or may
 43 reappoint, a Chief Inspector General before adjournment sine die
 44 of the first regular session of the Legislature that convenes
 45 after such change in Governors or reelection of the Governor.
 46 A Chief Inspector General may not serve for more than 10
 47 consecutive years.

48 Section 2. Subsection (2) of section 20.055, Florida
 49 Statutes, is amended to read:

50 20.055 Agency inspectors general.—

51 (2) An office of inspector general is established in each
 52 state agency to provide a central point for coordination of and
 53 responsibility for activities that promote accountability,
 54 integrity, and efficiency in government. An office of inspector
 55 general is a separate budget entity not subject to budgetary
 56 control by the state agency in which the office is established,
 57 including, but not limited to, personnel, purchasing,
 58 transactions involving real or personal property, and budgetary
 59 matters. It is the duty and responsibility of each inspector
 60 general, with respect to the state agency in which the office is
 61 established, to:

62 (a) Advise in the development of performance measures,
 63 standards, and procedures for the evaluation of state agency
 64 programs.

65 (b) Assess the reliability and validity of the information
 66 provided by the state agency on performance measures and
 67 standards, and make recommendations for improvement, if
 68 necessary, before submission of such information pursuant to s.
 69 216.1827.

70 (c) Review the actions taken by the state agency to
 71 improve program performance and meet program standards and make
 72 recommendations for improvement, if necessary.

73 (d) Provide direction for, supervise, and coordinate
 74 audits, investigations, and management reviews relating to the
 75 programs and operations of the state agency, except that when

76 | the inspector general does not possess the qualifications
 77 | specified in subsection (4), the director of auditing shall
 78 | conduct such audits.

79 | (e) Conduct, supervise, or coordinate other activities
 80 | carried out or financed by that state agency for the purpose of
 81 | promoting economy and efficiency in the administration of, or
 82 | preventing and detecting fraud and abuse in, its programs and
 83 | operations.

84 | (f) Keep the agency head or, for state agencies under the
 85 | jurisdiction of the Governor, the Chief Inspector General
 86 | informed concerning fraud, abuses, and deficiencies relating to
 87 | programs and operations administered or financed by the state
 88 | agency, recommend corrective action concerning fraud, abuses,
 89 | and deficiencies, and report on the progress made in
 90 | implementing corrective action.

91 | (g) Ensure effective coordination and cooperation between
 92 | the Auditor General, federal auditors, and other governmental
 93 | bodies with a view toward avoiding duplication.

94 | (h) Review, as appropriate, rules relating to the programs
 95 | and operations of such state agency and make recommendations
 96 | concerning their impact.

97 | (i) Ensure that an appropriate balance is maintained
 98 | between audit, investigative, and other accountability
 99 | activities.

100 | (j) Comply with the General Principles and Standards for

101 | Offices of Inspector General as published and revised by the
102 | Association of Inspectors General.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285 Florida Business Corporation Act
SPONSOR(S): Albritton
TIED BILLS: IDEN./SIM. BILLS: SB 1028

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Careers & Competition Subcommittee, 14 Y, 0 N, Wright, Anstead. Row 2: 2) Oversight, Transparency & Administration Subcommittee, Hoffman, Harrington. Row 3: 3) Commerce Committee.

SUMMARY ANALYSIS

The Florida Office of Financial Regulation (OFR) has regulatory authority over state-chartered depository and non-depository financial institutions and financial service companies, including state-chartered banks and trust companies.

Social purpose and benefit corporations are those formed to use corporate assets to pursue public benefit goals in addition to the generally accepted corporate goal of profit maximization. The profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations.

Currently, state banks and trust companies are not permitted to be formed as social purpose or benefit corporations.

The bill authorizes:

- state banks and trust companies to form as a social purpose or benefit corporation;
social purpose or benefit corporations to omit confidential information from their annual benefit reports;
state banks and trust companies to modify their form articles of incorporation with OFR to include provisions required for social purpose or benefit corporations; and
state banks and trust companies to approve special stock offering plans.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State-Chartered Banks or Trust Companies

The Florida Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.¹ OFR has regulatory authority over banks and trust companies, pursuant to ch. 658, F.S., of the Financial Institutions Codes (codes). These banks and trust companies operate pursuant to pt. I of ch. 607, F.S., relating to for-profit corporations, to the extent that ch. 607, F.S., does not conflict with, or is not expressly superseded by, the codes.²

A corporation that seeks to organize as a state-chartered bank or trust company in Florida must submit an application for authority to organize to OFR.³ The application must include the financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer.⁴ OFR is required to grant the corporation's request to organize if it meets certain criteria relating to local conditions, capitalization, paid-in capital-in surplus, qualifications of the proposed officer and directors, the corporate name of the proposed state bank or trust company, and provision of suitable quarters at the location.⁵

After OFR grants a corporation's approval to organize, the corporation must submit its articles of incorporation and filing fee to OFR to become chartered and begin its corporate existence as a banking corporation or trust company.⁶ OFR must then provide the proposed directors with form articles of incorporation that reflect only those provisions that are required under s. 658.23, F.S., and pt. I of ch. 607, F.S., relating to for-profit corporations.⁷

Currently, state banks and trust companies are not permitted to be formed as social purpose or benefit corporations.⁸

Social Purpose and Benefit Corporations

In 2014, the Florida Legislature adopted legislation that governs social purpose corporations and benefit corporations. Generally, social purpose and benefit corporations protect directors and officers who use corporate assets to pursue public benefit goals in addition to the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations.⁹

¹ s. 655.001(2), F.S.

² s. 658.30(1), F.S.

³ s. 658.19, F.S.

⁴ *Id.*

⁵ s. 658.21, F.S.

⁶ s. 658.23(1), F.S.

⁷ See, e.g., Florida Office of Financial Regulation, *Model Articles of Incorporation Bank, Trust Company, or Association*, available at https://www.flofr.com/PDFs/model_articles_OFR.pdf (last visited Jan. 24, 2018).

⁸ s. 658.23, F.S.

⁹ See generally ch. 607, pts. II and III, F.S.

The primary difference between a social purpose corporation and a benefit corporation is the degree of public benefit purpose imposed upon each of the corporations.¹⁰ A social purpose corporation may pursue or create one or more public benefits, which may be specific.¹¹ In contrast, a benefit corporation may pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.¹²

For both types of corporations, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Both of these corporations can be the subject of a benefit enforcement proceeding to compel them to pursue or create a general or specific public benefit. However, neither corporation, nor any of its directors and officers, may be found monetarily liable for a failure to create or pursue public benefit. For-profit corporations and their officers and directors are not subject to a requirement to pursue public benefit.¹³

As of May 2017, 32 states permitted benefit corporations.¹⁴ Four states have legislation that allow social purpose corporations.¹⁵ There are approximately 3,500 benefit corporations nationwide, including Kickstarter, Ben & Jerry’s, Patagonia, Warby Parker, Etsy, and King Arthur Flour, all of which operate with a commitment to environmental and social factors, as well as to their shareholders’ financial interests.¹⁶ Virginia Community Capital was the first federally chartered bank to become a benefit corporation in April 2016.¹⁷

Annual Benefit Report

Benefit corporations must prepare an annual benefit report (report). The report must contain information such as:¹⁸

- A description of the ways the benefit corporation pursued the general and specific public benefit goal;
- An explanation of the third-party standard against which the benefit corporation’s performance is assessed, if applicable;¹⁹
- The contact information of certain directors and officers; and
- If any benefit director resigned from, refused to stand for reelection to, or was removed from his or her position.

