Governmental Operations Committee

Monday, April 17, 2006
1:00 - 2:00 PM
Morris Hall

REVISED

Allan Bense
Speaker

David Rivera
Chairman

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense **(AMENDED 4/13/2006 4:05:03PM)**

Amended(1)

Governmental Operations Committee

Start Date and Time:	Monday, April 17, 2006 01:00 pm
End Date and Time:	Monday, April 17, 2006 02:00 pm
Location:	Morris Hall (17 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 651 Secondhand Dealers by Kottkamp
HB 675 CS Public Records and Public Meetings by Pickens
HB 775 CS Psychologist Specialties by Roberson
HB 911 CS Use of State Facilities as Emergency Shelters by Bullard
HB 1117 Public Records by Greenstein
HB 1223 Florida Retirement System by Machek
HB 1285 Public Records Exemptions by Attkisson
HB 1369 Public Records by Evers
HB 1421 Department of Public Safety by Needelman
HB 1451 Public Records by Gannon
HB 1469 CS Public Records by Grant

Consideration of the following bill(s) with proposed committee substitute(s):

Public Records -- PCS for HB 1563

NOTICE FINALIZED on 04/13/2006 16:05 by TUCK.SHIRLEY

HB 651

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Secondhand Dealers
SPONSOR(S): Kottkamp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Business Regulation Committee	18 Y, 0 N	Livingston	Liepshutz
3) Governmental Operations Committee		Brown	Williamson
4) Justice Council			
5)			

SUMMARY ANALYSIS

This bill modifies provisions relating to secondhand dealers, and adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property.

Changes include:

- Revising definitions of what constitutes secondhand goods and exempting persons.
- Repealing the exemption from regulation for mail order sales.
- Specifically exempting certain internet business from regulation as a secondhand dealer.
- Revising the recordkeeping requirements and increasing criminal penalties.
- Increasing the time law enforcement can order a hold on stolen goods.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases regulation of secondhand dealers.

B. EFFECT OF PROPOSED CHANGES:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Chapter 538, F.S., regulates secondhand dealers; the registration requirements are administered by the Department of Revenue.[1]

Prior to 1996, pawnbrokers also were regulated by chapter 538, F.S., but pawnbrokers are now regulated pursuant to chapter 539, F.S. This bill deletes references to pawnbrokers from chapter 538, F.S., and generally increases the regulation of secondhand dealers. The regulations are similar to the regulations governing pawnbrokers.

Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and defines secondhand goods as personal property previously owned or used which is not "regulated metals property"[2] and which is purchased, consigned, or traded as used property. The bill lists goods that are specifically excluded. This list contains office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

Mail Order Sales/Internet Sales

Section 538.03(2), F.S., currently lists entities and types of sales exempt from regulation pursuant to chapter 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.[3]

The bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under chapter 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for two years;
- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;

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[1] Initial registration as a secondhand dealer is $6.00 per location, plus $47.00 for each principal to conduct a criminal history background check. Annual renewal is $6.00 per location.

[2] "Regulated metals property" refers to certain precious metals and is governed by Part II of chapter 538, F.S.

[3] Specifically, the current exemption covers: "Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order."

- The name under which the company conducts business is provided to the appropriate law enforcement agency;
- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment for sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
    - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
    - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

The bill exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least one year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

Recordkeeping Requirements

Section 538.04, F.S., requires a secondhand dealer to maintain records of all goods purchased and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved by the Florida Department of Law Enforcement. Section 538.06(4), F.S., requires a secondhand dealer to keep the forms for five years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from five years to three years and forms must be maintained at the licensed premises for the first year. This bill also provides that if local law enforcement provides appropriate software and equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulations in chapter 539, F.S.

Criminal Penalties

Section 538.04(4), F.S., provides that it is a criminal offense for any person to knowingly give false verification of ownership[4] and receive money from a secondhand dealer for goods sold. If the amount

[4] This includes false or altered identification. *See* s. 538.04(4), F.S.

received is less than $300, it is a first degree misdemeanor; if greater than $300, it is a third degree felony.

This bill adds goods "consigned or traded" to the penalty provisions and increases the penalties to a third degree felony when the amount received is less than $300 and a second degree felony when the amount received is greater than $300. These penalties are analogous to the statute applicable to pawnbrokers.[5]

Section 538.07(2), F.S., currently provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

Inspection by Law Enforcement

The registered premises of a secondhand dealer, including any purchase records, may be inspected during regular business hours. The local police department may inspect the premises if they are located in a municipality. The sheriff may inspect, if the premises are located outside a municipality.

