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# Oversight, Transparency & Administration Subcommittee

February 8, 2018

Morris Hall (17 HOB)

## Meeting Packet

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Oversight, Transparency & Administration Subcommittee

**Start Date and Time:** Thursday, February 08, 2018 05:15 pm  
**Alternate Start Time:** 15 minutes upon adjournment of Session  
**End Date and Time:** Thursday, February 08, 2018 07:15 pm  
**Alternate End Time:** To meet for 2 hours  
**Location:** Morris Hall (17 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HJR 1421 Duties of the Chief Financial Officer by Stevenson

**Consideration of the following proposed committee bill(s):**

PCB OTA 18-08 -- OGSR/Payment Instrument Transaction Information  
PCB OTA 18-09 -- OGSR/Agency Employee Misconduct  
PCB OTA 18-10 -- Pub. Rec./Disaster Response

**NOTICE FINALIZED on 02/06/2018 4:17PM by Larson.Lisa**





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1421 Duties of the Chief Financial Officer

**SPONSOR(S):** Stevenson

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SJR 792

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

### SUMMARY ANALYSIS

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member. The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities. Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state, paying state employee salaries, and reporting all disbursements of funds administered by the CFO.

The joint resolution would amend the Florida Constitution to require the CFO to participate as a principal in consensus economic, demographic, and revenue estimating conferences.

The joint resolution also requires the CFO to review and certify certain state contracts proposed by or on behalf of a state agency, entity, or officer of the executive branch. If a contract requires a payment or aggregate payments of more than \$10 million from funds appropriated to the state agency, entity, or officer, the CFO must review and certify the contract before it is executed. The CFO must ensure that the contract complies with state law as to its procurement and content and that any payments required to be made by the state agency, entity, or officer under the contract in any fiscal year do not exceed the amount appropriated for that fiscal year or the amount authorized by law for the purpose of the contract.

The joint resolution requires the \$10 million threshold to be adjusted by general law every four years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or a successor index as calculated by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency.

The joint resolution may have an indeterminate negative fiscal impact on the state.

**Article XI, s. 1 of the Florida Constitution requires a three-fifths vote of the members present and voting for final passage of a joint resolution proposing an amendment to the Florida Constitution. This joint resolution proposes a constitutional amendment, thus it requires a three-fifths vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.<sup>1</sup> The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>2</sup> Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,<sup>3</sup> paying state employee salaries,<sup>4</sup> and reporting all disbursements of funds administered by the CFO.<sup>5</sup>

The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO.<sup>6</sup> DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>7</sup>

The Financial Services Commission,<sup>8</sup> the Board of Funeral, Cemetery, and Consumer Services,<sup>9</sup> and the Strategic Markets Research and Assessment Unit<sup>10</sup> are also established within DFS.

##### Florida Accountability Contract Tracking System

Section 215.985(14), F.S., requires the CFO to establish and maintain a secure online contract tracking system known as the Florida Accountability Contract Tracking System (FACTS).<sup>11</sup> Within 30 days after

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<sup>1</sup> FLA. CONST. art. IV, s. 4,

<sup>2</sup> FLA. CONST. art. IV, s. 4(c); s. 17.001, F.S.

<sup>3</sup> Section 17.04, F.S.

<sup>4</sup> Section 17.09, F.S.

<sup>5</sup> Section 17.11, F.S.

<sup>6</sup> Section 20.121, F.S.

<sup>7</sup> Section 20.121(2), F.S.

<sup>8</sup> The Financial Services Commission is composed of the Governor and the Cabinet members and includes the Office of Insurance Regulation and the Office of Financial Regulation. The offices are responsible for activities of the commission relating to regulation and investigation of violations of law relating to insurance and financial institutions. Section 20.121(3)(a), F.S.

<sup>9</sup> The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services and regulates licenses issued under ch. 497, F.S. Sections 20.121(4) and 497.103, F.S.

<sup>10</sup> The Strategic Markets Research and Assessment Unit creates reports on issues, trends, and threats that broadly impact the condition of the financial services industries. Section 20.121(6), F.S.