A social purpose corporation’s report is substantially similar to a benefit corporation’s report, but it need only describe how it pursued a particular rather than general public benefit.²⁰

¹⁰ Stuart Cohn & Stuart Ames, *Now It’s Easier Being Green: Florida’s New Benefit and Social Purpose Corporations*, 88-9 FLA. BAR. J. 38, AT 2 (Nov. 2014) available at <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjnjournal01.ns%2FArticles%2FC655F4F9D7D009B585257D7E004BCB18> (last visited Jan. 24, 2018).

¹¹ s. 607.506, F.S.

¹² s. 607.606, F.S.

¹³ ss. 607.602, 607.511, and 607.611, F.S.

¹⁴ BENEFIT CORPORATION GATEWAY, *State-by-State Guide*, <http://www.benefitcorporationgateway.org/h/entrepreneurs-main/state-by-state-guide/> (last visited Jan. 19, 2018).

¹⁵ Rob Esposito & Shawn Pelsinger, *Social Enterprise Law Tracker: Status Tool*, <http://socentlawtracker.org/#/spsc> (last visited Jan. 24, 2018).

¹⁶ Carol Hazard, *Community Capital Bank becomes first B Corp bank in U.S.*, RICHMOND TIMES-DISPATCH (Apr. 4, 2016), http://www.richmond.com/business/community-capital-bank-becomes-first-b-corp-bank-in-u/article_f26a9996-3f21-5b87-b1fb-c1011730a8ba.html; see also B-LAB, *FAQ’s*, <http://benefitcorp.net/faq> (last visited Jan. 24, 2018).

¹⁷ CISION PRWEB, *For-Profit Bank Becomes First Benefit Corporation Bank in U.S.* (Apr. 4, 2016), <http://www.prweb.com/releases/2016/03/prweb13301237.htm> (last visited Jan. 24, 2018).

¹⁸ s. 607.612, F.S.

¹⁹ A recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. ss. 607.502(10) and 607.602(10), F.S.

²⁰ s. 607.512(1)(a)1., F.S.

These annual benefit reports are not required to be audited or certified by a third-party standards provider, such as B-Lab, unless a corporation's articles of incorporation state otherwise.²¹

Additionally, a social purpose or benefit corporation must deliver their annual benefit report to each of its shareholders, and post the report publicly.²² If a social purpose or benefit corporation fails to publicly furnish its annual benefit report, one of its shareholders may bring an action to compel its provision in circuit court. The court may award the suing shareholder costs and attorney's fees.²³

Effect of Proposed Changes

The bill allows state banks and trust companies to form as a social purpose or benefit corporation. Specifically, the bill allows the social purpose and benefit corporations statutes to extend to state banks and trust companies, and permits stockholders, directors, and committees of such financial institutions to hold authorized meetings.

The bill allows social purpose corporations and benefit corporations to omit information required to be kept confidential under state or federal law from their annual benefit report. If the social purpose corporation or benefit corporation does omit such information, however, it must expressly state that it did so in its annual benefit report. This allows banks and trust companies that form as social purpose or benefit corporations to maintain the confidentiality of information that is required to be confidential under the Financial Institutions Codes.

The bill authorizes state banks and trust companies to modify their form articles of incorporation with OFR to include provisions required for social purpose or benefit corporations, and to approve special stock offering plans.

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

B. SECTION DIRECTORY:

- Section 1 Amends s. 607.512, F.S., authorizing the omission of certain confidential information from an annual benefit report of a social purpose corporation.
- Section 2 Amends s. 607.612, F.S., authorizing the omission of certain confidential information from an annual benefit report of a benefit corporation.
- Section 3 Amends s. 658.23, F.S., authorizing the modification of form articles of incorporation to include provisions required for a social purpose or benefit corporation.
- Section 4 Amends s. 658.30, F.S., allowing state banks and trust companies to form as a social purpose of benefit corporation, and stockholders, directors, and committees of financial institutions to hold authorized meetings.
- Section 5 Amends s. 658.36, F.S., authorizing a social purpose or benefit financial institution to approve special stock offering plans.
- Section 6 Provides an effective date.

²¹ ss. 607.512(3) and 607.612(4), F.S.

²² ss. 607.513 and 607.613, F.S.

²³ ss. 607.513(4) and 607.613, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow state banks and trust companies to form as social purpose or benefit corporations, which could allow for more innovation in the way banks function or divestment of stockholders in such institutions based on factors associated with banks broadening their investment opportunities.

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

None.

1 A bill to be entitled
 2 An act relating to the Florida Business Corporation
 3 Act; amending s. 607.512, F.S.; authorizing the
 4 omission of certain confidential information from an
 5 annual benefit report of a social purpose corporation;
 6 amending s. 607.612, F.S.; authorizing the omission of
 7 certain confidential information from an annual
 8 benefit report of a benefit corporation; amending s.
 9 658.23, F.S.; authorizing the modification of form
 10 articles of incorporation to include provisions
 11 required for a social purpose or benefit corporation;
 12 amending s. 658.30, F.S.; providing that certain
 13 provisions of the act extend to financial institutions
 14 in certain circumstances; authorizing stockholders,
 15 directors, and committees of financial institutions to
 16 hold meetings as authorized by the act; amending s.
 17 658.36, F.S.; authorizing a financial institution to
 18 approve special stock offering plans notwithstanding
 19 provisions of the act; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (4) is added to section 607.512,
 24 Florida Statutes, to read:
 25 607.512 Preparation of annual benefit report.-

26 (4) Notwithstanding the requirements of this section,
 27 information that is required to be included in the annual
 28 benefit report but that is otherwise required by applicable
 29 regulatory state or federal law to be kept confidential may be
 30 omitted from the annual benefit report. If such information is
 31 omitted, the annual benefit report shall expressly state that
 32 information required by this section has been omitted in
 33 reliance on this subsection.

34 Section 2. Subsection (5) is added to section 607.612,
 35 Florida Statutes, to read:

36 607.612 Preparation of annual benefit report.—

37 (5) Notwithstanding the requirements of this section,
 38 information that is required to be included in the annual
 39 benefit report but that is otherwise required by applicable
 40 regulatory state or federal law to be kept confidential may be
 41 omitted from the annual benefit report. If such information is
 42 omitted, the annual benefit report shall expressly state that
 43 information required by this section has been omitted in
 44 reliance on this subsection.

45 Section 3. Subsection (2) of section 658.23, Florida
 46 Statutes, is amended to read:

47 658.23 Submission of articles of incorporation; contents;
 48 form; approval; filing; commencement of corporate existence;
 49 bylaws.—

50 (2) The articles of incorporation shall contain:

- 51 (a) The name of the proposed bank or trust company.
- 52 (b) The general nature of the business to be transacted or
- 53 a statement that the corporation may engage in any activity or
- 54 business permitted by law. Such statement shall authorize all
- 55 such activities and business by the corporation.
- 56 (c) The amount of capital stock authorized, showing the
- 57 maximum number of shares of par value common stock and of
- 58 preferred stock, and of every kind, class, or series of each,
- 59 together with the distinguishing characteristics and the par
- 60 value of all shares.
- 61 (d) The amount of capital with which the corporation will
- 62 begin business, which may not be less than the amount required
- 63 by the office pursuant to s. 658.21.
- 64 (e) A provision that the corporation is to have perpetual
- 65 existence unless existence is terminated pursuant to the
- 66 financial institutions codes.
- 67 (f) The initial street address of the main office of the
- 68 corporation, which shall be in this state.
- 69 (g) The number of directors, which shall be five or more,
- 70 and the names and street addresses of the members of the initial
- 71 board of directors.
- 72 (h) A provision for preemptive rights, if applicable.
- 73 (i) A provision authorizing the board of directors to
- 74 appoint additional directors, pursuant to s. 658.33, if
- 75 applicable.