This bill specifies that the "entire" registered premises is open to inspection and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

Minimum Holding Period and Law Enforcement Holds

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

Section 538.06(3), F.S., provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen.

This bill amends the law enforcement hold period for secondhand dealers to 90 days. This bill also provides that, if a 90-day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney's fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.[6]

Registration as a Secondhand Dealer

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that a principal in the business may not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of Florida, any other state, or the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of section 812.015, or any fraudulent dealing within the previous five years.

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[5] *See* section 539.001(8)(b)8.a. and b., F.S. The felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code; accordingly the amended third degree felony will be a Level 1 offense and the second degree felony will be a Level 4 offense. [s. 921.0023, F.S.]

[6] Section 539.001(16)(e)2., F.S.

This bill changes the time period from "previous 5 years" to "previous 10 years," and adds that merely having adjudication withheld for any of the enumerated offenses disqualifies a person from being a principal in a business acting as a secondhand dealer.[7]

This bill also amends section 538.09, F.S., to add, upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

The effective date of this bill is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to chapter 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold stolen goods.

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

[7] Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. *See* section 539.001(4)(a)4., F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to secondhand dealers; amending s. 538.03,
3 F.S.; revising definitions; revising applicability of ch.
4 538, F.S.; exempting persons or entities offering
5 secondhand goods or personal property for sale, purchase,
6 consignment, or trade via the Internet from the provisions
7 of ch. 538, F.S., under certain circumstances; exempting
8 certain businesses that sell, rent, or trade motion
9 picture videos or video games from ch. 538, F.S.; amending
10 s. 538.04, F.S.; revising recordkeeping requirements for
11 secondhand dealers; providing penalties for knowingly
12 giving false verification of ownership or a false or
13 altered identification, and for receiving money from a
14 secondhand dealer for goods sold, consigned, or traded if
15 the value of the money received is less than $300, and if
16 the value of the money received is $300 or more; providing
17 for the electronic transfer of secondhand dealer
18 transactions under specified circumstances; authorizing
19 appropriate law enforcement agencies to provide a
20 secondhand dealer with a computer and other equipment
21 necessary to electronically transfer secondhand dealer
22 transactions; providing procedures with respect to
23 electronic transfer of secondhand dealer transactions;
24 amending s. 538.05, F.S.; revising provisions relating to
25 the inspection of records and premises of secondhand
26 dealers; amending s. 538.06, F.S.; revising provisions
27 with respect to the holding of goods upon probable cause
28 that the goods are stolen; providing for payment of

29 restitution, attorney's fees, and costs to a secondhand
30 dealer under specified circumstances; revising the time
31 limit for maintenance of transaction records by dealers in
32 secondhand property; amending s. 538.07, F.S.; revising
33 provisions relating to restitution for stolen property
34 recovered from a secondhand dealer; amending s. 538.09,
35 F.S.; revising provisions with respect to registration as
36 a secondhand dealer; revising conditions under which
37 registration may be denied, revoked, restricted, or
38 suspended by the Department of Revenue; repealing s.
39 538.16, F.S., relating to disposal of property by
40 secondhand dealers; amending s. 516.02, F.S.; removing
41 cross-references; reenacting s. 790.335(3)(f), F.S., which
42 provides a second degree felony penalty for any secondhand
43 dealer who contracts with a specified third-party provider
44 or electronically transmits certain records of firearms
45 transactions to any third-party provider; providing an
46 effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Section 538.03, Florida Statutes, is amended to
51 read:
52 538.03 Definitions; applicability.--
53 (1) As used in this part, the term:
54 (a) "Secondhand dealer" means any person, corporation, or
55 other business organization or entity which is not a secondary
56 metals recycler subject to part II and which is engaged in the