<sup>11</sup> The FACTS website can be found online at: <http://www.myfloridacfo.com/aadir/statewidecontractreporting.htm> (last visited Feb. 6, 2018).

executing a contract, each state entity<sup>12</sup> is required to post the following information relating to the contract on FACTS:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and ending dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract performance measures.
- If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any.
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.<sup>13</sup>

State entities must update the information on FACTS within 30 days of an amendment to an existing contract.<sup>14</sup>

Current law also requires each state agency<sup>15</sup> to report to DFS, within three working days of executing a contract, the following information relating to certain contracted activities that are not awarded by competitive solicitation:<sup>16</sup>

- The nature of the commodities or services purchased.
- The term of the contract.
- The final obligation made by the agency.
- A summary of any time constraints that apply to the procurement.
- The justification for not using the competitive solicitation, including any statutory exemption or exception.
- Other information regarding the contract or the procurement that DFS requires.<sup>17</sup>

### **Effect of the Joint Resolution**

The joint resolution would amend the Florida Constitution to require the CFO to participate as a principal in consensus economic, demographic, and revenue estimating conferences.

The joint resolution also requires the CFO to review and certify certain state contracts proposed by or on behalf of a state agency, entity, or officer of the executive branch. If a contract requires a payment or aggregate payments of more than \$10 million from funds appropriated to the state agency, entity, or officer, the CFO must review and certify the contract before it is executed. The CFO must ensure that the contract complies with state law as to its procurement and content and that any payments required

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<sup>12</sup> The term “state entity” means an official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; a state attorney, public defender, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission; the Public Service Commission; and any part of the judicial branch of state government. Section 215.985(14)(h)2., F.S.

<sup>13</sup> Section 215.985(14)(a), F.S.

<sup>14</sup> Section 215.985(14)(b), F.S.

<sup>15</sup> The term “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. The term includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Section 216.011(1)(qq), F.S.

<sup>16</sup> Agencies must submit the information to DFS for contracts in excess of Category Two (\$35,000) if the goods and services were not purchased by competitive solicitation or from a state term contract. Section 216.011(2), F.S.

<sup>17</sup> Section 216.011(1), F.S.

to be made by the state agency, entity, or officer under the contract in any fiscal year do not exceed the amount appropriated for that fiscal year or the amount authorized by law for the purpose of the contract.

The joint resolution requires the \$10 million threshold to be adjusted by general law every four years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or a successor index as calculated by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by 60 percent of the electors voting. If approved, the amendment will take effect January 8, 2019.

**B. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The joint resolution does not appear to impact state government revenues.

**2. Expenditures:**

According to DFS, the joint resolution may have an indeterminate negative fiscal impact on DFS for the additional staff required to perform the tasks outlined in the joint resolution. In addition, there may be costs to implement an information technology system to facilitate review of the contracts.<sup>18</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The joint resolution does not appear to impact local government revenues.

**2. Expenditures:**

The joint resolution does not appear to impact local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The joint resolution may have a negative fiscal impact on the Department of State as a result of publishing the proposed resolution. Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The department is required to advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election. The department is also required to provide each supervisor of elections with either booklets or posters displaying the full text of a proposed amendment.<sup>19</sup>

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<sup>18</sup> Department of Financial Services, Agency Analysis for Senate Joint Resolution 792, Nov. 21, 2017 (on file with the Oversight, Transparency & Administration Subcommittee). Prior to being amended, SJR 792 was substantively identical to HJR 1421.

<sup>19</sup> Section 101.171, F.S.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IV of the State Constitution to revise the duties and responsibilities of the Chief Financial Officer.

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

That the following amendment to Section 4 of Article IV of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general

26 the position of statewide prosecutor. The statewide prosecutor  
 27 shall have concurrent jurisdiction with the state attorneys to  
 28 prosecute violations of criminal laws occurring or having  
 29 occurred, in two or more judicial circuits as part of a related  
 30 transaction, or when any such offense is affecting or has  
 31 affected two or more judicial circuits as provided by general  
 32 law. The statewide prosecutor shall be appointed by the attorney  
 33 general from not less than three persons nominated by the  
 34 judicial nominating commission for the supreme court, or as  
 35 otherwise provided by general law.