76
 77 The office shall provide to the proposed directors form articles
 78 of incorporation which must include only those provisions
 79 required under this section or under ~~part I of~~ chapter 607. The
 80 form articles may be modified by the applicant to include any of
 81 the additional provisions required by part II or part III of
 82 chapter 607 which are necessary for a corporation to be a social
 83 purpose or benefit corporation. The form articles shall be
 84 acknowledged by the proposed directors and returned to the
 85 office for filing with the Department of State.

86 Section 4. Section 658.30, Florida Statutes, is amended to
 87 read:

88 658.30 Application of the Florida Business Corporation
 89 Act.—

90 (1) When not in direct conflict with or superseded by
 91 specific provisions of the financial institutions codes, the
 92 provisions of the Florida Business Corporation Act, part I of
 93 chapter 607, and, if applicable, part II or part III of chapter
 94 607, extend to state banks and trust companies formed under the
 95 financial institutions codes. This section shall be liberally
 96 construed to accomplish the purposes stated herein.

97 (2) Without limiting the generality of subsection (1),
 98 stockholders, directors, and committees of state banks and trust
 99 companies may hold meetings in any manner authorized by part I
 100 of chapter 607, and, if applicable, part II or part III of

101 chapter 607, and any action by stockholders, directors, or
 102 committees required or authorized to be taken at a meeting may
 103 be taken without a meeting in any manner authorized by part I of
 104 chapter 607.

105 Section 5. Subsection (3) of section 658.36, Florida
 106 Statutes, is amended to read:

107 658.36 Changes in capital.—

108 (3) If a bank or trust company's capital accounts have
 109 been diminished by losses to less than the minimum required
 110 pursuant to the financial institutions codes, the market value
 111 of its shares of capital stock is less than the present par
 112 value, and the bank or trust company cannot reasonably issue and
 113 sell new shares of stock to restore its capital accounts at a
 114 share price of par value or greater of the previously issued
 115 capital stock, the office, notwithstanding any other provisions
 116 of part I of chapter 607 and, if applicable, part II or part III
 117 of chapter 607, or the financial institutions codes, may approve
 118 special stock offering plans.

119 (a) Such plans may include, but are not limited to,
 120 mechanisms for stock splits including reverse splits;
 121 revaluations of par value of outstanding stock; changes in
 122 voting rights, dividends, or other preferences; and creation of
 123 new classes of stock.

124 (b) The plan must be approved by majority vote of the bank
 125 or trust company's entire board of directors and by holders of

126 two-thirds of the outstanding shares of stock.

127 (c) The office shall disapprove a plan that provides
 128 unfair or disproportionate benefits to existing shareholders,
 129 directors, executive officers, or their related interests. The
 130 office shall also disapprove any plan that is not likely to
 131 restore the capital accounts to sufficient levels to achieve a
 132 sustainable, safe, and sound financial institution.

133 (d) For any bank or trust company that the office
 134 determines to be a failing financial institution pursuant to s.
 135 655.4185, the office may approve special stock offering plans
 136 without a vote of the shareholders.

137 Section 6. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1317 Pub. Rec./Autopsy Records
SPONSOR(S): Jacobs
TIED BILLS: IDEN./SIM. BILLS: SB 1850

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

SUMMARY ANALYSIS

Current law provides that a photograph or video or audio recording of an autopsy in the custody of a medical examiner is confidential and exempt from public records requirements. A surviving spouse may view and copy a photograph or video recording or listen to or copy the audio recording of the deceased spouse's autopsy. If there is no surviving spouse, then the surviving parents have access to such records. If there is no surviving spouse or parent, then an adult child has access to such records. The surviving relative with whom authority rests to obtain confidential and exempt autopsy records may designate in writing an agent to obtain those records. In addition, pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy. The identity of the deceased must remain confidential and exempt. The custodian of such records may not permit any other person to view or copy an autopsy photograph or video recording or to listen to or copy the audio recording without a court order.

The bill expands the public record exemption for photographs, videos, and audio records of an autopsy to make autopsy reports or related written records that personally identify the deceased and that are held by a medical examiner confidential and exempt. The records may be released at the earlier of:

- 10 days after the date of death; or
- Immediately after law enforcement notifies a surviving spouse, parent, legal guardian, or adult child of the deceased of any request to obtain the autopsy report, written record, or name of the deceased.

The bill adds legal guardians to the list of persons, assuming the decedent has no surviving spouse, who have access to photographs, videos, or audio recordings of an autopsy.

The bill provides for retroactive application of the public record exemption. It also provides that the exemption will repeal on October 2, 2023, unless reviewed and saved from repeal by the Legislature. Finally, the bill provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on the state and may have a minimal impact on 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 expands the public record exemption for certain records relating to autopsies; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

Autopsy Records

A photograph, video, or audio recording of an autopsy in the custody of a medical examiner⁸ is confidential and exempt⁹ from public records requirements.¹⁰ However, a surviving spouse may view and copy a photograph or video recording or listen to or copy the audio recording of the deceased spouse's autopsy.¹¹ If there is no surviving spouse, then the surviving parents have access to such records.¹² If there is no surviving spouse or parent, then an adult child has access to such records.¹³ In

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 For purposes of the exemption, the term "medical examiner" means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to chapter 406, F.S. The term also includes any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a photograph or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties. Section 406.135(1), F.S.

⁹ 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).

¹⁰ Section 406.135(2), F.S.

¹¹ *Id.*

¹² *Id.*

addition, the surviving relative with whom authority rests to obtain confidential and exempt autopsy records may designate in writing an agent to obtain those records.¹⁴

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy.¹⁵ The identity of the deceased must remain confidential and exempt.¹⁶

The custodian of such records may not permit any other person to view or copy an autopsy photograph or video recording or to listen to or copy the audio recording without a court order.¹⁷ If such a court proceeding is initiated, the surviving spouse must receive reasonable notice of the petition and of the opportunity to be present and heard at any hearing on the matter.¹⁸ If there is no surviving spouse, then such notice must be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased.¹⁹ Upon a showing of good cause,²⁰ the court may issue an order authorizing a person to view or copy a photograph or video recording of an autopsy or to listen to or copy the audio recording.²¹

This public records exemption does not apply to such photographs or video or audio recordings submitted as part of a criminal or administrative proceeding.²²

It is a third degree felony for any:

- Custodian of such photograph or video or audio recording who willfully and knowingly violates the provisions of the exemption.²³
- Person who willfully and knowingly violates a court order issued pursuant to s. 406.135, F.S.²⁴

Effect of the Bill

The bill expands the public record exemption for autopsy records to make autopsy reports or related written records that personally identify the deceased and that are held by a medical examiner confidential and exempt. The records may be released at the earlier of:

- 10 days after the date of death; or
- Immediately after law enforcement notifies a surviving spouse, parent, legal guardian, or adult child of the deceased of any request to obtain the autopsy report, written record, or name of the deceased person.

The bill adds legal guardians to the list of persons, assuming the decedent has no surviving spouse, who have access to photographs, videos, or audio recordings of an autopsy.

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

¹³ *Id.*

¹⁴ Section 406.135(3)(a), F.S.

¹⁵ Section 406.135(3)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 406.135(3)(c), F.S.

¹⁸ Section 406.135(5), F.S.

¹⁹ *Id.*

²⁰ In determining good cause, the court must consider whether 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. In all cases, the viewing, copying, or listening must be under the direct supervision of the records custodian. Section 406.135(4)(b)-(c), F.S.

²¹ Section 406.135(4)(a), F.S.

²² Section 406.135(7), F.S.

²³ Section 406.135(6)(a), F.S.

²⁴ Section 406.135(6)(b), F.S.

