



Oversight, Transparency & Administration Subcommittee

December 6, 2017
4:00 PM – 6:00 PM
Morris Hall (17 HOB)

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time: Wednesday, December 06, 2017 04:00 pm
End Date and Time: Wednesday, December 06, 2017 06:00 pm
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

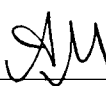
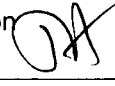
Consideration of the following bill(s):

HB 55 Sale of Firearms by White
HB 273 Public Records by Rodrigues
CS/HB 307 Florida Commission on Human Relations by Civil Justice & Claims Subcommittee, Antone
HB 545 Prohibition Against Contracting with Scrutinized Companies by Fine, Moskowitz
HB 551 Pub. Rec./Health Care Facilities by Burton

NOTICE FINALIZED on 11/29/2017 4:05PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 55 Sale of Firearms
SPONSOR(S): White and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 152

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

SUMMARY ANALYSIS

The Department of Law Enforcement (DLE) is responsible for regulating the sale and delivery of firearms by licensed firearm dealers to persons who are not licensed. Before a licensed importer, licensed manufacturer, or licensed dealer (licensee) can sell or deliver a firearm to another person who is not a licensee, Florida law requires the licensee to conduct a criminal history check of the potential buyer and collect a \$5 fee for processing the criminal history check. Currently, DLE requires the licensee to transmit the fees using a business or personal check, a money order, or a cashier's check.

The bill requires such procedures to allow the processing fees to be paid or transmitted by electronic means, including, but not limited to, debit cards, credit cards, or electronic funds transfers.

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

The Department of Law Enforcement (DLE) is responsible for regulating the sale and delivery of firearms¹ by licensed firearm dealers to persons who are not licensed. Before a licensed importer, licensed manufacturer, or licensed dealer (licensee) can sell or deliver a firearm to another person who is not a licensee, Florida law requires the licensee to:

- Obtain a completed criminal history check form² from the potential buyer, which is provided by the licensee and must include the name, date of birth, gender, race, and social security number or other identification number of the potential buyer.
- Inspect proper identification that includes a photograph of the potential buyer.
- Collect a fee from the potential buyer for processing the criminal history check of the potential buyer.
- Request, via telephone call, DLE to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems.
- Receive a unique approval number for the inquiry from DLE and record such number and the date on the criminal history check form.³

The fee collected from a potential buyer for processing the criminal history check is established by DLE and may not exceed \$8 per transaction.⁴ Currently, the processing fee is \$5 per transaction.⁵ DLE is required to establish procedures for the fees to be transmitted by the licensee to DLE.⁶ Currently, the procedures established by DLE require a licensee to transmit the fees to DLE each month using a business or personal check, a money order, or a cashier's check.⁷

Effect of the Bill

The bill requires the procedures established by DLE for transmitting the criminal history check processing fees to DLE to allow such fees to be paid or transmitted by electronic means, including, but not limited to, debit cards, credit cards, or electronic funds transfers.

B. SECTION DIRECTORY:

Section 1. amends s. 790.065, F.S., relating to sale and delivery of firearms.

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

¹ The term "firearm" means any weapon (including a starter gun) that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term does not include an antique firearm unless the antique firearm is used in the commission of a crime. Section 790.001(6), F.S.

² The form is created by the United States Treasury Department's Bureau of Alcohol, Tobacco, and Firearms. Rule 11C-6.009, F.A.C. A copy of the form is available online at <https://www.atf.gov/file/61446/download>.

³ Section 790.065(1)(a), F.S.

⁴ Section 790.065(1)(a)2., F.S.

⁵ Rule 11C-6.009(4), F.A.C.

⁶ Section 790.065(1)(a)2., F.S.

⁷ Rule 11C-6.009(9), F.A.C.

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:

According to DLE, the agency will absorb the fiscal impact of the bill by diverting existing staff and resources. However, DLE stated that these existing resources will not be available until the third quarter of 2018 and recommends moving the effective date of the bill to April 1, 2019.⁸

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 requires the department to establish procedures for licensees to pay criminal history check fees to the department through electronic means, including debit cards, credit cards, or electronic funds transfers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁸ Department of Law Enforcement, Agency Analysis of 2018 House Bill 55, p. 4 (Sept. 6, 2017) (on file with the Oversight, Transparency & Administration Subcommittee).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled
 An act relating to the sale of firearms; amending s.
 790.065, F.S.; requiring Department of Law Enforcement
 procedures to allow the payment or transmittal of
 processing fees for criminal history checks of
 potential firearms buyers by electronic means;
 providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section
 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(1)(a) A licensed importer, licensed manufacturer, or
 licensed dealer may not sell or deliver from her or his
 inventory at her or his licensed premises any firearm to another
 person, other than a licensed importer, licensed manufacturer,
 licensed dealer, or licensed collector, until she or he has:

1. Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification

26 including an identification containing a photograph of the
 27 potential buyer or transferee.

28 2. Collected a fee from the potential buyer for processing
 29 the criminal history check of the potential buyer. The fee shall
 30 be established by the Department of Law Enforcement and may not
 31 exceed \$8 per transaction. The Department of Law Enforcement may
 32 reduce, or suspend collection of, the fee to reflect payment
 33 received from the Federal Government applied to the cost of
 34 maintaining the criminal history check system established by
 35 this section as a means of facilitating or supplementing the
 36 National Instant Criminal Background Check System. The
 37 Department of Law Enforcement shall, by rule, establish
 38 procedures for the fees to be transmitted by the licensee to the
 39 Department of Law Enforcement. Such procedures must provide that
 40 fees may be paid or transmitted by electronic means, including,
 41 but not limited to, debit cards, credit cards, or electronic
 42 funds transfers. All such fees shall be deposited into the
 43 Department of Law Enforcement Operating Trust Fund, but shall be
 44 segregated from all other funds deposited into such trust fund
 45 and must be accounted for separately. Such segregated funds must
 46 not be used for any purpose other than the operation of the
 47 criminal history checks required by this section. The Department
 48 of Law Enforcement, each year before ~~prior to~~ February 1, shall
 49 make a full accounting of all receipts and expenditures of such
 50 funds to the President of the Senate, the Speaker of the House

51 of Representatives, the majority and minority leaders of each
52 house of the Legislature, and the chairs of the appropriations
53 committees of each house of the Legislature. In the event that
54 the cumulative amount of funds collected exceeds the cumulative
55 amount of expenditures by more than \$2.5 million, excess funds
56 may be used for the purpose of purchasing soft body armor for
57 law enforcement officers.

58 3. Requested, by means of a toll-free telephone call, the
59 Department of Law Enforcement to conduct a check of the
60 information as reported and reflected in the Florida Crime
61 Information Center and National Crime Information Center systems
62 as of the date of the request.

63 4. Received a unique approval number for that inquiry from
64 the Department of Law Enforcement, and recorded the date and
65 such number on the consent form.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 55 (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 White offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 58-66 and insert:

7 3. Requested, by means of a toll-free telephone call or
8 other electronic means, the Department of Law Enforcement to
9 conduct a check of the information as reported and reflected in
10 the Florida Crime Information Center and National Crime
11 Information Center systems as of the date of the request.

12 4. Received a unique approval number for that inquiry from
13 the Department of Law Enforcement, and recorded the date and
14 such number on the consent form.

15 Section 2. This act shall take effect October 1, 2018.
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Amendment No.