57 business of purchasing, consigning, or trading ~~pawning~~
58 secondhand goods. ~~However, secondhand dealers are not limited to~~
59 ~~dealing only in items defined as secondhand goods in paragraph~~
60 ~~(g). Except as provided in subsection (2), the term means~~
61 ~~pawnbrokers, jewelers, precious metals dealers, garage sale~~
62 ~~operators, secondhand stores, and consignment shops.~~
63 (b) "Precious metals dealer" means a secondhand dealer who
64 normally or regularly engages in the business of buying used
65 precious metals for resale. The term does not include those
66 persons involved in the bulk sale of precious metals from one
67 secondhand or precious metals dealer to another.
68 ~~(c) "Pawnbroker" means any person, corporation, or other~~
69 ~~business organization or entity which is regularly engaged in~~
70 ~~the business of making pawns but does not include a financial~~
71 ~~institution as defined in s. 655.005 or any person who regularly~~
72 ~~loans money or any other thing of value on stocks, bonds, or~~
73 ~~other securities.~~
74 ~~(d) "Pawn" means either of the following transactions:~~
75 ~~1. Loan of money. A written or oral bailment of personal~~
76 ~~property as security for an engagement or debt, redeemable on~~
77 ~~certain terms and with the implied power of sale on default.~~
78 ~~2. Buy-sell agreement. An agreement whereby a purchaser~~
79 ~~agrees to hold property for a specified period of time to allow~~
80 ~~the seller the exclusive right to repurchase the property. A~~
81 ~~buy-sell agreement is not a loan of money.~~
82 (c) ~~(e)~~ "Secondhand store" means the place or premises at
83 which a secondhand dealer is registered to conduct business as a
84 secondhand dealer~~,~~ or conducts business~~, including pawn shops~~.

85 (d) ~~(f)~~ "Consignment shop" means a shop engaging in the
86 business of accepting for sale, on consignment, secondhand goods
87 which, having once been used or transferred from the
88 manufacturer to the dealer, are then received into the
89 possession of a third party.
90 (e) "Acquire" means to obtain by purchase, consignment, or
91 trade.
92 (f) ~~(g)~~ "Secondhand goods" means personal property
93 previously owned or used, which is not regulated metals property
94 regulated under part II and which is purchased, consigned, or
95 traded ~~pawned~~ as used property. Such secondhand goods shall not
96 include office furniture, pianos, books, clothing, organs,
97 coins, motor vehicles, costume jewelry, and secondhand sports
98 equipment that is not permanently labeled with a serial number.
99 For purposes of this paragraph, "secondhand sports equipment"
100 does not include golf clubs. ~~be limited to watches; diamonds,~~
101 ~~gems, and other precious stones; fishing rods, reels, and~~
102 ~~tackle; audio and video electronic equipment, including~~
103 ~~television sets, compact disc players, radios, amplifiers,~~
104 ~~receivers, turntables, tape recorders; video tape recorders;~~
105 ~~speakers and citizens' band radios; computer equipment; radar~~
106 ~~detectors; depth finders; trolling motors; outboard motors;~~
107 ~~sterling silver flatware and serving pieces; photographic~~
108 ~~equipment, including cameras, video and film cameras, lenses,~~
109 ~~electronic flashes, tripods, and developing equipment; microwave~~
110 ~~ovens; animal fur coats; marine equipment; video games and~~
111 ~~cartridges; power lawn and landscape equipment; office equipment~~
112 ~~such as copiers, fax machines, and postage machines but~~

113 ~~excluding furniture; sports equipment; golf clubs; weapons,~~
114 ~~including knives, swords, and air guns; telephones, including~~
115 ~~cellular and portable; firearms; tools; calculators; musical~~
116 ~~instruments, excluding pianos and organs; lawnmowers; bicycles;~~
117 ~~typewriters; motor vehicles; gold, silver, platinum, and other~~
118 ~~precious metals excluding coins; and jewelry, excluding costume~~
119 ~~jewelry.~~
120 (g) ~~(h)~~ "Transaction" means any purchase, consignment, or
121 trade ~~pawn~~ of secondhand goods by a secondhand dealer.
122 (h) ~~(i)~~ "Precious metals" means any item containing any
123 gold, silver, or platinum, or any combination thereof,
124 excluding~~:~~
125 ~~1.~~ any chemical or any automotive, photographic,
126 electrical, medical, or dental materials or electronic parts.
127 ~~2. Any coin with an intrinsic value less than its~~
128 ~~numismatic value.~~
129 ~~3. Any gold bullion coin.~~
130 ~~4. Any gold, silver, or platinum bullion that has been~~
131 ~~assayed and is properly marked as to its weight and fineness.~~
132 ~~5. Any coin which is mounted in a jewelry setting.~~
133 (i) ~~(j)~~ "Department" means the Department of Revenue.
134 ~~(k) "Pledge" means pawn or buy-sell agreement.~~
135 (2) This chapter does not apply to:
136 (a) Any secondhand goods transaction involving an
137 organization or entity registered with the state as a nonprofit,
138 religious, or charitable organization or any school-sponsored
139 association or organization other than a secondary metals
140 recycler subject to the provisions of part II.