The bill states the public necessity as required by the Florida Constitution, specifying that the exemption is necessary because the deceased's family may unexpectedly encounter new information obtained from an autopsy report or related written record regarding the death of a loved one which, after its publication, could cause the family to experience trauma, sorrow, humiliation, or emotional injury. As such, the deceased's family should be given a reasonable time to be notified before any highly sensitive autopsy report or related written record is released to the public.

Lastly, the bill provides for retroactive application of the expanded public record exemption.²⁵

B. SECTION DIRECTORY:

Section 1 amends s. 406.135, F.S., relating to the confidentiality afforded to autopsies.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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 medical examiners responsible for complying with public record requests may require training related to expansion of the public record exemption. In addition, such staff could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of local governments.

²⁵ 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).

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 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 Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill expands 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 expands a public record exemption for records created during the course of an autopsy. The release of such records could cause the family of the decedent to experience trauma, sorrow, humiliation, or emotional injury. The exemption allows the records to be released at the earlier of 10 days after the date of death or immediately after law enforcement notifies a surviving spouse, parent, legal guardian, or adult child of the deceased of any request to obtain the autopsy report, written record, or name of the deceased person. 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: Notification by Law Enforcement

The bill provides that the autopsy reports and related written records can be released at the earlier of 10 days after the date of death or immediately after law enforcement notifies the decedent's next of kin that a public record request has been received. However, the bill does not require the medical examiner to notify law enforcement of such a request, nor does it require law enforcement to notify the next of kin that such a public record request has been received.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.135, F.S.; revising the definition of the term
 4 "medical examiner"; providing that a legal guardian
 5 shall have access, under certain circumstances, to a
 6 photograph or video or audio recording of an autopsy
 7 held by a medical examiner; providing that a legal
 8 guardian shall be given reasonable notice of, a copy
 9 of, and reasonable notice of an opportunity to be
 10 present and heard at any hearing on a petition to view
 11 or make a copy of such photograph or recording under
 12 certain circumstances; providing an exemption from
 13 public records requirements for a specified time after
 14 the date of death or after a certain notification
 15 occurs for an autopsy report or a related written
 16 record held by a medical examiner which personally
 17 identifies the deceased; providing for future
 18 legislative review and repeal of the exemption;
 19 providing criminal penalties for any custodian of an
 20 autopsy report or a certain record who willfully and
 21 knowingly violates specified provisions; providing
 22 retroactive applicability; providing a statement of
 23 public necessity; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsections (1), (2), and (5) of section 406.135, Florida Statutes, are amended, present subsections (6) through (8) of that section are redesignated as (7) through (9), respectively, present subsections (6) and (8) are amended, and a new subsection (6) is added to that section, to read:

406.135 Autopsies; confidentiality of reports, related written records, photographs, and video and audio recordings; exemption.—

(1) For the purpose of this section, the term "medical examiner" means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to this chapter, as well as any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of an autopsy report or a related written record that personally identifies the deceased, or a photograph or audio or video recording of an autopsy, in the course of assisting a medical examiner in the performance of his or her official duties.

(2) A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy. If there is no surviving spouse, ~~then~~ the surviving parents or legal guardians shall have access to

51 such records. If there is no surviving spouse, ~~or~~ parent, or
 52 legal guardian, then an adult child shall have access to such
 53 records.

54 (5) A surviving spouse shall be given reasonable notice of
 55 a petition filed with the court to view or copy a photograph or
 56 video recording of an autopsy or a petition to listen to or copy
 57 an audio recording, a copy of such petition, and reasonable
 58 notice of the opportunity to be present and heard at any hearing
 59 on the matter. If there is no surviving spouse, ~~then~~ such notice
 60 must be given to the parents or legal guardians of the deceased,
 61 and if the deceased has no surviving living parent or legal
 62 guardian, then to the adult children of the deceased.

63 (6) (a) An autopsy report or a related written record that
 64 personally identifies the deceased and that is held by a medical
 65 examiner is confidential and exempt from s. 119.07(1) and s.
 66 24(a), Art. I of the State Constitution for the earlier of 10
 67 days after the date of death or immediately after law
 68 enforcement notifies a surviving spouse, parent, legal guardian,
 69 or adult child of the deceased of any request to obtain the
 70 autopsy report, written record, or name of the deceased person.

71 (b) The exemption in paragraph (a) is subject to the Open
 72 Government Sunset Review Act in accordance with s. 119.15 and
 73 shall stand repealed on October 2, 2023, unless reviewed and
 74 saved from repeal through reenactment by the Legislature.

75 ~~(7) (a) (6) (a)~~ Any custodian of an autopsy report or a

76 related written record that personally identifies the deceased,
 77 or a photograph or video or audio recording of an autopsy, who
 78 willfully and knowingly violates this section commits a felony
 79 of the third degree, punishable as provided in s. 775.082, s.
 80 775.083, or s. 775.084.

81 (b) Any person who willfully and knowingly violates a
 82 court order issued pursuant to this section commits a felony of
 83 the third degree, punishable as provided in s. 775.082, s.
 84 775.083, or s. 775.084.

85 ~~(9)(8)~~ This exemption applies to records held before, on,
 86 or after the effective date of this act shall be given
 87 ~~retroactive application.~~

88 Section 2. The Legislature finds that it is a public
 89 necessity that autopsy reports and related written records that
 90 personally identify the deceased be made confidential and exempt
 91 from the requirements of s. 119.07(1), Florida Statutes, and s.
 92 24(a), Article I of the State Constitution for 10 days after the
 93 date of death or until the family has been notified by law
 94 enforcement. The Legislature finds that the deceased's family
 95 may unexpectedly encounter new information obtained from an
 96 autopsy report or related written record regarding the death of
 97 a loved one which is published or conveyed by word of mouth,
 98 causing the family to experience trauma, sorrow, humiliation, or
 99 emotional injury. The Legislature finds that, although access
 100 delayed is access denied, the deceased's family should be given

101 a reasonable time to be notified before any highly sensitive
102 autopsy report or related written record that personally
103 identifies the deceased is released to the public. The
104 Legislature further finds that the exemption provided in this
105 act should be given retroactive application because it is
106 remedial in nature.

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



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Administration Subcommittee

3 Representative Jacobs offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 66-94 and insert:

7 24(a), Art. I of the State Constitution for 10 days after the
8 medical examiner has completed the report, except that a
9 surviving spouse may view and copy the records. If there is no
10 surviving spouse, the surviving parents or legal guardians shall
11 have access to such records. If there is no surviving spouse,
12 parent, or legal guardian, an adult child shall have access to
13 such records.

14 (b) The exemption in paragraph (a) is subject to the Open
15 Government Sunset Review Act in accordance with s. 119.15 and



Amendment No.

16 shall stand repealed on October 2, 2023, unless reviewed and
17 saved from repeal through reenactment by the Legislature.

18 (7) (a) ~~(6) (a)~~ Any custodian of an autopsy report or a
19 related written record that personally identifies the deceased,
20 or a photograph or video or audio recording of an autopsy, who
21 willfully and knowingly violates this section commits a felony
22 of the third degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084.

24 (b) Any person who willfully and knowingly violates a
25 court order issued pursuant to this section commits a felony of
26 the third degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 (9) ~~(8)~~ This exemption applies to records held before, on,
29 or after the effective date of this act shall be given
30 retroactive application.

31 Section 2. The Legislature finds that it is a public
32 necessity that autopsy reports and related written records that
33 personally identify the deceased be made confidential and exempt
34 from the requirements of s. 119.07(1), Florida Statutes, and s.
35 24(a), Article I of the State Constitution for 10 days after the
36 medical examiner has completed the report. The Legislature finds
37 that the deceased's family

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1317 (2018)

Amendment No.