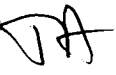
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T I T L E A M E N D M E N T

Between lines 6 and 7, insert:
providing that criminal history check requests by licensed
importers, manufacturers, and dealers to the department may
be made by electronic means;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Public Records
SPONSOR(S): Rodrigues
TIED BILLS: IDEN./SIM. BILLS: SB 750

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

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government, unless such record is specifically exempt. The Florida Statutes further provide that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency to provide access to public records. A custodian of public records (records custodian) is required to permit any person to inspect and copy records at any reasonable time, under reasonable conditions, and under supervision by the records custodian.

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

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

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

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records³ (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,⁴ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.⁵

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.⁶ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.⁷

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

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

³ Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

⁴ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

⁵ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

⁶ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

⁷ Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

Effect of the Bill

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

B. SECTION DIRECTORY:

Section 1. amends s. 119.07, F.S., relating to inspection and copying of records; photographing public records; fees; exemptions.

Section 2. 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.

2. Expenditures:

The bill does not appear to impact state government expenditures.

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:

The bill may have an indeterminate positive fiscal impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by an agency.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s. 119.07,
 3 F.S.; prohibiting an agency that receives a request to
 4 inspect or copy a record from responding to such
 5 request by filing a civil action against the
 6 individual or entity making the request; providing an
 7 effective date.

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

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11 Section 1. Paragraph (j) is added to subsection (1) of
 12 section 119.07, Florida Statutes, to read:

13 119.07 Inspection and copying of records; photographing
 14 public records; fees; exemptions.—



15 (1)

16 (j) An agency that receives a request to inspect or copy a
 17 record is prohibited from responding to such request by filing a
 18 civil action against the individual or entity making the
 19 request.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Florida Commission on Human Relations
SPONSOR(S): Civil Justice & Claims Subcommittee, Antone
TIED BILLS: None **IDEN./SIM. BILLS:** SB 300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee		Toliver 	Harrington 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) administers the state's civil rights laws and serves as a resource for businesses, individuals, and groups to prevent costly and damaging discriminatory activities. The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate. The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination related to employment, housing, certain public accommodations, and state employee whistle-blower retaliation.

The bill:

- Changes quorum requirements for the Commission to be based on the number of currently appointed commissioners;
- Authorizes the Commission to recommend up to 10 nominees for the Florida Civil Rights Hall of Fame, rather than 10 nominees;
- Specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act;
- Deletes the registration requirements for facilities and communities claiming the housing for older persons exemption and eliminates the need for related forms, fees, and fines;
- Deletes an investigation requirement for the Commission for certain public accommodation discrimination cases to allow the Commission to immediately enter into the informal methods of conference, conciliation, and persuasion; and
- Aligns time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Commission on Human Relations

Chapter 760, F.S., provides a forum for all individuals in Florida to be protected against discrimination in areas of employment, housing, certain public accommodations and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., is known as the Florida Civil Rights Act of 1992; Part II is known as the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.¹ The Commission is housed in the Department of Management Services (DMS).² DMS does not exercise any control or supervision over the Commission.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.³ The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.⁴ At least one member of the Commission must be 60 years of age or older.⁵ The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging any discriminatory practice.⁶

Quorum for Commission Meeting

Background

While the Commission is comprised of 12 members, it currently has only eight commissioners serving on its board.⁷ Of these eight commissioners, only two are in terms that have not yet expired; the other six commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.

Current law provides that seven members constitute a quorum for the Commission to conduct business.⁸ Due to the low number of commissioners currently serving, the Commission has difficulty in meeting the seven member quorum requirement and continually cancels and reschedules meetings. If two members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.⁹

Effect of the Bill

The bills amends s. 760.03, F.S., to provide that a quorum for a Commission meeting consists of a majority of the currently appointed members. At the current time, this would allow the Commission to conduct business with five members present, rather than seven members. The bill also provides that

¹ s. 760.03, F.S.

² s. 760.04, F.S.

³ s. 760.03(1), F.S.

⁴ s. 760.03(2), F.S.

⁵ *Id.*

⁶ s. 760.06, F.S.

⁷ *Meet the Commissioners*, Florida Commission on Human Relations, http://fchr.state.fl.us/about_us/meet_the_commissioners (last accessed November 28, 2017).

⁸ s. 760.03(5), F.S.

⁹ Among others, ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within DBPR), 456.011(3) (Boards and Commissions within DOH), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

the panels created by the Commission would be able to establish a quorum to conduct business with three members of the panel.

Florida Civil Rights Hall of Fame

Background

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.¹⁰ The purpose of the program is to recognize those persons, living or deceased, who have made significant contributions to the state as leaders in the struggle for equality and justice for all persons.¹¹ The Commission oversees and administers the Hall of Fame, excluding the normal costs of operations, repairs, and maintenance, which is the responsibility of DMS.¹² The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.¹³ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹⁴

With its limited resources, the Commission has struggled to make the minimum number of 10 recommendations each year.

Effect of the Bill

The bill amends s. 760.065(3)(a), F.S., to provide that the Commission may recommend up to 10 nominees each year for the Governor's consideration. This change prevents the Commission from violating the law if it submits less than 10 recommendations due to a lack of nominees.

Florida Civil Rights Act

Background

A person aggrieved by a violation of ss. 760.01-760.10, F.S., may file a complaint with the Commission pursuant to the Florida Civil Rights Act.¹⁵ The complaint must be filed within 365 days and name the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describe the violation.¹⁶ The Commission must determine within 180 days whether reasonable cause exists to believe that a discriminatory practice occurred.¹⁷

If the Commission makes a "reasonable cause" determination, the claimant may then bring a civil action or request an administrative hearing.¹⁸ A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.¹⁹ If the Commission does not find reasonable cause, the claimant may still request an administrative hearing, but is precluded from commencing a civil action.²⁰ If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.²¹

¹⁰ s. 760.065, F.S.; see ch. 2010-53, L.O.F.

¹¹ s. 760.065(1), F.S.

¹² s. 760.065(5), F.S.

¹³ s. 760.065(3)(a), F.S.

¹⁴ s. 760.065(3)(b), F.S.

¹⁵ s. 760.11(1), F.S.

¹⁶ *Id.*

¹⁷ s. 760.11(3), F.S.

¹⁸ s. 760.11(4), F.S.

¹⁹ s. 760.11(5), F.S.

²⁰ s. 760.11(7), F.S.

²¹ s. 760.11(8), F.S.

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between the Commission finding reasonable cause and the statute of limitations.²² The Court stated that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."²³ The Court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. Instead, the Court held that the four-year statute of limitations for a cause of action based on statutory liability²⁴ applies when the Commission fails to make a determination.²⁵

Effect of the Bill

The bill amends s. 760.11(8), F.S., to provide that if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as claims that receive a determination of reasonable cause. Moreover, the Commission is required to promptly notify the individual of the Commission's failure to determine reasonable cause and inform the individual of their options as a result. The one-year period for filing an action begins to run on the date the Commission certifies that the notice was mailed.

Florida Fair Housing Act

Background

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.²⁶ It is the state's policy to provide for fair housing throughout the state.²⁷ The Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Commission.²⁸ The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.²⁹ The Commission has 100 days after receipt of the complaint to complete its investigation and issue a determination.³⁰ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.³¹

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply.³² For example, a single-family house sold or rented by its owner is exempted, as well as rooms or units in dwellings that provide housing for four or less families.³³

Certain housing for older persons is also exempt from charges of discrimination based on familial status.³⁴ Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or, if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older.³⁵ The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the

²² *Joshua v. City of Gainesville*, 768 So.2d 432, 434-435 (Fla. 2000).