36 (c) The chief financial officer shall serve as the chief  
 37 fiscal officer of the state, and shall:

38 (1) Settle and approve accounts against the state; ~~and~~  
 39 ~~shall~~

40 (2) Keep all state funds and securities;

41 (3) Participate as a principal in consensus economic,  
 42 demographic, and revenue estimating conferences; and

43 (4) Review and certify state contracts proposed by or on  
 44 behalf of any state agency, entity, or officer of the executive  
 45 branch as defined by general law which require a payment or  
 46 aggregate payments in excess of ten million dollars from funds  
 47 appropriated to the state agency, entity, or officer before the  
 48 execution of any such contract. The chief financial officer  
 49 shall ensure that such a contract complies with state law as to  
 50 its procurement and content and that any payments required to be

51 made by the state agency, entity, or officer under the contract  
 52 in any fiscal year do not exceed the amount appropriated for  
 53 that fiscal year or the amount authorized by law for the purpose  
 54 of the contract. The ten-million-dollar threshold shall be  
 55 adjusted by general law every four years to reflect the rate of  
 56 inflation or deflation as indicated in the Consumer Price Index  
 57 for All Urban Consumers, U.S. City Average, All Items, or a  
 58 successor index as calculated by the United States Department of  
 59 Labor, Bureau of Labor Statistics, or its successor agency.

60 (d) The commissioner of agriculture shall have supervision  
 61 of matters pertaining to agriculture except as otherwise  
 62 provided by law.

63 (e) The governor as chair, the chief financial officer,  
 64 and the attorney general shall constitute the state board of  
 65 administration, which shall succeed to all the power, control,  
 66 and authority of the state board of administration established  
 67 pursuant to Article IX, Section 16 of the Constitution of 1885,  
 68 and which shall continue as a body at least for the life of  
 69 Article XII, Section 9(c).

70 (f) The governor as chair, the chief financial officer,  
 71 the attorney general, and the commissioner of agriculture shall  
 72 constitute the trustees of the internal improvement trust fund  
 73 and the land acquisition trust fund as provided by law.

74 (g) The governor as chair, the chief financial officer,  
 75 the attorney general, and the commissioner of agriculture shall

76 constitute the agency head of the Department of Law Enforcement.

77 BE IT FURTHER RESOLVED that the following statement be  
78 placed on the ballot:

79 CONSTITUTIONAL AMENDMENT

80 ARTICLE IV, SECTION 4

81 DUTIES OF THE CHIEF FINANCIAL OFFICER.—Proposing an  
82 amendment to the State Constitution to expand the duties of the  
83 Chief Financial Officer to require that he or she participate as  
84 a principal in consensus economic, demographic, and revenue  
85 estimating conferences; review and certify certain state  
86 contracts above a threshold dollar amount; and ensure that such  
87 contracts comply with state law and do not require payments in  
88 any fiscal year which exceed the amount appropriated or the  
89 amount authorized by 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		

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

**Amendment (with ballot amendment)**

Remove lines 43-59 and insert:

- 4  
5  
6  
7 (4) As prescribed by general law, review and certify,  
8 before execution, that each proposed contract of a state agency,  
9 entity, or officer of the executive branch requiring a payment  
10 or aggregate payments in excess of ten million dollars from  
11 funds appropriated to the state agency, entity, or officer:
- 12 a. Complies with general laws relating to procurement;
  - 13 b. Includes all provisions required by general law for  
14 state agency contracts; and
  - 15 c. Does not require payments by the state agency, entity,  
16 or officer in any fiscal year in excess of the amount



Amendment No.

17 appropriated for that fiscal year or the amount authorized by  
18 general law, for the purpose of the contract.

19  
20 The legislature shall enact legislation to implement this  
21 paragraph, including the adjustment, to be adjusted at least  
22 every four years, of the contract amount threshold to reflect  
23 the rate of inflation or deflation as indicated in the Consumer  
24 Price Index for All Urban Consumers, U.S. City Average, All  
25 Items, or a successor index, as calculated by the United States  
26 Department of Labor Bureau of Labor Statistics, or its successor  
27 agency.