41 | Remove lines 14-17 and insert:
42 | the medical examiner has completed the autopsy report;
43 | providing for future

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1397 Hardee County Economic Development Authority, Hardee County
SPONSOR(S): Local, Federal & Veteran Affairs Subcommittee; Albritton
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N, As CS	Rivera	Miller
2) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>JA</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

The state levies an excise tax on the severance of phosphate rock from Florida soil, a portion of which is distributed to the counties from which the phosphate is severed to be used for phosphate-related expenses. Counties designated as a rural area of opportunity receive a portion without the limitation to use it for phosphate-related expenses. Payment is made to the county or a legislatively-created local authority to promote and direct the economic development of the county.

The Hardee County Economic Development Authority (Authority) is an independent special district created in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County. The Authority can appropriate the phosphate tax revenue received from the state but has no taxing authority.

The Authority is governed by a nine member panel serving staggered terms composed of the director of the Agency for Workforce Innovation, the chair of Enterprise Florida, the president of the Hardee County Farm Bureau, the president of the Hardee County Chamber of Commerce, and the chair of the Phosphate Council, or their designees, and four members appointed by the Hardee County Board of Commissioners. The County Commissioners appoint two members at-large and two from a pool of candidates nominated by the municipalities within Hardee County. Appointed members serve three year terms and receive no compensation but may be reimbursed for travel and per diem expenses if they reside outside of the county. An appointed member serves as interim chair to call the Authority's first meeting and the panel must elect a chair to serve a two year term. The members may elect other officers as provided by the Authority's bylaws.

The bill replaces the five specified entity representatives with the Hardee County Board of Commissioners, and revises how the remaining four members are appointed. The President of the Heartland Workforce Investment Board, Inc., in Hardee County will serve as one member and the municipalities of Bowling Green, Wauchula, and Zolfo Springs, each appoint one member. The bill increases appointed member terms to four years and sets the county commissioner members' terms to run concurrent with their commission seat terms.

The bill designates the chair of the Board of County Commissioners as interim chair to call the Authority's first meeting. The members may elect any sitting member to be the chair. The bill removes the provision that the members may elect other officers as provided by the Authority's bylaws.

The bill removes the provision allowing the authority to reimburse members for their travel or per diem expenses when the members reside outside of the county and the provision requiring the appointed members to reside within Hardee County.

The bill provides the act takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent and Dependent Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.¹ A special district may be created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.² A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.³ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁴

A "dependent special district" is a special district in which the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.⁵ The county or municipality upon which the district will be dependent must adopt its charter by local ordinance.⁶ The Legislature may create a dependent special district by special act at the request or with the consent of the local government upon which the special district will be dependent.⁷

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.⁸ Independent special districts are created by the Legislature unless otherwise authorized by general law.⁹ The charter of a newly-created district must meet minimum statutory requirements which includes a statement that it is an independent special district.¹⁰

¹ Section 189.012(6), F.S. The Legislature adopted ch. 189, F.S., in 1989, to provide uniform statutes for the definition, creation, and operation of special districts. *See s. 189.011(1), F.S.*

² Section 189.012(6), F.S.

³ *See ss. 189.02(4)-(5) and 189.031(3), F.S.* Counties and municipalities have "home rule" powers allowing them to enact ordinances not inconsistent with general or special law for governmental, corporate, or proprietary purposes. Special districts do not possess home rule powers and are permitted to impose only those taxes, assessments, or fees authorized by special or general law. *See art. VIII, ss. 1(f) and (g), 2(b), s. 6(e), Fla. Const. and ss. 166.021 and 125.01, F.S. See also 2017 – 2018 Local Gov't Formation Manual, p. 70, at <http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (accessed 1/26/2018)(hereinafter Local Government Manual).*

⁴ Local Government Manual, p. 64.

⁵ Section 189.012(2), F.S.

⁶ Sections 189.011(1) and 189.02(1), F.S. A county can create dependent special districts within the boundary lines of the county, subject to the approval of the governing body of the incorporated area affected. Section 189.02(2), F.S.

⁷ Section 189.02(5), F.S. Despite the statutory limitations, the Legislature is permitted under the state Constitution to create a dependent special district without the authorization of the local governing body upon which the district will depend. *See art. VIII, s. 6(b), Fla. Const.*

⁸ Section 189.012(3), F.S.

⁹ Section 189.031(4), F.S.

¹⁰ Section 189.031(2),(3) & (5), F.S.

Rural Economic Development Initiative

The Legislature created the Rural Economic Development Initiative (REDI) to encourage and facilitate the location and expansion of major economic development projects in rural communities and regions.¹¹ A “rural area of opportunity” is a rural community,¹² or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.¹³ The Governor may designate up to three rural areas of opportunity by executive order making these areas priority assignments for REDI and allowing the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive.¹⁴

Phosphate Rock Severance Tax

The state levies an excise tax on those severing phosphate rock from Florida soils or waters for commercial use, which tax is collected, administered, and enforced by the Department of Revenue (DOR).¹⁵ Under the current tax scheme, counties designated as rural areas of opportunity that have phosphate mining within the county receive 8.9 percent of the tax revenue created by the county.¹⁶ DOR distributes the tax revenue to the county or the local authority designated to promote and direct the economic development of the county, if the Legislature has established one.¹⁷

Hardee County Economic Development Authority

Hardee County has been designated a rural area of opportunity.¹⁸ The Hardee Economic Development Authority (Authority) is an independent special district created by special act in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County.¹⁹ The Authority must adopt administrative rules and hold public meetings pursuant to general law, establish procedures for soliciting and awarding grants, direct the county clerk to expend funds upon proper authorization, and create a

¹¹ Section 288.0656(1)(a)-(b), F.S. REDI is within the Department of Economic Opportunity and state and regional agencies are authorized to participate. REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems which affect the fiscal, economic, and community viability of Florida’s economically distressed rural communities to find ways to balance environmental and growth management issues with local needs. Section 288.0656(3), F.S.

¹² Section 288.0656(2)(e), F.S. A “rural community” is:

1. A county, or a municipality within a county, with a population of 75,000 or fewer;
2. A county, or a municipality within a county, with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer;
3. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified and verified by the department.

“Economic distress” means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities. Section 288.0656(2)(c), F.S.

¹³ Section 288.0656(2)(d), F.S.

¹⁴ Section 288.0656(7)(a), F.S. REDI may recommend up to three rural areas of opportunity to the Governor. Designation as a rural area of opportunity under this subsection shall be contingent upon the execution of a memorandum of agreement among the department; the governing body of the county; and the governing bodies of any municipalities to be included within a rural area of opportunity. Section 288.0656(7)(b), F.S.

¹⁵ Section 211.3103(1), F.S. The tax is in addition to any ad valorem taxes levied upon the separately assessed mineral interest in land the rock was located, or any other tax, permit, or license fee imposed by the state or counties. Section 211.3103(4), F.S.

¹⁶ Section 211.3103(6)(b), F.S. After December 31, 2022, the percentage will increase to 10 percent. Section 211.3103(6)(a), F.S.

¹⁷ Section 211.3103(6)(a)4., F.S.

¹⁸ Fla. Exec. Order No. 16-150 (June 27, 2016), at https://www.flgov.com/wp-content/uploads/orders/2016/EO_16-150.pdf. (accessed 1/26/18).