²³ *Id.*

²⁴ s. 95.11(3)(f), F.S.

²⁵ *Joshua*, 768 So.2d at 439.

²⁶ ss. 760.20-760.37, F.S.

²⁷ s. 760.21, F.S.

²⁸ s. 760.34(1), F.S.

²⁹ s. 760.34(2), F.S.

³⁰ s. 760.34(1), F.S.

³¹ *Id.*

³² s. 760.29, F.S.

³³ s. 760.29(1)(a)1 and 2, F.S.

³⁴ s. 760.29(4), F.S.

³⁵ s. 760.29(4)(b), F.S.

U.S. Department of Housing and Urban Development pursuant to 24 C.F.R. 100.³⁶ These facilities and communities must register with the Commission and renew such registration every two years and pay a \$20 fee for registration and renewal.³⁷ The Commission may impose an administrative fine of up to \$500 for submission of false information, but there is no penalty for failure to register with the Commission.³⁸ Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.³⁹

The Commission has not charged a fee to register or renew facilities and communities since 2015. The Commission reports that the "registration program does not enhance or benefit the Commission in implementing its statutory requirements or carrying out its mission-critical responsibilities."⁴⁰ The registry is not determinative as to whether the community actually qualifies from the housing for older persons exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Effect of the Bill

The bill deletes s. 760.29(4)(e), F.S., repealing the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

The bill also amends s. 760.31(5), F.S., relating to the powers and duties of the Commission. The bill deletes language requiring the Commission to create forms and procedures and setting the fee for the registration of facilities and communities claiming the exemption. The language is no longer needed as the registration requirement is being deleted.

Discriminatory Practices in Certain Clubs

Background

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.⁴¹ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages from non-members for business purposes.⁴² The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement denying use and access to the club for a discriminatory purpose.⁴³

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.⁴⁴ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant of its intention to resolve the complaint.⁴⁵ If the Commission or the Attorney General decides to resolve the complaint, it must

³⁶ s. 760.29(4)

³⁷ s. 760.29(4)(e), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *SB 1716/HB 1255- Florida Civil Rights and Discrimination Cases- Chapter 760 Changes*, p. 6, Florida Commission on Human Relations. A copy of the document is on file with the Civil Justice & Claims Subcommittee.

⁴¹ s. 760.60(1), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ s. 760.60(2), F.S.

⁴⁵ *Id.*

attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁴⁶

If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.⁴⁷ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁴⁸

Effect of the Bill

The bill amends s. 760.60, F.S., to delete the requirement that the Commission or Attorney General investigate the public accommodation discrimination complaint. This allows the Commission or Attorney General to immediately enter into the informal methods of conference, conciliation, and persuasion after giving notice to the club of the discrimination complaint. The bill also extends the time for the Commission or Attorney General to resolve the dispute by informal methods to 45 days, bringing the time period in line with the time allowance in other mediation activities that the Commission undertakes.

State Employee Whistle-Blower Retaliation

Background

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.⁴⁹ If a person is retaliated against, he or she can file a written complaint with either the Commission or the Office of the Chief Inspector General (CIG) in the Executive Office of the Governor within 60 days after the adverse action.⁵⁰

Within three days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint to the parties.⁵¹ The Commission must then further notify, within 15 days, the complainant that their complaint has been received.⁵² The Commission must then complete the fact-finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations or a proposed resolution.⁵³

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation.⁵⁴ The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.⁵⁵

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.⁵⁶ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission

⁴⁶ *Id.*

⁴⁷ s. 760.60(3), F.S.

⁴⁸ *Id.*

⁴⁹ s. 112.31895, F.S.

⁵⁰ s. 112.31895(1)(a), F.S.

⁵¹ s. 112.31895(1)(b), F.S.

⁵² s. 112.38195(2)(b), F.S.

⁵³ s. 112.31895(2), F.S.

⁵⁴ s. 112.31895(3)(d), F.S.

⁵⁵ *Id.*

⁵⁶ s. 112.31895(3)(e)3., F.S.

after the termination of an investigation by the Commission.⁵⁷ This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.⁵⁸

Effect of the Bill

The bill amends s. 112.31895, F.S., to amend a number of the time periods related to investigations by the Commission. The bill provides that a complainant must file a complaint no later than 365 days after the prohibited personnel action. The bill provides that the Commission or CIG must respond within five working days after receiving a complaint, instead of three working days. The bill deletes language requiring the Commission to further notify the complainant that their complaint has been received within 15 days of receiving the complaint. The bill also amends the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also shortens the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission to 21 days. These changes bring most of the timeframes in line with complaints filed with the Commission pursuant to s. 760.11, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 760.03, F.S., relating to the Commission.

Section 2: Amends s. 760.065, F.S., relating to the Florida Civil Rights Hall of Fame.

Section 3: Amends s. 760.11, F.S., relating to administrative and civil remedies.

Section 4: Amends s. 760.29, F.S., relating to exemptions.

Section 5: Amends s. 760.31, F.S., relating to powers and duties of the commission.

Section 6: Amends s. 760.60, F.S., relating to prohibited discriminatory practices of certain clubs and remedies.

Section 7: Amends s. 112.31895, F.S., relating to investigative procedures in response to prohibited personnel actions.

Section 8: 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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁵⁷ s. 112.31895(4)(a), F.S.

⁵⁸ *Id.*

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:

The bill eliminates rulemaking authority relating to forms and fees for facilities and communities to register as housing for older persons.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires the commission to notify a complainant alleging a violation of the Florida Civil Rights Act should the Commission fail to timely determine whether there is reasonable cause. The notice must inform the complainant of his or her available options; and
- Provides that a civil action alleging a violation of the Act must be filed within one year after the Commission mailed such notice to the complainant.

The analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

26 complainant upon receipt of the complaint; providing
 27 an effective date.

28
 29 Be It Enacted by the Legislature of the State of Florida:

30
 31 Section 1. Subsection (5) of section 760.03, Florida
 32 Statutes, is amended to read:

33 760.03 Commission on Human Relations; staff.—

34 (5) A quorum is necessary for the conduct of official
 35 business. Unless otherwise provided by law, a quorum consists of
 36 a majority of the currently appointed commissioners. ~~Seven~~
 37 ~~members shall constitute a quorum for the conduct of business;~~
 38 ~~however,~~ The commission may establish panels of not less than
 39 three of its members to exercise its powers under the Florida
 40 Civil Rights Act of 1992, subject to such procedures and
 41 limitations as the commission may provide by rule.
 42 Notwithstanding this subsection, three appointed members serving
 43 on panels shall constitute a quorum for the conduct of official
 44 business of the panel.

45 Section 2. Paragraph (a) of subsection (3) of section
 46 760.065, Florida Statutes, is amended to read:

47 760.065 Florida Civil Rights Hall of Fame.—

48 (3) (a) The commission shall annually accept nominations
 49 for persons to be recommended as members of the Florida Civil
 50 Rights Hall of Fame. The commission shall recommend up to 10

51 persons from which the Governor shall select up to 3 hall-of-
 52 fame members.

53 Section 3. Subsection (8) of section 760.11, Florida
 54 Statutes, is amended to read:

55 760.11 Administrative and civil remedies; construction.—

56 (8) ~~If In the event that~~ the commission fails to
 57 conciliate or determine whether there is reasonable cause on any
 58 complaint under this section within 180 days of the filing of
 59 the complaint:7

60 (a) An aggrieved person may proceed under subsection (4)7
 61 as if the commission determined that there was reasonable cause.