28  
29 -----  
30 **B A L L O T A M E N D M E N T**

31 Remove lines 81-89 and insert:



32 DUTIES OF THE CHIEF FINANCIAL OFFICER.—Expands the Chief  
33 Financial Officer's duties to require that he or she participate  
34 as a principal in consensus economic, demographic, and revenue  
35 estimating conferences and review and certify certain state  
36 contracts above a threshold dollar amount to ensure compliance  
37 with certain laws and that such contracts do not require  
38 payments in any fiscal year which exceed the amount appropriated  
39 or the amount authorized by law. Requires the Legislature to  
40 enact legislation to implement the amendment.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB OTA 18-08 OGSR/Payment Instrument Transaction Information  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 7010

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

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of Financial Regulation (OFR) licenses and regulates check cashers. Florida law imposes various requirements on check cashiers, including that such licensees maintain certain payment instrument transaction information. In addition, certain information related to each payment instrument being cashed that exceeds \$1,000 must be entered into OFR's check cashing database. Current law provides that payment instrument transaction information held by OFR pursuant to the database that identifies a licensee, payor, payee, or conductor is confidential and exempt from public record requirements. OFR may enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law. The bill also clarifies that OFR may release information in the database in the aggregate as long as confidential and exempt identifying information is not disclosed.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

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

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Office of Financial Regulation Check Cashing Regulations

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to chapter 560, F.S. Florida law imposes various requirements on check cashiers, including requiring the licensee to maintain copies of each payment instrument cashed.<sup>6</sup> If the payment instrument exceeds \$1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,<sup>7</sup> on all customers who cash corporate payment instruments that exceed \$1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.<sup>8</sup>

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds \$1,000:

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I of the State Constitution.

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

<sup>6</sup> Section 560.310(1), F.S.

<sup>7</sup> Rule 69V-560.704, F.A.C.

<sup>8</sup> Section 560.310(2)(a)-(c), F.S.

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.<sup>9</sup>

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.<sup>10</sup>

#### Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for payment instrument transaction information (check cashing database information) held by OFR that identifies a licensee, payor, payee, or conductor.<sup>11</sup> OFR may enter into information-sharing agreements with DFS, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The 2013 public necessity statement for the exemption provided that use of the check cashing database is necessary to deter money laundering through these entities and to prevent fraud, including workers' compensation fraud. In addition, it provided that:

[T]he public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check-cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. Such information is traditionally private and sensitive. Protecting the confidentiality of information that would identify these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. The public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensee or payors in the marketplace. If such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors.<sup>12</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.<sup>13</sup>

<sup>9</sup> Section 560.310(1)(d), F.S.

<sup>10</sup> Section 560.310(5), F.S.

<sup>11</sup> Chapter 2013-155, L.O.F.; codified as s. 560.312, F.S.

<sup>12</sup> Section 2, ch. 2013-155, L.O.F.

<sup>13</sup> Section 560.312(3), F.S.

During the 2017 interim, subcommittee staff met with staff from OFR and DFS as part of its review under the Open Government Sunset Review Act. OFR and DFS recommended that the exemption be reenacted noting that the exemption has allowed the agencies to properly regulate licensees and to monitor and prevent fraud while preventing the disclosure of information that would identify the licensee payor, payee, or conductor.

### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public record exemption for payment instrument transaction information held by OFR pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor. The bill also clarifies that OFR may release information in the database in the aggregate as long as confidential and exempt identifying information is not disclosed.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 560.312, F.S., to save from repeal the public record exemption for payment instrument transaction information held by OFR that reveals a licensee, payor, payee, or conductor.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable

1                                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; amending s. 560.312, F.S., relating  
4           to an exemption from public record requirements for  
5           certain payment instrument transaction information  
6           held by the Office of Financial Regulation; clarifying  
7           that the Office of Financial Regulation may release  
8           certain information in the aggregate; removing the  
9           scheduled repeal of the exemption; providing an  
10          effective date.

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

13  
14           Section 1.   Section 560.312, Florida Statutes, is amended  
15   to read:

16           560.312   Database of payment instrument transactions;  
17   confidentiality.—

18           (1)   Payment instrument transaction information held by the  
19   office pursuant to s. 560.310 which identifies a licensee,  
20   payor, payee, or conductor is confidential and exempt from s.  
21   119.07(1) and s. 24(a), Art. I of the State Constitution.

22           (2) (a)   A licensee may access information that it submits  
23   to the office for inclusion in the database.