¹⁹ Ch. 2004-394, Laws of Fla., as amended by chs. 2006-349 and 2010-271, Laws of Fla., and ss. 211.3103(6)(a)4. and (5), F.S.

standardized application form for the award of grants by the Authority. The Authority's discretionary power includes the power to appropriate funds paid to the clerk by the state's chief financial officer in distributing county's portion of the state's excise tax on the severance of phosphate rock, conduct business and receive funds on behalf of the Authority, approve or amend time and cost sheets submitted county employees appointed to work for the Authority, and any other acts reasonable and necessary to implement and enforce the charter and rules adopted in accordance with the charter. The Authority may appropriate funds paid to the clerk by the state's chief financial officer in distributing the county's portion of the state's excise tax on the severance of phosphate rock, but cannot levy taxes or impose fees within the county.²⁰

The Authority has a governing body composed of nine members serving staggered terms.²¹ Four members are appointed and five members are designated from the following entities:

1. The President of the Hardee County Farm Bureau, or designee;
2. The director of the Agency for Workforce Innovation, or designee;
3. The chair of Enterprise Florida, or designee;
4. The chair of the Florida Phosphate Council, or designee; and
5. The president of the Hardee County Chamber of Commerce, or designee.²²

The appointed members are selected by the Hardee County Board of Commissioners (County Commission) in the following manner:

- Two members are designated at-large; and
- The remaining two members are selected from a pool of nominees consisting of two persons designated by the governing bodies of each municipality within county.²³

Appointed members serve three year terms and vacancies are filled by the appointing authority.²⁴ Members are not compensated but can be reimbursed for travel and per diem expenses if they reside outside of the county pursuant to the charter and general law.²⁵ Members may serve successive terms.²⁶ Members, other than members who are the heads of state agencies, must reside in the county.²⁷

An appointed member serves as interim chair to call the first meeting of the Authority.²⁸ The members must elect a chair to serve a two year term and may elect other officers as the Authority's bylaws permit.²⁹ A majority of the members constitutes a quorum and each member is entitled to one vote.³⁰

Effect of Proposed Changes

The bill changes the composition of the nine members of the Authority. The five entity representatives are replaced with the commissioners of the County Commission. The first of the four appointed members will be the President of the Heartland Workforce Investment Board, Inc., in Hardee County. The governing bodies of the three municipalities within the county (the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs) each will appoint one of the remaining three members.

²⁰ See Ch. 2004-394, s. 4(1), Laws of Fla.

²¹ Ch. 2004-394, s. 3(1), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²² *Id.*

²³ *Id.* The municipalities within Hardee County are the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs. See Local Government Manual, *supra*, n. 3, at page 99.

²⁴ Ch. 2004-394, s. 3(2), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁵ Ch. 2004-394, s. 3(4), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁶ Ch. 2004-394, s. 3(2), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁷ Ch. 2004-394, s.3(1)(f), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁸ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla. The member at-large designated to be the interim chair is the member that would serve an initial term of 3 years whereas the other at-large member served an initial term of 2 years.

²⁹ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

³⁰ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

The bill increases the terms of the appointed members to four years and sets the terms of the County Commission members to run concurrent with their commission terms. The bill replaces the appointed member designated to serve as interim chair with the chair of the County Commission to call the first meeting. The bill provides the members may elect any sitting member to be chair.

The bill removes the clause providing that members may elect other officers as designated by the Authority's bylaws and the clause requiring that members must reside in the county. The bill removes the provision allowing the Authority to reimburse members who reside out of the county for their travel and per diem expenses.

The bill provides the act takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends ch. 2004-394, as amended by ch. 2006-349, replacing the five named members of the Authority with the Hardee County Board of Commissioners, re-defining how the remaining four members will be appointed to the Authority, and disallowing members residing outside of the county to be reimbursed for travel and per diem expenses.

Section 2. Providing the act will take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 9 and December 10, 2017

WHERE? *The Ledger*, Lakeland, Polk 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 neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changes the County Commission appointment of the at-large member to the appointment of the President/CEO of the Heartland Workforce Investment Board, Inc., in Hardee County.

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 Hardee County Economic
 3 Development Authority, Hardee County; amending chapter
 4 2004-394, Laws of Florida, as amended; revising
 5 membership of the authority; providing that members
 6 shall not be reimbursed for travel and per diem
 7 expenses; providing an effective date.

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

10
 11 Section 1. Section 3 of chapter 2004-394, Laws of Florida,
 12 as amended by chapter 2006-349, Laws of Florida, is amended to
 13 read:

14 Section 3. Authority composition; procedures.-

15 (1) The authority shall consist of the five members of the
 16 ~~commission nine members serving staggered terms~~ and four members
 17 appointed ~~selected~~ in the following manner:

18 (a) The President/CEO of the Heartland Workforce
 19 Investment Board, Inc., in Hardee County ~~The President of the~~
 20 ~~Hardee County Farm Bureau or the president's designee for an~~
 21 ~~initial term of 3 years;~~

22 (b) One member appointed by the governing body of Wauchula
 23 ~~The director of the Agency for Workforce Innovation or its~~
 24 ~~successor agency or the director's designee for an initial term~~
 25 ~~of 2 years;~~

26 (c) One member appointed by the governing body of Bowling
 27 Green ~~The chairman of Enterprise Florida or its successor agency~~
 28 ~~or the chairman's designee for an initial term of 2 years; and~~

29 (d) One member appointed by the governing body of Zolfo
 30 Springs. ~~The chairman of the Florida Phosphate Council or the~~
 31 ~~chairman's designee for an initial term of 3 years;~~

32 ~~(e) The president of the Hardee County Chamber of Commerce~~
 33 ~~or the president's designee for an initial term of 3 years; and~~

34 ~~(f) Four members appointed by the commission. Two of these~~
 35 ~~shall be designated at large, and of these one shall serve an~~
 36 ~~initial term of 3 years and one shall serve an initial term of 2~~
 37 ~~years. One of the remaining commission appointments shall be~~
 38 ~~designated Seat 8 and the appointee shall be appointed for an~~
 39 ~~initial term of 2 years; the last commission appointment shall~~
 40 ~~be designated Seat 9 and the appointee shall be appointed for an~~
 41 ~~initial term of 3 years. Persons appointed to Seat 8 and Seat 9~~
 42 ~~shall be selected from a pool of nominees consisting of two~~
 43 ~~persons designated by the governing body of each municipality in~~
 44 ~~the county. All members except the members designated under~~
 45 ~~paragraphs (b) and (c) must be residents of the county. Initial~~
 46 ~~terms of office begin January 1, 2005.~~

47 (2) The five commissioner members shall serve terms
 48 concurrent with their commissioner terms. The four appointed
 49 members shall serve 4-year terms and may be reappointed. After
 50 ~~completion of the initial term, each appointed member shall~~

51 ~~serve a term of 3 years. If a vacancy occurs during the term of~~
 52 ~~an appointed member, the appointing authority shall fill the~~
 53 ~~appointment for the remainder of the term. A member may serve~~
 54 ~~successive terms.~~

55 (3) The chair of the commission shall serve as the interim
 56 chair for the purpose of calling the first meeting. The members
 57 may elect any sitting member of the authority as chair. The
 58 ~~members shall elect a chair from their number for a period of 2~~
 59 ~~years and may elect such other officers as they designate in the~~
 60 ~~written bylaws of the authority. The at-large member designated~~
 61 ~~by the commission for an initial 3-year term shall serve as~~
 62 ~~interim chair for the purpose of calling the first meeting of~~
 63 ~~the authority. A majority of the members constitute a quorum.~~
 64 Each member is entitled to one vote. An action of the authority
 65 is not binding unless it is taken at a meeting at which a
 66 majority of the members cast their votes in favor. The fiscal
 67 year of the authority begins October 1.