62 (b) The commission shall promptly notify the aggrieved
 63 person of the failure to conciliate or determine whether there
 64 is reasonable cause. The notice shall provide the options
 65 available to the aggrieved person under subsection (4) and
 66 inform the aggrieved person that a civil action is prohibited if
 67 not filed within 1 year after the date the commission certifies
 68 that the notice was mailed.

69 (c) Any civil action brought by an aggrieved person under
 70 this section must be commenced within 1 year after the date the
 71 commission certifies that the notice was mailed pursuant to
 72 paragraph (b).

73 Section 4. Subsection (4) of section 760.29, Florida
 74 Statutes, is amended to read:

75 760.29 Exemptions.—

76 (4) (a) Any provision of ss. 760.20-760.37 regarding
 77 familial status does not apply with respect to housing for older
 78 persons.

79 (b) As used in this subsection, the term "housing for
 80 older persons" means housing:

81 1. Provided under any state or federal program that the
 82 commission determines is specifically designed and operated to
 83 assist elderly persons, as defined in the state or federal
 84 program;

85 2. Intended for, and solely occupied by, persons 62 years
 86 of age or older; or

87 3. Intended and operated for occupancy by persons 55 years
 88 of age or older that meets the following requirements:

89 a. At least 80 percent of the occupied units are occupied
 90 by at least one person 55 years of age or older.

91 b. The housing facility or community publishes and adheres
 92 to policies and procedures that demonstrate the intent required
 93 under this subparagraph. If the housing facility or community
 94 meets the requirements of sub-subparagraphs a. and c. and the
 95 recorded governing documents provide for an adult, senior, or
 96 retirement housing facility or community and the governing
 97 documents lack an amendatory procedure, prohibit amendments, or
 98 restrict amendments until a specified future date, then that
 99 housing facility or community shall be deemed housing for older
 100 persons intended and operated for occupancy by persons 55 years

101 of age or older. If those documents further provide a
 102 prohibition against residents 16 years of age or younger, that
 103 provision shall be construed, for purposes of the Fair Housing
 104 Act, to only apply to residents 18 years of age or younger, in
 105 order to conform with federal law requirements. Governing
 106 documents which can be amended at a future date must be amended
 107 and properly recorded within 1 year after that date to reflect
 108 the requirements for consideration as housing for older persons,
 109 if that housing facility or community intends to continue as
 110 housing for older persons.

111 c. The housing facility or community complies with rules
 112 made by the Secretary of the United States Department of Housing
 113 and Urban Development pursuant to 24 C.F.R. part 100 for
 114 verification of occupancy, which rules provide for verification
 115 by reliable surveys and affidavits and include examples of the
 116 types of policies and procedures relevant to a determination of
 117 compliance with the requirements of sub-subparagraph b. Such
 118 surveys and affidavits are admissible in administrative and
 119 judicial proceedings for the purposes of such verification.

120 (c) Housing shall not fail to be considered housing for
 121 older persons if:

122 1. A person who resides in such housing on or after
 123 October 1, 1989, does not meet the age requirements of this
 124 subsection, provided that any new occupant meets such age
 125 requirements; or

126 2. One or more units are unoccupied, provided that any
 127 unoccupied units are reserved for occupancy by persons who meet
 128 the age requirements of this subsection.

129 (d) A person shall not be personally liable for monetary
 130 damages for a violation of this subsection if such person
 131 reasonably relied in good faith on the application of the
 132 exemption under this subsection relating to housing for older
 133 persons. For purposes of this paragraph, a person may show good
 134 faith reliance on the application of the exemption only by
 135 showing that:

136 1. The person has no actual knowledge that the facility or
 137 the community is ineligible, or will become ineligible, for such
 138 exemption; and

139 2. The facility or community has stated formally, in
 140 writing, that the facility or community complies with the
 141 requirements for such exemption.

142 ~~(c) A facility or community claiming an exemption under~~
 143 ~~this subsection shall register with the commission and submit a~~
 144 ~~letter to the commission stating that the facility or community~~
 145 ~~complies with the requirements of subparagraph (b)1.,~~
 146 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~
 147 ~~submitted on the letterhead of the facility or community and~~
 148 ~~shall be signed by the president of the facility or community.~~
 149 ~~This registration and documentation shall be renewed biennially~~
 150 ~~from the date of original filing. The information in the~~

151 ~~registry shall be made available to the public, and the~~
 152 ~~commission shall include this information on an Internet~~
 153 ~~website. The commission may establish a reasonable registration~~
 154 ~~fee, not to exceed \$20, that shall be deposited into the~~
 155 ~~commission's trust fund to defray the administrative costs~~
 156 ~~associated with maintaining the registry. The commission may~~
 157 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 158 ~~or community that knowingly submits false information in the~~
 159 ~~documentation required by this paragraph. Such fines shall be~~
 160 ~~deposited in the commission's trust fund. The registration and~~
 161 ~~documentation required by this paragraph shall not substitute~~
 162 ~~for proof of compliance with the requirements of this~~
 163 ~~subsection. Failure to comply with the requirements of this~~
 164 ~~paragraph shall not disqualify a facility or community that~~
 165 ~~otherwise qualifies for the exemption provided in this~~
 166 ~~subsection.~~

167
 168 A county or municipal ordinance regarding housing for older
 169 persons may not contravene the provisions of this subsection.

170 Section 5. Subsection (5) of section 760.31, Florida
 171 Statutes, is amended to read:

172 760.31 Powers and duties of commission.—The commission
 173 shall:

174 (5) Adopt rules necessary to implement ss. 760.20-760.37
 175 and govern the proceedings of the commission in accordance with

176 chapter 120. Commission rules shall clarify terms used with
 177 regard to handicapped accessibility, exceptions from
 178 accessibility requirements based on terrain or site
 179 characteristics, and requirements related to housing for older
 180 persons. ~~Commission rules shall specify the fee and the forms~~
 181 ~~and procedures to be used for the registration required by s.~~
 182 ~~760.29(4)(e).~~

183 Section 6. Subsections (2) and (3) of section 760.60,
 184 Florida Statutes, are amended to read:

185 760.60 Discriminatory practices of certain clubs
 186 prohibited; remedies.—

187 (2) A person who has been discriminated against in
 188 violation of this act may file a complaint with the Commission
 189 on Human Relations or with the Attorney General's Office of
 190 Civil Rights. A complaint must be in writing and must contain
 191 such information and be in such form as the commission requires.
 192 Upon receipt of a complaint, the commission or the Attorney
 193 General shall provide a copy to the person who represents the
 194 club. Within 30 days after receiving a complaint, the commission
 195 or the Attorney General shall ~~investigate the alleged~~
 196 ~~discrimination and~~ give notice in writing to the person who
 197 filed the complaint if it intends to resolve the complaint. If
 198 the commission or the Attorney General decides to resolve the
 199 complaint, it shall attempt to eliminate or correct the alleged
 200 discriminatory practices of a club by informal methods of

201 conference, conciliation, and persuasion.

202 (3) If the commission or the Attorney General fails,
 203 within 30 days after receiving a complaint filed pursuant to
 204 subsection (2), to give notice of its intent to eliminate or
 205 correct the alleged discriminatory practices of a club, or if
 206 the commission or the Attorney General fails to resolve the
 207 complaint within 45 ~~30~~ days after giving such notice, the person
 208 or the Attorney General on behalf of the person filing the
 209 complaint may commence a civil action in a court against the
 210 club, its officers, or its members to enforce this section. If
 211 the court finds that a discriminatory practice occurs at the
 212 club, the court may enjoin the club, its officers, or its
 213 members from engaging in such practice or may order other
 214 appropriate action.