24           (b)   The office, to the extent permitted by state and  
25   federal law, may enter into information-sharing agreements with

26 the department, law enforcement agencies, and other governmental  
 27 agencies and, in accordance with such agreements, may provide  
 28 the department, law enforcement agencies, and other governmental  
 29 agencies with access to information contained in the database  
 30 for use in detecting and deterring financial crimes and workers'  
 31 compensation violations, pursuant to chapter 440. Any department  
 32 or agency that receives confidential information from the office  
 33 under this paragraph must maintain the confidentiality of the  
 34 information, unless, and only to the extent that, a court order  
 35 compels production of the information to a specific party or  
 36 parties.

37 (3) The office may release payment instrument transaction  
 38 information in the aggregate, so long as the information  
 39 released does not reveal information that identifies a licensee,  
 40 payor, payee, or conductor.

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

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

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

**Amendment (with title amendment)**

Remove lines 41-44 and insert:

7 (4)~~(3)~~ This section is subject to the Open Government  
8 Sunset Review Act in accordance with s. 119.15 and shall stand  
9 repealed on October 2, 2020 ~~2018~~, unless reviewed and saved from  
10 repeal through reenactment by the Legislature.  
11

12 -----  
13 **T I T L E A M E N D M E N T**

Remove lines 8-9 and insert:

14 certain information in the aggregate; extending the repeal date;  
15 providing an  
16





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB OTA 18-09 OGSR/Agency Employee Misconduct  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 7018

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

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law protects complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct. The records are confidential and exempt from public record requirements until the investigation ceases to be active or the agency provides written notice to the employee that the agency has concluded the investigation with a finding to proceed with disciplinary action or to not proceed with disciplinary action.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Open Government Sunset Review Act

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

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

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemption under Review

Current law requires that complaints of misconduct filed with an agency<sup>5</sup> against an agency employee be kept confidential and exempt<sup>6</sup> from public records requirements.<sup>7</sup> If an agency investigates such a complaint, the information obtained from the investigation is also confidential and exempt.<sup>8</sup> The complaint and the investigative information remain confidential and exempt until either the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint.<sup>9</sup> The written notice may be delivered personally or by mail and must state that the agency

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>7</sup> Section 119.071(2)(k)1., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

has concluded the investigation with a finding to proceed with disciplinary action or file charges<sup>10</sup> or not to proceed.<sup>11</sup>

The 2013 public necessity statement<sup>12</sup> for the exemption provides the following policy rationale for its enactment:

The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to determine the truth.<sup>13</sup>

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

#### Open Government Sunset Review Results

During the 2017 interim, subcommittee staff sent a questionnaire to every state agency, county, city, sheriff's office, public defender's office, and state attorney's office. In all, 62 questionnaire responses were received.<sup>14</sup> A majority of respondents recommended that the exemption be reenacted without changes and no respondents recommended letting the exemption repeal. Many respondents reported that their agency had received public record requests for the exempt information. The most common rationale offered for maintaining the exemption was that the temporary confidentiality it afforded the agency allowed it to maintain the fairness and integrity of the investigation that in turn encouraged all parties involved to be candid and forthcoming.

#### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to save from repeal the public records exemption for complaints of misconduct and information obtained from an investigation stemming from a complaint of misconduct.

Section 2 provides an effective October 1, 2018.

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<sup>10</sup> Section 119.071(2)(k)1.b., F.S.

<sup>11</sup> Section 119.071(2)(k)1.a., F.S.

<sup>12</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity statement justifying" its existence.

<sup>13</sup> Chapter 2013-248, L.O.F.

<sup>14</sup> The questionnaire and responses are on file with the House Oversight, Transparency & Administration Subcommittee.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 119.071, F.S., which  
 4           provides an exemption from public record requirements  
 5           for a complaint of misconduct against an agency  
 6           employee and all information obtained pursuant to an  
 7           investigation of such a complaint; removing the  
 8           scheduled repeal of the exemption; providing an  
 9           effective date.