68 (4) Each member of the authority shall serve without
 69 compensation, ~~except that a member who resides outside the~~
 70 ~~county may be reimbursed for travel and per diem expenses as~~
 71 ~~provided by general law and as further provided by this act.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1437 Employment Services for Persons with Disabilities
SPONSOR(S): Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** SB 648

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

SUMMARY ANALYSIS

The Division of Blind Services (DBS), and the Division of Vocational Rehabilitation (division), are subdivisions of the Department of Education. DBS and the division, pursuant to statute, have both established statewide vocational rehabilitation programs for blind and disabled persons, respectively, for the purpose of maximizing employment opportunities for these individuals and to increase their independence and self-sufficiency. Participants in DOE's vocational rehabilitation programs are not currently considered employees of the state for the purpose of workers' compensation coverage. Workers' compensation coverage requires an employer to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.

The bill requires participants in an adult or youth work experience activity under either the DBS or the division be deemed an employee of the state for the purposes of workers' compensation coverage

The bill has a significant fiscal impact on state government expenditures from the State Risk Management Trust Fund. According to the Department of Financial Services, the Division of Risk Management (DRM) will incur additional expenditures associated with an annual increase of medical and indemnity workers compensation claims costs. DRM estimates that claims will increase by approximately \$166,000. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of Blind Services

The Division of Blind Services (DBS) is housed within the Department of Education (DOE).¹ It is the intent of the Legislature to establish a coordinated program of services which are available throughout Florida to individuals who are blind.² The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.³ DBS's program of services include the blind babies program, children's program, transition services, independent living program, vocational rehabilitative program, employer services, business enterprises program, rehabilitation center for the blind and visually impaired, and the braille and talking books library.⁴

The Rehabilitative Council for the Blind⁵ (RCB) is an advisory council responsible for assisting the DBS in the planning and development of statewide vocational rehabilitation programs and services pursuant to the Rehabilitation Act of 1973,⁶ as amended, to recommend improvements to such programs and services, and to perform specified functions.

Vocational Rehabilitation

The Division of Vocational Rehabilitation (division), located within the DOE,⁷ is designated as the administrative unit⁸ for the purposes of complying with the Rehabilitation Act of 1973, as amended. Under Florida law, an individual with a disability⁹ is eligible for vocational rehabilitative (VR) services if the person requires VR services to prepare for, engage in, or retain gainful employment.¹⁰ The division is responsible for determining eligibility of an individual for VR services.¹¹ The division is also responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.¹²

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommending improvements to such programs and services, and performing specified functions.¹³ The council is responsible for performing functions such as developing and reviewing state goals and priorities in accordance with federal law and evaluating VR program effectiveness.¹⁴

¹ Section 20.15(3)(e), F.S.

² Section 413.011(2), F.S.

³ *Id.*

⁴ *See About Blind Services*, FLORIDA DIVISION OF BLIND SERVICES, <http://dbs.myflorida.com/Information/index.html> (last visited Jan. 25, 2018).

⁵ Section 413.011(8), F.S. Members of the council are appointed by the Governor with the majority being blind or visually impaired. The council membership must include at least 13 members. Also, *see* Florida Division of Blind Services, *Rehabilitation Council*, <http://dbs.myflorida.com/Rehab-Council/index.html> (last visited Jan. 25, 2018).

⁶ 29 U.S.C. s. 701(b).

⁷ Section 20.15(3)(d), F.S.

⁸ Section 413.202, F.S.

⁹ Section 413.20(7), F.S., defines "disability" to mean a physical or mental impairment that constitutes or results in a substantial impediment to employment.

¹⁰ Section 413.30(1), F.S.

¹¹ Section 413.30(4), F.S.

¹² Section 413.207(1), F.S.

¹³ Section 413.405, F.S. Members of the council are appointed by the Governor. The council membership must include at least 15 members but no more than 25 at a time.

¹⁴ Section 413.405(9)(b), F.S.

Workers' Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment in exchange for giving up the right to sue the employer for negligence. In Florida, workers' compensation is governed by ch. 440, F.S., the "Workers' Compensation Law." The law prescribes coverage requirements, medical and indemnity benefits, the rights and responsibilities of employers, injured employees, medical providers, and carriers, as well as procedures for dispute resolution.

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.¹⁵ For such injuries, an employer is responsible for providing medical treatment,¹⁶ and compensation in the event of employee disability¹⁷ or death.¹⁸ Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.¹⁹

State Risk Management Program

The Division of Risk Management (DRM)²⁰ located within the Department of Financial Services (DFS) is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. DRM's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund.²¹ Agency premiums are based on loss experience, exposure, and a prorated share of the DRM's operating budget. Projected costs are derived from actuarial studies of the DRM's cash flow needs for claims and program expenses.²²

Effect of the Bill

The bill requires participants in an adult or youth work experience activity under either the DBS or the division be deemed an employee of the state for the purposes of workers' compensation coverage.

B. SECTION DIRECTORY:

Section 1 creates s. 413.015, F.S., relating to workers' compensation coverage for participants in an adult or youth work experience activity for blind individuals.

Section 2 creates s. 413.209, F.S., relating to workers' compensation coverage for participants in an adult or youth work experience activity in a vocational rehabilitation program.

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

¹⁵ Section 440.09(1), F.S.

¹⁶ Section 440.13(2), F.S.

¹⁷ Section 440.15, F.S.

¹⁸ Section 440.16, F.S.

¹⁹ *Coverage Requirements*, DIVISION OF WORKERS' COMPENSATION, <https://www.myfloridacfo.com/division/wc/Employer/coverage.htm> (last visited on Jan. 25, 2018).

²⁰ Section 20.121(2)(h), F.S.

²¹ Section 284.30, F.S.

²² See Division of Risk Management, Department of Financial Services, Fiscal Year 2016 Annual Report, <https://www.myfloridacfo.com/Division/Risk/documents/2015-2016Report.pdf> (last visited on Jan. 25, 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 Division of Risk Management (DRM) is expected to incur additional medical and indemnity claim costs for providing workers compensation benefits coverage to participants of training programs offered by the DBS and the division, operated within DOE. Currently, in similar training programs offered by the Department of Economic Opportunity (DEO), the division only covers the medical benefits of program participants. Based on five years of claims experience in the DEO training programs, DRM estimates that medical claim costs for the new program created in the bill will increase approximately \$128,000 annually. DRM also indicates that this cost estimate does not include ultimate developed costs, and is based on 966 additional participants from the DOE for these programs.

Additionally, DRM states that the above costs do not include indemnity payments. Unlike DEO participants, the participants in the blind and vocational rehabilitation training programs will now be eligible for indemnity payments. Based on DRM's aggregate claim data, approximately 8 percent of claims will result in indemnity payments. Although injury severity will influence the duration of indemnity payments, it is anticipated that adding 966 training participants will result in 23 additional claims per year. Based on aggregate claim data, DRM indicates that 8 percent of the anticipated claims (2) will result in indemnity payments. The National Council on Compensation Insurance estimates that the average Florida indemnity cost per claim is \$19,000. DRM estimates that annual indemnity claim payments for the new program created in the bill will be approximately \$38,000. However, DRM also suggests that if a training participant is injured severely, resulting in the receipt of permanent total benefits, that indemnity claims payments would greatly exceed \$19,000 for the life of the claim.²³

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.

²³ 2018 Agency Bill Analysis for SB 648, DEPARTMENT OF FINANCIAL SERVICES, on file with the Oversight, Transparency & Administration Subcommittee. SB 648 and HB 1437 are identical.

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 employment services for persons
 3 with disabilities; creating ss. 413.015 and 413.209,
 4 F.S.; specifying that participants in certain disabled
 5 persons' work experience activities are considered
 6 state employees for workers' compensation purposes;
 7 providing an effective date.

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

10
 11 Section 1. Section 413.015, Florida Statutes, is created
 12 to read:

13 413.015 Workers' compensation coverage for program
 14 participants.-A participant in an adult or youth work experience
 15 activity administered under this part shall be deemed an
 16 employee of the state for purposes of workers' compensation
 17 coverage.