215 Section 7. Subsections (1) and (2), paragraphs (d) and (e)
 216 of subsection (3), and paragraph (a) of subsection (4) of
 217 section 112.31895, Florida Statutes, are amended to read:

218 112.31895 Investigative procedures in response to
 219 prohibited personnel actions.—

220 (1)(a) If a disclosure under s. 112.3187 includes or
 221 results in alleged retaliation by an employer, the employee or
 222 former employee of, or applicant for employment with, a state
 223 agency, as defined in s. 216.011, that is so affected may file a
 224 complaint alleging a prohibited personnel action, which
 225 complaint must be made by filing a written complaint with the

226 Office of the Chief Inspector General in the Executive Office of
 227 the Governor or the Florida Commission on Human Relations, no
 228 later than 60 days after the prohibited personnel action.

229 (b) Within five ~~three~~ working days after receiving a
 230 complaint under this section, the office or officer receiving
 231 the complaint shall acknowledge receipt of the complaint and
 232 provide copies of the complaint and any other preliminary
 233 information available concerning the disclosure of information
 234 under s. 112.3187 to each of the other parties named in
 235 paragraph (a), which parties shall each acknowledge receipt of
 236 such copies to the complainant.

237 (2) FACT FINDING.—The Florida Commission on Human
 238 Relations shall:

239 (a) Receive any allegation of a personnel action
 240 prohibited by s. 112.3187, including a proposed or potential
 241 action, and conduct informal fact finding regarding any
 242 allegation under this section, to the extent necessary to
 243 determine whether there are reasonable grounds to believe that a
 244 prohibited personnel action under s. 112.3187 has occurred, is
 245 occurring, or is to be taken.

246 ~~(b) Notify the complainant, within 15 days after receiving~~
 247 ~~a complaint, that the complaint has been received by the~~
 248 ~~department.~~

249 (b) ~~(e)~~ Within 180 ~~90~~ days after receiving the complaint,
 250 provide the agency head and the complainant with a fact-finding

251 report that may include recommendations to the parties or
 252 proposed resolution of the complaint. The fact-finding report
 253 shall be presumed admissible in any subsequent or related
 254 administrative or judicial review.

255 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

256 (d) If the Florida Commission on Human Relations is unable
 257 to conciliate a complaint within 35 ~~60~~ days after receipt of the
 258 fact-finding report, the Florida Commission on Human Relations
 259 shall terminate the investigation. Upon termination of any
 260 investigation, the Florida Commission on Human Relations shall
 261 notify the complainant and the agency head of the termination of
 262 the investigation, providing a summary of relevant facts found
 263 during the investigation and the reasons for terminating the
 264 investigation. A written statement under this paragraph is
 265 presumed admissible as evidence in any judicial or
 266 administrative proceeding but is not admissible without the
 267 consent of the complainant.

268 (e)1. The Florida Commission on Human Relations may
 269 request an agency or circuit court to order a stay, on such
 270 terms as the court requires, of any personnel action for 45 days
 271 if the Florida Commission on Human Relations determines that
 272 reasonable grounds exist to believe that a prohibited personnel
 273 action has occurred, is occurring, or is to be taken. The
 274 Florida Commission on Human Relations may request that such stay
 275 be extended for appropriate periods of time.

276 2. If, in connection with any investigation, the Florida
 277 Commission on Human Relations determines that reasonable grounds
 278 exist to believe that a prohibited action has occurred, is
 279 occurring, or is to be taken which requires corrective action,
 280 the Florida Commission on Human Relations shall report the
 281 determination together with any findings or recommendations to
 282 the agency head and may report that determination and those
 283 findings and recommendations to the Governor and the Chief
 284 Financial Officer. The Florida Commission on Human Relations may
 285 include in the report recommendations for corrective action to
 286 be taken.

287 3. If, after 35 ~~20~~ days, the agency does not implement the
 288 recommended action, the Florida Commission on Human Relations
 289 shall terminate the investigation and notify the complainant of
 290 the right to appeal under subsection (4), or may petition the
 291 agency for corrective action under this subsection.

292 4. If the Florida Commission on Human Relations finds, in
 293 consultation with the individual subject to the prohibited
 294 action, that the agency has implemented the corrective action,
 295 the commission shall file such finding with the agency head,
 296 together with any written comments that the individual provides,
 297 and terminate the investigation.

298 (4) RIGHT TO APPEAL.—

299 (a) Not more than 21 ~~60~~ days after receipt of a notice of
 300 termination of the investigation from the Florida Commission on

301 Human Relations, the complainant may file, with the Public
 302 Employees Relations Commission, a complaint against the
 303 employer-agency regarding the alleged prohibited personnel
 304 action. The Public Employees Relations Commission shall have
 305 jurisdiction over such complaints under ss. 112.3187 and
 306 447.503(4) and (5).

307 Section 8. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 Prohibition Against Contracting with Scrutinized Companies
SPONSOR(S): Fine and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 780

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

SUMMARY ANALYSIS

Current law prohibits a company that is on the Scrutinized Companies that Boycott Israel List (Israel List) or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more. A company that submits a bid or proposal for or enters into or renews such a contract must certify that the company is not participating in a boycott of Israel.

The bill amends the provision prohibiting agencies and local governmental entities from contracting with companies on the Israel List or that boycott Israel to apply the prohibition to contracts for goods or services of any amount, rather than only contracts of \$1 million or more. The bill requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Israel List or is engaged in a boycott of Israel.

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

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods that include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.²

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.³ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁴

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,⁵ creating uniform agency procurement rules,⁶ implementing the online procurement program,⁷ and establishing state term contracts.⁸ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Prohibition against Contracting with Companies that Boycott Israel

Current law prohibits a company that is on the Scrutinized Companies that Boycott Israel List (Israel List)⁹ or that is engaged in a boycott of Israel¹⁰ from bidding on, submitting a proposal for, or entering

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

² See ss. 287.012(6) and 287.057(1), F.S.

³ Section 287.057(1), F.S., requires all projects that exceed the Category Two threshold amount (\$35,000) contained in s. 287.017, F.S., to be competitively procured.

⁴ See s. 287.057(3)(e), F.S.

⁵ See ss. 287.032 and 287.042, F.S.

⁶ See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

⁷ See s. 287.057(23), F.S.

⁸ See ss. 287.042(2), 287.056, and 287.1345, F.S.

⁹ The Israel List is a list of companies that boycott Israel that is compiled by the State Board of Administration. Section 215.4725(2), F.S.

¹⁰ The term "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. Sections 287.135(1)(b) and 215.4725(1)(a), F.S.

into or renewing a contract with an agency or local governmental entity¹¹ for goods or services of \$1 million or more.¹² A company that submits a bid or proposal for or enters into or renews such a contract must certify that the company is not participating in a boycott of Israel.¹³ The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.¹⁴ In addition, a contract for goods or services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification, has been placed on the Israel List, or is engaged in a boycott of Israel.¹⁵

If an agency or local governmental entity determines that a company has submitted a false certification, it must provide the company with written notice, and the company has 90 days to respond in writing to such determination.¹⁶ If the company fails to demonstrate that the determination of false certification was made in error, the awarding body must bring a civil action against the company.¹⁷ If a civil action is brought and the court determines that the company submitted a false certification, the company must pay all reasonable attorney fees and costs (including costs for investigations that led to the finding of false certification).¹⁸ In addition, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted must be imposed.¹⁹ The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false certification.²⁰ A civil action to collect the penalties must commence within three years after the date the false certification is submitted.²¹

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List if all of the following occur:

- The boycott of Israel was initiated before October 1, 2016.
- The company certifies in writing that it has ceased its boycott of Israel.
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations²² and to refrain from engaging in any new scrutinized business operations.²³

An agency or local governmental entity is also authorized to make an exception to the contracting prohibition for a company on the Israel List if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

¹¹ The term “local governmental entity” means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(1)(d), F.S.