10

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

12

13           Section 1. Paragraph (k) of subsection (2) of section  
 14           119.071, Florida Statutes, is amended to read:

15           119.071 General exemptions from inspection or copying of  
 16           public records.—

17           (2) AGENCY INVESTIGATIONS.—

18           (k)~~1~~. A complaint of misconduct filed with an agency  
 19           against an agency employee and all information obtained pursuant  
 20           to an investigation by the agency of the complaint of misconduct  
 21           is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 22           I of the State Constitution until the investigation ceases to be  
 23           active, or until the agency provides written notice to the  
 24           employee who is the subject of the complaint, either personally  
 25           or by mail, that the agency has either:

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ORIGINAL

2018

26            a.1. Concluded the investigation with a finding not to  
27 proceed with disciplinary action or file charges; or

28            b.2. Concluded the investigation with a finding to proceed  
29 with disciplinary action or file charges.

30            ~~2. Subparagraph 1. is subject to the Open Government~~  
31 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
32 ~~repealed on October 2, 2018, unless reviewed and saved from~~  
33 ~~repeal through reenactment by the Legislature.~~

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-10 Pub. Rec./Disaster Response
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Oversight, Transparency & Administration Subcommittee; Toliver; Harrington

SUMMARY ANALYSIS

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency. The State Emergency Management Act directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act allows a state to collect monetary assistance from the federal government in the event that an emergency "situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments."

The bill creates a public record exemption for certain personal information collected by public shelters during emergencies. Specifically, the bill provides that the name, address, and telephone number of a person using a public shelter during an emergency is exempt from public records requirements.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemptions by that date.

The bill may have a minimal fiscal impact on the state and local governments.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>2</sup> 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.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

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<sup>5</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>6</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>7</sup>

##### Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.<sup>8</sup> The State Emergency Management Act<sup>9</sup> directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency.<sup>10</sup> Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> Section 119.15(3), F.S.

<sup>8</sup> Section 14.2016, F.S.

<sup>9</sup> Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

<sup>10</sup> Section 252.385(2)(a), F.S.

or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.<sup>11</sup>

DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.<sup>12</sup> The CEMP<sup>13</sup> must include a shelter component, the Statewide Emergency Shelter Plan (plan),<sup>14</sup> with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.<sup>15</sup> The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a postdisaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.<sup>16</sup>

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.<sup>17</sup> The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.<sup>18</sup> The plan must also identify the types of public facilities that should be constructed to comply with emergency-shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.<sup>19</sup>

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public record exemption for this information exists, the plan states that shelter staff members should “abide by principles of confidentiality.”<sup>20</sup>

### Damage Assessments

Congress, in order “to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from ... disasters,”<sup>21</sup> passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).<sup>22</sup> The Stafford Act allows the Federal Emergency

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<sup>11</sup> Section 252.385(4)(a), F.S.

<sup>12</sup> Section 252.35(2)(a), F.S. ; *see also* s. 1013.372, F.S.

<sup>13</sup> FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited February 2, 2018).

<sup>14</sup> 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited February, 4, 2018).

<sup>15</sup> Section 252.35(2)(a)2., F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 1013.372(2), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, App’x F., pg. F-2, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited February, 4, 2018).

<sup>21</sup> 42 U.S.C. s. 5121(b).

<sup>22</sup> P.L. 100-707 (1988).

Management Agency (FEMA) to promulgate rules and regulations to carry out its provisions.<sup>23</sup> FEMA regulations under the Stafford Act, for instance, require that each state create an emergency plan.<sup>24</sup>

The Stafford Act allows a state to collect monetary assistance from the federal government in the event that an emergency “situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments.”<sup>25</sup> To receive funding, the Governor, on behalf of the state or on behalf of certain localities, must request from the President of the United States a declaration that an emergency exists (Stafford declaration).<sup>26</sup> As a part of the request, and as a prerequisite to emergency assistance, the Governor is required to take appropriate action under state law and direct execution of the State’s emergency plan.<sup>27</sup> The Governor must submit information that describes the state and local efforts and resources which have been or will have to be used to alleviate the emergency as well as define the type and extent of federal aid required.<sup>28</sup> FEMA has created a detailed process by which the information that must accompany a Governors’ request for a Stafford declaration is obtained and verified.<sup>29</sup>

In brief, the process for obtaining and verifying the information that must accompany a request for a Stafford declaration is as follows:

- *Preassessment*: The local government collects preliminary damage assessment (PDA) information within its jurisdiction and then submits the information to the State;<sup>30</sup>
- *Verification by the State*: The information provided by the local government is verified by the State to ensure that it “is complete and consistent with programmatic assessment criteria”;<sup>31</sup>
- *Joint PDA*: The Director of the State Emergency Management Agency<sup>32</sup> requests a joint PDA and state officials work jointly with FEMA officials on damage assessment field teams to validate the state’s PDA information;<sup>33</sup>
- *Recommendation to the Governor*: Once the Joint PDA is completed, the State’s emergency managers review the validated information and then make a recommendation to the Governor on whether a request for a Stafford declaration is necessary.<sup>34</sup>

If the Governor decides to request a Stafford declaration from the President, he or she must submit the request through the FEMA Regional Administrator.<sup>35</sup> Based upon the Governor’s request, the President may declare that an emergency exists in a state or a region of a state.<sup>36</sup> Once a Stafford declaration is signed by the President, FEMA may then begin allocating funds to the state or local governments.

The damage assessment information collected or created by the state or local government to aid in the process of obtaining federal aid could include such personal information as the name, address, and

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<sup>23</sup> 42 U.S.C. s. 5164.

<sup>24</sup> 44 C.F.R. s. 206.4. Florida has, through its Division of Emergency Management, created a state comprehensive emergency management plan. Section 252.35(2)(a), F.S.; *see also* Comprehensive Emergency Management Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited February 5, 2018).

<sup>25</sup> 42 U.S.C. s. 5191(a).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 44 C.F.R. ss. 206.31-206.48.

<sup>30</sup> 44 C.F.R. s. 206.33(a).

<sup>31</sup> Damage Assessment Operations Manual, FEMA, pg. 5, available at <https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf> (last visited February 5, 2018).

<sup>32</sup> In Florida, this would be the Director of the Division of Emergency Management. Section 14.2016(1), F.S.

<sup>33</sup> 44 C.F.R. s. 206.33(b), F.S.

<sup>34</sup> Damage Assessment Operations Manual, FEMA, pg. 7, available at <https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf> (last visited February 5, 2018).

<sup>35</sup> 44 C.F.R. ss. 206.35(a) and 206.36(a).

<sup>36</sup> 42 U.S.C. s. 5191(a).

telephone number of the residents of a damaged structure. Current law does not provide a public record exemption for damage assessment information submitted to a state or local agency.

### **Effect of the Bill**

The bill creates a public record exemption for certain personal information collected by public shelters during emergencies. Specifically, the bill provides that the name, address, and telephone number of a person using a public shelter during an emergency is exempt<sup>37</sup> from public records requirements. The bill provides a public necessity statement as required by the Florida Constitution. The statement asserts that persons using a shelter, having been displaced from their residences and possessions, are in a vulnerable state. Information given to a shelter could be used by persons seeking to take advantage their vulnerability. In addition, the statement provides that a person seeking shelter for their safety and the safety of their families should not be forced to forfeit their privacy for such safety.

The bill also creates a public record exemption for the name, address, and telephone number of a homeowner or tenant held by an agency for the purpose of providing damage assessment data following a disaster. The information remains exempt from disclosure for one year following the date of the disaster. The bill provides a public necessity statement as required by the Florida Constitution. The statement provides that, in response to a disaster, an agency may ask residents to submit damage assessment data or the agency may itself create such data to ascertain the damage to certain areas. The information could, if released, be used by thieves, predatory lenders, deceptive contractors, or persons otherwise seeking to take advantage of an affected homeowner's or tenant's vulnerability following a disaster.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 252.385, F.S., relating to public shelter space.

Section 2 creates s. 252.64, F.S., relating to a public records exemption for damage assessments.