18 Section 2. Section 413.209, Florida Statutes, is created
 19 to read:

20 413.209 Workers' compensation coverage for program
 21 participants.-A participant in an adult or youth work experience
 22 activity administered under this part shall be deemed an
 23 employee of the state for purposes of workers' compensation
 24 coverage.

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

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

1 A bill to be entitled
 2 An act relating to retirement; amending s. 121.101,
 3 F.S.; specifying the minimum amount of the factor used
 4 to calculate the cost-of-living adjustment of benefits
 5 for certain retirees and beneficiaries of the Florida
 6 Retirement System; providing a declaration of
 7 important state interest; providing an effective date.

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

10
 11 Section 1. Subsection (4) of section 121.101, Florida
 12 Statutes, is amended to read:

13 121.101 Cost-of-living adjustment of benefits.—

14 (4) For members whose effective retirement date is on or
 15 after July 1, 2011, the benefit of each retiree and annuitant
 16 shall be adjusted annually on July 1 as follows:

17 (a) For those retirees and annuitants who have never
 18 received a cost-of-living adjustment under this subsection, the
 19 amount of the monthly benefit payable for the 12-month period
 20 commencing on the adjustment date shall be the amount of the
 21 member's initial benefit plus an amount equal to a percentage of
 22 the member's initial benefit. This percentage is derived by
 23 dividing the number of months the member has received an initial
 24 benefit by 12, and multiplying the result by the factor
 25 calculated pursuant to paragraph (c).

26 (b) For those retirees and annuitants who have received a
 27 cost-of-living adjustment under this subsection, the adjusted
 28 monthly benefit shall be the amount of the monthly benefit being
 29 received on June 30 immediately preceding the adjustment date
 30 plus an amount determined by multiplying the benefit by the
 31 factor calculated pursuant to paragraph (c).

32 (c) The department shall calculate a cost-of-living factor
 33 for each retiree and beneficiary retiring on or after July 1,
 34 2011. This factor shall equal the product of 3 percent
 35 multiplied by the quotient of the sum of the member's service
 36 credit earned for service before July 1, 2011, divided by the
 37 sum of the member's total service credit earned. However, for a
 38 retiree and beneficiary retiring on or after July 1, 2011, with
 39 service credit earned before July 1, 2011, the factor calculated
 40 pursuant to this paragraph may not be a product of less than 2.

41 Section 2. The Legislature finds that a proper and
 42 legitimate state purpose is served when employees and retirees
 43 of the state and its political subdivisions, and the dependents,
 44 survivors, and beneficiaries of such employees and retirees, are
 45 extended the basic protections afforded by governmental
 46 retirement systems. These persons must be provided benefits that
 47 are fair and adequate and that are managed, administered, and
 48 funded in an actuarially sound manner, as required by s. 14,
 49 Article X of the State Constitution and part VII of chapter 112,
 50 Florida Statutes. Therefore, the Legislature determines and

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51 | declares that this act fulfills an important state interest.

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

1 A bill to be entitled
 2 An act relating to firefighters; creating s. 112.1816,
 3 F.S.; providing definitions; granting certain benefits
 4 to a firefighter upon receiving a diagnosis of cancer
 5 if certain conditions are met; requiring an employer
 6 to make certain disability payments to a firefighter
 7 in the event of a total and permanent disability;
 8 providing for death benefits to a firefighter's
 9 beneficiary if a firefighter died as a result of
 10 cancer or cancer treatments; specifying that any costs
 11 associated with benefits granted by the act are to be
 12 borne by the employer; requiring the Division of the
 13 State Fire Marshal to adopt certain rules; providing a
 14 declaration of important state interest; providing an
 15 effective date.

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

18
 19 Section 1. Section 112.1816, Florida Statutes, is created
 20 to read:

- 21 112.1816 Firefighters; cancer diagnosis.—
 22 (1) As used in this section, the term:
 23 (a) "Employer" has the same meaning as in s. 112.191.
 24 (b) "Firefighter" means an individual employed as a full-
 25 time firefighter within the fire department or public safety

26 | department of an employer whose primary responsibility is the
 27 | prevention and extinguishing of fires; the protection of life
 28 | and property; and the enforcement of municipal, county, and
 29 | state fire prevention codes and laws pertaining to the
 30 | prevention and control of fires.

31 | (2) Upon a diagnosis of cancer, a firefighter is entitled
 32 | to the following benefits, at no cost to the firefighter, if the
 33 | firefighter has been employed by his or her employer for at
 34 | least 5 continuous years, has not used tobacco products for at
 35 | least the preceding 5 years, and has not been employed in any
 36 | other position in the preceding 5 years which is proven to
 37 | create a higher risk for any cancer:

38 | (a) A group health insurance or self-insurance policy that
 39 | provides cancer treatment using the same health care network as
 40 | the group health insurance or self-insurance policy provided to
 41 | all other employees of the employer. The policy, or a rider
 42 | added to the group health insurance or self-insurance policy,
 43 | may not require the firefighter to contribute toward any
 44 | premium, deductible, copayment, or coinsurance amount. The
 45 | policy must remain available, at no cost to the firefighter, for
 46 | at least 10 years after the firefighter leaves employment.

47 | (b) A cash payout of \$25,000.

48 |
 49 | For purposes of determining employer policies and the provision
 50 | of benefits, a firefighter's cancer diagnosis must be considered

51 an injury or illness incurred in the line of duty by the
 52 employer.

53 (3) (a) If the firefighter participates in an employer-
 54 sponsored retirement plan, the retirement plan must consider the
 55 firefighter totally and permanently disabled if he or she is
 56 prevented from rendering useful and effective service as a
 57 firefighter and is likely to remain disabled continuously and
 58 permanently due to the diagnosis of cancer or circumstances
 59 arising out of the treatment of cancer.

60 (b) If the firefighter does not participate in an
 61 employer-sponsored retirement plan, the employer must provide a
 62 disability retirement plan that provides the firefighter with at
 63 least 42 percent of his or her annual salary, at no cost to the
 64 firefighter, until the firefighter's death as coverage for
 65 disabilities attributable to the diagnosis of cancer or
 66 disabilities arising out of the treatment of cancer.

67 (4) (a) If the firefighter participated in an employer-
 68 sponsored retirement plan, the retirement plan must consider the
 69 firefighter to have died in the line of duty if he or she dies
 70 as a result of cancer or circumstances arising out of the
 71 treatment of cancer.

72 (b) If the firefighter did not participate in an employer-
 73 sponsored retirement plan, the employer must provide a death
 74 benefit to the firefighter's beneficiary, at no cost to the
 75 firefighter or his or her beneficiary, totaling at least 42

76 percent of the firefighter's most recent annual salary for at
 77 least 10 years following the firefighter's death.

78 (c) Firefighters who die as a result of cancer or
 79 circumstances arising out of the treatment of cancer are
 80 considered to have died in the manner as described in s.
 81 112.191(2)(a) and all of the benefits arising out of such death
 82 are available to the deceased firefighter's beneficiary.

83 (5) The costs of purchasing an insurance policy that
 84 provides the benefits contained in this section, or the costs of
 85 providing such benefits through a self-funded system, must be
 86 borne solely by the employer that employs firefighters and may
 87 not be funded by individual firefighters, by any group health
 88 insurance trust fund funded partially or wholly by firefighters,
 89 or by any self-insured trust fund that provides health insurance
 90 coverage which is funded partially or wholly by firefighters.

91 (6) The Division of the State Fire Marshal within the
 92 Department of Financial Services shall adopt rules to establish
 93 employer best practices regarding how to prevent or reduce the
 94 incidence of cancer among firefighters.

95 Section 2. The Legislature determines and declares that
 96 this act fulfills an important state interest.

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