¹² Section 287.135(2), F.S.

¹³ Section 287.135(5), F.S.

¹⁴ *Id.*

¹⁵ Section 287.135(3)(c), F.S.

¹⁶ Section 287.135(5)(a), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 287.135(5)(a)1., F.S.

²⁰ Section 287.135(5)(a)2., F.S.

²¹ Section 287.135(5)(b), F.S.

²² Section 215.473(1)(u), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

²³ Section 287.135(4), F.S.

- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.²⁴

Effect of the Bill

The bill amends the provision prohibiting agencies and local governmental entities from contracting with companies on the Israel List or that boycott Israel to apply the prohibition to contracts for goods or services of any amount, rather than only contracts of \$1 million or more.

The bill requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Israel List or is engaged in a boycott of Israel.

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List based on the same conditions currently applicable to contracts of \$1 million or more.

B. SECTION DIRECTORY:

Section 1. amends s. 287.135, F.S., relating to prohibition against contracting with scrutinized companies.

Section 2. 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.

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. A company that engages in a boycott of Israel may not be eligible to contract with the state and local governmental entities, which may have a negative fiscal impact on the company.

²⁴ *Id.*

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the state and local governments. State agencies and local governments will not be authorized to contract with certain companies that boycott Israel in certain instances. This prohibition may eliminate companies that otherwise would have been the least expensive source for certain goods or services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Dormant Foreign Affairs Doctrine

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,²⁵ maintain a military,²⁶ enter into treaties and other international agreements,²⁷ regulate foreign commerce,²⁸ and to hear cases involving foreign states and citizens.²⁹ These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.³⁰ The federal government's exclusive authority to act in the area of foreign affairs is known as the dormant foreign affairs doctrine.

When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid as a violation of the dormant foreign affairs doctrine.³¹ If the purpose of the bill is to impact foreign affairs,³² or if the effects of the bill have a sufficiently serious impact on foreign policy,³³ the bill may be found in violation of the dormant foreign affairs doctrine.³⁴

B. RULE-MAKING AUTHORITY:

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

²⁵ Section 8, Art. I, U.S. Constitution.

²⁶ *Id.*

²⁷ Section 2, Art. II, U.S. Constitution.

²⁸ Section 8, Art. I, U.S. Constitution.

²⁹ Section 2, Art. III, U.S. Constitution.

³⁰ *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

³¹ *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

³² *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (pointing out that a congressional invocation of exclusively national powers with respect to addressing human rights violations in Burma precluded Massachusetts from restricting its agencies from purchasing goods or services from companies that did business with Burma; the case, however, was decided on the basis that a federal law preempted the state law.).

³³ *Clark v. Allen*, 331 U.S. 503, 517-518 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would "have some incidental or indirect effect in foreign countries."); *Zschernig v. Miller*, 389 U.S. 429 (1968).

³⁴ Matthew Shaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining, and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 SETON HALL L. REV. 201, 237-239 (2011).

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 the prohibition against contracting
 3 with scrutinized companies; amending s. 287.135, F.S.;
 4 prohibiting a company that is on the Scrutinized
 5 Companies that Boycott Israel List or that is engaged
 6 in a boycott of Israel from bidding on, submitting a
 7 proposal for, or entering into or renewing a contract
 8 with an agency or local governmental entity for goods
 9 or services of any amount; providing exceptions;
 10 requiring such contracts entered into or renewed on or
 11 after July 1, 2018, to include a provision authorizing
 12 termination in specified circumstances; requiring a
 13 company to provide a specified certification before
 14 submitting a bid or proposal for or entering into or
 15 renewing such contracts; providing for preemption of
 16 agency or local governmental entity ordinances and
 17 rules involving such contracts; conforming provisions
 18 to changes made by the act; providing an effective
 19 date.

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

22
 23 Section 1. Section 287.135, Florida Statutes, is amended
 24 to read:

25 287.135 Prohibition against contracting with scrutinized

26 companies.-

27 (1) In addition to the terms defined in ss. 287.012 and
28 215.473, as used in this section, the term:

29 (a) "Awarding body" means, for purposes of state
30 contracts, an agency or the department, and for purposes of
31 local contracts, the governing body of the local governmental
32 entity.

33 (b) "Boycott of Israel" has the same meaning as defined in
34 s. 215.4725.

35 (c) "Business operations" means, for purposes specifically
36 related to Cuba or Syria, engaging in commerce in any form in
37 Cuba or Syria, including, but not limited to, acquiring,
38 developing, maintaining, owning, selling, possessing, leasing,
39 or operating equipment, facilities, personnel, products,
40 services, personal property, real property, military equipment,
41 or any other apparatus of business or commerce.

42 (d) "Local governmental entity" means a county,
43 municipality, special district, or other political subdivision
44 of the state.

45 (2) A company is ineligible to, and may not, bid on,
46 submit a proposal for, or enter into or renew a contract with an
47 agency or local governmental entity for goods or services of \$1
48 ~~million or more if at the time of bidding or submitting a~~
49 ~~proposal for a new contract or renewal of an existing contract,~~
50 ~~the company:~~

51 (a) Any amount if, at the time of bidding on, submitting a
 52 proposal for, or entering into or renewing such contract, the
 53 company is on the Scrutinized Companies that Boycott Israel
 54 List, created pursuant to s. 215.4725, or is engaged in a
 55 boycott of Israel; or

56 (b) One million dollars or more if, at the time of bidding
 57 on, submitting a proposal for, or entering into or renewing such
 58 contract, the company:

59 1. Is on the Scrutinized Companies with Activities in
 60 Sudan List or the Scrutinized Companies with Activities in the
 61 Iran Petroleum Energy Sector List, created pursuant to s.
 62 215.473; or

63 ~~2.(e)~~ Is engaged in business operations in Cuba or Syria.

64 (3) (a) Any contract with an agency or local governmental
 65 entity for goods or services of \$1 million or more entered into
 66 or renewed on or after:

67 ~~1.(a)~~ July 1, 2011, through June 30, 2012, must contain a
 68 provision that allows for the termination of such contract at
 69 the option of the awarding body if the company is found to have
 70 submitted a false certification as provided under subsection (5)
 71 or been placed on the Scrutinized Companies with Activities in
 72 Sudan List or the Scrutinized Companies with Activities in the
 73 Iran Petroleum Energy Sector List.

74 ~~2.(b)~~ July 1, 2012, through September 30, 2016, must
 75 contain a provision that allows for the termination of such

76 contract at the option of the awarding body if the company is
 77 found to have submitted a false certification as provided under
 78 subsection (5), been placed on the Scrutinized Companies with
 79 Activities in Sudan List or the Scrutinized Companies with
 80 Activities in the Iran Petroleum Energy Sector List, or been
 81 engaged in business operations in Cuba or Syria.