Section 3 provides a public necessity statement as required by the Florida Constitution

Section 4 provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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<sup>37</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

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

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates public record exemptions; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain personal information collected from residents of a public shelter and its purpose is to protect the vulnerable residents from potential predatory behavior caused by the release of such information. This bill also creates a public record exemption for certain personal information of a person held by an agency for the purpose of providing damage assessment data. The purpose of the exemption is to protect persons made vulnerable due to a disaster from actors who might use the information maliciously. As such, the bill appears to be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
An act relating to public records; amending s.  
252.385, F.S.; creating an exemption from public  
record requirements for certain information of a  
person using a public shelter during an emergency;  
defining the term "agency"; providing for future  
legislative review and repeal of the exemption;  
creating s. 252.64, F.S.; creating an exemption from  
public record requirements for certain identifying  
information related to damage assessments held by an  
agency; defining the term "agency"; providing for  
expiration of the public record exemption; providing  
for future legislative review and repeal of the  
exemption; providing public necessity statements;  
providing an effective date.

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

Section 1. Subsection (5) is added to section 252.385,  
Florida Statutes, to read:

252.385 Public shelter space; public record exemption.—  
(5) The name, address, and telephone number of a person  
using a public shelter during an emergency held by an agency as  
defined in s. 119.011, is exempt from s. 119.07(1) and s. 24(a),  
Art. I of the State Constitution. This subsection is subject to

26 the Open Government Sunset Review Act in accordance with s.  
 27 119.15 and shall stand repealed on October 2, 2023, unless  
 28 reviewed and saved from repeal through reenactment of the  
 29 Legislature.

30 Section 2. Section 252.64, Florida Statutes, is created to  
 31 read:

32 252.64 Public records exemption; damage assessments.— The  
 33 name, address, and telephone number of a homeowner or tenant  
 34 held by an agency as defined in s. 119.011, for the purpose of  
 35 providing or receiving damage assessment data following a  
 36 disaster is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 37 State Constitution. Such information shall cease to be exempt  
 38 one year after the date of the disaster. This section is subject  
 39 to the Open Government Sunset Review Act in accordance with s.  
 40 119.15 and shall stand repealed on October 2, 2023, unless  
 41 reviewed and saved from repeal through reenactment of the  
 42 Legislature.

43 Section 3. (1) The Legislature finds that it is a public  
 44 necessity that the name, address, and telephone number of a  
 45 person using a public shelter during an emergency held by an  
 46 agency be made exempt from s. 119.07(1), Florida Statutes, and  
 47 s. 24(a), Article I of the State Constitution. Shelters are made  
 48 available to the public to provide a safe place of accommodation  
 49 before, during, and immediately following an emergency or  
 50 disaster. During an emergency or disaster, the people affected



51 are in a vulnerable state as they have voluntarily displaced  
 52 themselves from their residences and possessions to seek refuge.  
 53 The information submitted by such a shelter resident could be  
 54 used by persons seeking to take advantage of their vulnerability  
 55 during or following the emergency or disaster. In addition,  
 56 persons seeking shelter for their safety and the safety of their  
 57 families should not be forced to forfeit their privacy for the  
 58 sake of such safety. Therefore, the Legislature finds that it is  
 59 a public necessity to protect such information from public  
 60 disclosure.

61 (2) The Legislature further finds that it is a public  
 62 necessity that the name, address, and telephone number of a  
 63 person held by an agency for the purpose of providing or  
 64 receiving damage assessment data should be made exempt from s.  
 65 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 66 State Constitution for one year following the date of a  
 67 disaster. In response to a disaster, an agency, in trying to  
 68 ascertain the damage to certain areas, may ask residents to  
 69 submit data detailing the damage to their properties. The agency  
 70 may also create damage assessment data or amend the submitted  
 71 data to enhance the accuracy of all damage assessments within a  
 72 given area. The information may include a person's name,  
 73 address, and telephone number which may then be used to locate  
 74 the damaged property, identify the owner or tenant, and contact  
 75 them if needed. Following a disaster the people affected are

76 vulnerable; they are frequently displaced, living without their  
 77 possessions, and their homes may be severely damaged, often to  
 78 the point of being uninhabitable. The information could, if  
 79 released, be used by thieves, predatory lenders, deceptive  
 80 contractors, or persons otherwise seeking to take advantage of  
 81 the vulnerability of an affected homeowner or tenant following a  
 82 disaster. Therefore, it is necessary that this information be  
 83 protected for a period to ensure that persons affected by a  
 84 disaster are not harassed, intimidated, or potentially defrauded  
 85 by such persons.

86 Section 4. This act shall take effect upon becoming a law.