82 ~~3.(e)~~ October 1, 2016, through June 30, 2018, must contain
 83 a provision that allows for the termination of such contract at
 84 the option of the awarding body if the company:

85 ~~a.1.~~ Is found to have submitted a false certification as
 86 provided under subsection (5);

87 ~~b.2.~~ Has been placed on the Scrutinized Companies that
 88 Boycott Israel List, or is engaged in a boycott of Israel;

89 ~~c.3.~~ Has been placed on the Scrutinized Companies with
 90 Activities in Sudan List or the Scrutinized Companies with
 91 Activities in the Iran Petroleum Energy Sector List; or

92 ~~d.4.~~ Has been engaged in business operations in Cuba or
 93 Syria.

94 4. July 1, 2018, must contain a provision that allows for
 95 the termination of such contract at the option of the awarding
 96 body if the company is found to have submitted a false
 97 certification as provided under subsection (5), been placed on
 98 the Scrutinized Companies with Activities in Sudan List or the
 99 Scrutinized Companies with Activities in the Iran Petroleum
 100 Energy Sector List, or been engaged in business operations in

101 Cuba or Syria.

102 (b) Any contract with an agency or local governmental
 103 entity for goods or services of any amount entered into or
 104 renewed on or after July 1, 2018, must contain a provision that
 105 allows for the termination of such contract at the option of the
 106 awarding body if the company is found to have been placed on the
 107 Scrutinized Companies that Boycott Israel List or is engaged in
 108 a boycott of Israel.

109 (4) Notwithstanding subsection (2) or subsection (3), an
 110 agency or local governmental entity, on a case-by-case basis,
 111 may permit a company on ~~the Scrutinized Companies that Boycott~~
 112 ~~Israel List,~~ the Scrutinized Companies with Activities in Sudan
 113 List or the Scrutinized Companies with Activities in the Iran
 114 Petroleum Energy Sector List, or a company engaged in with
 115 business operations in Cuba or Syria, to be eligible for, bid
 116 on, submit a proposal for, or enter into or renew a contract for
 117 goods or services of \$1 million or more, or may permit a company
 118 on the Scrutinized Companies that Boycott Israel List to be
 119 eligible for, bid on, submit a proposal for, or enter into or
 120 renew a contract for goods or services of any amount, under the
 121 conditions set forth in paragraph (a) or the conditions set
 122 forth in paragraph (b):

123 (a)1. With respect to a company on the Scrutinized
 124 Companies with Activities in Sudan List or the Scrutinized
 125 Companies with Activities in the Iran Petroleum Energy Sector

126 List, all of the following occur:
 127 a. The scrutinized business operations were made before
 128 July 1, 2011.
 129 b. The scrutinized business operations have not been
 130 expanded or renewed after July 1, 2011.
 131 c. The agency or local governmental entity determines that
 132 it is in the best interest of the state or local community to
 133 contract with the company.
 134 d. The company has adopted, has publicized, and is
 135 implementing a formal plan to cease scrutinized business
 136 operations and to refrain from engaging in any new scrutinized
 137 business operations.
 138 2. With respect to a company engaged in business
 139 operations in Cuba or Syria, all of the following occur:
 140 a. The business operations were made before July 1, 2012.
 141 b. The business operations have not been expanded or
 142 renewed after July 1, 2012.
 143 c. The agency or local governmental entity determines that
 144 it is in the best interest of the state or local community to
 145 contract with the company.
 146 d. The company has adopted, has publicized, and is
 147 implementing a formal plan to cease business operations and to
 148 refrain from engaging in any new business operations.
 149 3. With respect to a company on the Scrutinized Companies
 150 that Boycott Israel List, all of the following occur:

151 a. The boycott of Israel was initiated before October 1,
152 2016.

153 b. The company certifies in writing that it has ceased its
154 boycott of Israel.

155 c. The agency or local governmental entity determines that
156 it is in the best interest of the state or local community to
157 contract with the company.

158 d. The company has adopted, has publicized, and is
159 implementing a formal plan to cease scrutinized business
160 operations and to refrain from engaging in any new scrutinized
161 business operations.

162 (b) One of the following occurs:

163 1. The local governmental entity makes a public finding
164 that, absent such an exemption, the local governmental entity
165 would be unable to obtain the goods or services for which the
166 contract is offered.

167 2. For a contract with an executive agency, the Governor
168 makes a public finding that, absent such an exemption, the
169 agency would be unable to obtain the goods or services for which
170 the contract is offered.

171 3. For a contract with an office of a state constitutional
172 officer other than the Governor, the state constitutional
173 officer makes a public finding that, absent such an exemption,
174 the office would be unable to obtain the goods or services for
175 which the contract is offered.

176 (5) At the time a company submits a bid or proposal for a
 177 contract or before the company enters into or renews a contract
 178 with an agency or local governmental entity for goods or
 179 services of \$1 million or more, the company must certify that
 180 the company is not ~~participating in a boycott of Israel,~~ on the
 181 Scrutinized Companies with Activities in Sudan List or the
 182 Scrutinized Companies with Activities in the Iran Petroleum
 183 Energy Sector List and,~~or~~ that it does not have business
 184 operations in Cuba or Syria. At the time a company submits a bid
 185 or proposal for a contract or before the company enters into or
 186 renews a contract with an agency or local governmental entity
 187 for goods or services of any amount, the company must certify
 188 that the company is not participating in a boycott of Israel.

189 (a) If, after the agency or the local governmental entity
 190 determines, using credible information available to the public,
 191 that the company has submitted a false certification, the agency
 192 or local governmental entity shall provide the company with
 193 written notice of its determination. The company shall have 90
 194 days following receipt of the notice to respond in writing and
 195 to demonstrate that the determination of false certification was
 196 made in error. If the company does not make such demonstration
 197 within 90 days after receipt of the notice, the agency or the
 198 local governmental entity shall bring a civil action against the
 199 company. If a civil action is brought and the court determines
 200 that the company submitted a false certification, the company

201 shall pay the penalty described in subparagraph 1. and all
 202 reasonable attorney fees and costs, including any costs for
 203 investigations that led to the finding of false certification.

204 1. A civil penalty equal to the greater of \$2 million or
 205 twice the amount of the contract for which the false
 206 certification was submitted shall be imposed.

207 2. The company is ineligible to bid on any contract with
 208 an agency or local governmental entity for 3 years after the
 209 date the agency or local governmental entity determined that the
 210 company submitted a false certification.

211 (b) A civil action to collect the penalties described in
 212 paragraph (a) must commence within 3 years after the date the
 213 false certification is submitted.

214 (6) Only the agency or local governmental entity that is a
 215 party to the contract may cause a civil action to be brought
 216 under this section. This section does not create or authorize a
 217 private right of action or enforcement of the penalties provided
 218 in this section. An unsuccessful bidder, or any other person
 219 other than the agency or local governmental entity, may not
 220 protest the award of a contract or contract renewal on the basis
 221 of a false certification.

222 (7) This section preempts any ordinance or rule of any
 223 agency or local governmental entity involving public contracts
 224 for goods or services of:

225 (a) One million dollars ~~Of \$1 million~~ or more with a

226 | company engaged in scrutinized business operations.

227 | (b) Any amount with a company that has been placed on the
 228 | Scrutinized Companies that Boycott Israel List or is engaged in
 229 | a boycott of Israel.

230 | (8) The contracting prohibitions in this section
 231 | applicable to companies on the Scrutinized Companies with
 232 | Activities in Sudan List or the Scrutinized Companies with
 233 | Activities in the Iran Petroleum Energy Sector List or to
 234 | companies engaged in business operations in Cuba or Syria become
 235 | inoperative on the date that federal law ceases to authorize the
 236 | states to adopt and enforce such contracting prohibitions.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 551 Pub. Rec./Health Care Facilities
SPONSOR(S): Burton
TIED BILLS: **IDEN./SIM. BILLS:** SB 906

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

SUMMARY ANALYSIS

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Although health care facilities are required to submit similar building plans and related documents to agencies, there does not appear to be a public record exemption for these building plans.

The bill expands the public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final forms, which depict the internal layout and structural elements to include health care facilities. Specifically, the bills provides that such plans for a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled are exempt from public disclosure.

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

The bill may have a minimal fiscal impact on the state and local governments. 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 expands a public record exemption for building plans and related documents; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State 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 Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.⁵ 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

Public Record Exemption for Building Plans and Related Documents

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency.⁷ Such information is exempt from public disclosure.⁸ This exemption does not apply to comprehensive plans or site plans which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

Health Care Facilities

Health care facilities require review of methods of proposed construction by the Agency for Health Care Administration.⁹ The Agency ensures compliance with health care rules, codes and standards to

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 119.071(3)(c), F.S.

⁸ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as 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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

⁹ Section 408.035(h), F.S.

provide protection of public health and safety.¹⁰ Schematics, preliminary plans and construction documents received by the Agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes and intermediate care facilities for the developmentally disabled are public record and subject to release upon request.¹¹ These plans include building floor plans, communication systems, medical gas systems, electrical systems, emergency generators, and other physical plant and security details.¹²

Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists.¹³ Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities and aid in the planning, training and execution of criminal activities.¹⁴

Effect of the Bill

This bill expands the public records exemption for building plans and other related documents for an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Specifically, this bill expands this exemption to include health care facilities. The public record exemption is retroactive and applies to records held before, on, or after the effective date of this bill.

The bill provides that the public record 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.

This bill provides a public necessity statement as required by the Florida Constitution, which states that the building plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. In addition, information contained in the documents could aid in the planning, training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for building plans for health care facilities.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

¹⁰ Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; Department of Homeland Security, *Terrorists Call for Attacks on Hospitals, Healthcare Facilities* (Feb. 8, 2017) available at: <http://www.arkhospitals.org/Misc.%20Files/AttacksHospitalsHCFacilities.pdf>.

¹⁴ Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for access to building plans, blueprints, schematic drawings and diagrams for healthcare facilities. The expansion of the public record exemption seeks to prevent criminals and terrorists from accessing information that could aid the conduct of criminal activity targeting health care facilities.

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.

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams held by an agency which depict the internal layout or structural elements of certain health care facilities; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

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

(3) SECURITY.—

(c)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, which records are held by an agency are exempt from

26 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

27 2. This exemption applies to any such records held by an
28 agency before, on, or after the effective date of this act.

29 3. Information made exempt by this paragraph may be
30 disclosed to another governmental entity if disclosure is
31 necessary for the receiving entity to perform its duties and
32 responsibilities; to the owner or owners of the structure in
33 question or the owner's legal representative; or upon a showing
34 of good cause before a court of competent jurisdiction.

35 4. This paragraph does not apply to comprehensive plans or
36 site plans, or amendments thereto, which are submitted for
37 approval or which have been approved under local land
38 development regulations, local zoning regulations, or
39 development-of-regional-impact review.

40 5. As used in this paragraph, the term:

41 a. "Attractions and recreation facility" means any sports,
42 entertainment, amusement, or recreation facility, including, but
43 not limited to, a sports arena, stadium, racetrack, tourist
44 attraction, amusement park, or pari-mutuel facility that:

45 (I) For single-performance facilities:

46 (A) Provides single-performance facilities; or

47 (B) Provides more than 10,000 permanent seats for
48 spectators.

49 (II) For serial-performance facilities:

50 (A) Provides parking spaces for more than 1,000 motor

51 vehicles; or

52 (B) Provides more than 4,000 permanent seats for
53 spectators.

54 b. "Entertainment or resort complex" means a theme park
55 comprised of at least 25 acres of land with permanent
56 exhibitions and a variety of recreational activities, which has
57 at least 1 million visitors annually who pay admission fees
58 thereto, together with any lodging, dining, and recreational
59 facilities located adjacent to, contiguous to, or in close
60 proximity to the theme park, as long as the owners or operators
61 of the theme park, or a parent or related company or subsidiary
62 thereof, has an equity interest in the lodging, dining, or
63 recreational facilities or is in privity therewith. Close
64 proximity includes an area within a 5-mile radius of the theme
65 park complex.

66 c. "Industrial complex" means any industrial,
67 manufacturing, processing, distribution, warehousing, or
68 wholesale facility or plant, as well as accessory uses and
69 structures, under common ownership that:

70 (I) Provides onsite parking for more than 250 motor
71 vehicles;

72 (II) Encompasses 500,000 square feet or more of gross
73 floor area; or

74 (III) Occupies a site of 100 acres or more, but excluding
75 wholesale facilities or plants that primarily serve or deal

76 onsite with the general public.

77 d. "Retail and service development" means any retail,
 78 service, or wholesale business establishment or group of
 79 establishments which deals primarily with the general public
 80 onsite and is operated under one common property ownership,
 81 development plan, or management that:

82 (I) Encompasses more than 400,000 square feet of gross
 83 floor area; or

84 (II) Provides parking spaces for more than 2,500 motor
 85 vehicles.

86 e. "Office development" means any office building or park
 87 operated under common ownership, development plan, or management
 88 that encompasses 300,000 or more square feet of gross floor
 89 area.

90 f. "Health care facility" means a hospital, ambulatory
 91 surgical center, nursing home, hospice, or intermediate care
 92 facility for the developmentally disabled.

93 ~~g.f.~~ "Hotel or motel development" means any hotel or motel
 94 development that accommodates 350 or more units.

95 6. This paragraph is subject to the Open Government Sunset
 96 Review Act in accordance with s. 119.15 and shall stand repealed
 97 on October 2, 2023, unless reviewed and saved from repeal
 98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public
 100 necessity that the building plans, blueprints, schematic

101 drawings, and diagrams of a health care facility should remain
102 confidential to ensure the safety of the health care facility's
103 staff, patients, and visitors. The Agency for Health Care
104 Administration reviews the building plans of proposed health
105 care facility construction to ensure compliance with health care
106 rules, codes, and standards in order to protect the public
107 health and safety. Schematics, preliminary plans, and
108 construction documents received by the agency and other
109 government agencies for hospitals, ambulatory surgical centers,
110 nursing homes, hospices, and intermediate care facilities for
111 the developmentally disabled are currently subject to release as
112 public records and subject to release upon request. These plans
113 include building floor plans, communication systems, medical gas
114 systems, electrical systems, emergency generators, and other
115 physical plant and security details. Recent security threats
116 have been shared by state and federal security and emergency
117 preparedness officials that describe the targeting of health
118 care facilities by terrorists. Because architectural and
119 engineering plans reviewed and held by government agencies
120 include information regarding emergency egress, locking
121 arrangements, critical life safety systems, and restricted
122 areas, these plans could be used by criminals or terrorists to
123 examine the physical plant for vulnerabilities. Information
124 contained in these documents could aid in the planning,
125 training, and execution of criminal actions including infant

126 abduction, cyber-crime, arson, and terrorism. Consequently, the
127 Legislature finds that the public records exemption created by
128 this act is a public necessity to reduce exposure to security
129 threats and protect the public.

130 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 Burton offered the following:

Amendment

6 Remove lines 101-102 and insert:
 7 drawings, and diagrams of a health care facility should be made
 8 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 9 Article I of the State Constitution to ensure the safety of the
 10 health care facility's