141 (b) A law enforcement officer acting in an official
142 capacity.
143 (c) A trustee in bankruptcy, executor, administrator, or
144 receiver who has presented proof of such status to the
145 secondhand dealer.
146 (d) Any public official acting under judicial process or
147 authority who has presented proof of such status to the
148 secondhand dealer.
149 (e) A sale on the execution, or by virtue of any process
150 issued by a court, if proof thereof has been presented to the
151 secondhand dealer.
152 (f) Any garage sale operator who holds garage sales less
153 than 10 weekends per year.
154 (g) Any person at antique, coin, or collectible shows or
155 sales.
156 (h) Any person who sells household personal property as an
157 agent for the property owner or their representative pursuant to
158 a written agreement at that person's residence.
159 (i) The purchase, consignment, or trade ~~pawn~~ of secondhand
160 goods from one secondhand dealer to another secondhand dealer
161 when the selling secondhand dealer has complied with the
162 requirements of this chapter.
163 (j) Any person accepting a secondhand good as a trade-in
164 for a similar item of greater value.
165 (k) Any person purchasing, consigning, or trading ~~pawning~~
166 secondhand goods at a flea market regardless of whether at a
167 temporary or permanent business location at the flea market.
168 (l) Any auction business as defined in s. 468.382(1).

169 (m) Any business that is registered with the Department of
170 Revenue for sales tax purposes as an antique dealer pursuant to
171 chapter 212 and that purchases secondhand goods from the
172 property owner or her or his representative at the property
173 owner's residence pursuant to a written agreement that states
174 the name, address, and telephone number of the property owner
175 and the type of property purchased.
176 (n) A business that contracts with other persons or
177 entities to offer its secondhand goods for sale, purchase,
178 consignment, or trade via an Internet website, and that
179 maintains a shop, store, or other business premises for this
180 purpose, if all of the following apply:
181 1. The secondhand goods must be available on the website
182 for viewing by the general public at no charge;
183 2. The records of the sale, purchase, consignment, or
184 trade must be maintained for at least 2 years;
185 3. The records of the sale, purchase, consignment, or
186 trade, and the description of the secondhand goods as listed on
187 the website, must contain the serial number of each item, if
188 any;
189 4. The secondhand goods listed on the website must be
190 searchable based upon the state or zip code;
191 5. The business must provide the appropriate law
192 enforcement agency with the name or names under which it
193 conducts business on the website;
194 6. The business must allow the appropriate law enforcement
195 agency to inspect its business premises at any time during
196 normal business hours;

197 7. Any payment by the business resulting from such a sale,
198 purchase, consignment, or trade must be made to the person or
199 entity with whom the business contracted to offer the goods and
200 must be made by check or via a money transmitter licensed under
201 part II of chapter 560; and
202 8.a. At least 48 hours after the estimated time of
203 contracting to offer the secondhand goods, the business must
204 verify that any item having a serial number is not stolen
205 property by entering the serial number of the item into the
206 Department of Law Enforcement's stolen article database located
207 at the Florida Crime Information Center's public access system
208 website. The business shall record the date and time of such
209 verification on the contract covering the goods. If such
210 verification reveals that an item is stolen property, the
211 business shall immediately remove the item from any website on
212 which it is being offered and notify the appropriate law
213 enforcement agency; or
214 b. The business must provide the appropriate law
215 enforcement agency with an electronic copy of the name, address,
216 phone number, driver's license number, and issuing state of the
217 person with whom the business contracted to offer the goods, as
218 well as an accurate description of the goods, including make,
219 model, serial number, and any other unique identifying marks,
220 numbers, names, or letters that may be on an item, in a format
221 agreed upon by the business and the appropriate law enforcement
222 agency. This information must be provided to the appropriate law
223 enforcement agency within 24 hours after entering into the
224 contract unless other arrangements are made between the business

225 and the law enforcement agency. ~~Any person purchasing,~~
226 ~~consigning, or pawning secondhand goods ordered by mail,~~
227 ~~computer-assisted shopping, media-assisted, media-facilitated,~~
228 ~~or media-solicited shopping or shopping by other means of media~~
229 ~~communication, including, but not limited to, direct mail~~
230 ~~advertising, unsolicited distribution of catalogs, television,~~
231 ~~radio, or other electronic media, telephone, magazine, or~~
232 ~~newspaper advertising, so long as such person is in this state~~
233 ~~at the time of the order.~~
234 (o) Any person offering his or her own personal property
235 for sale, purchase, consignment, or trade via an Internet
236 website, or a person or entity offering the personal property of
237 others for sale, purchase, consignment, or trade via an Internet
238 website, when that person or entity does not have, and is not
239 required to have, a local occupational or business license for
240 this purpose.
241 (p) A business whose primary business is the sale, rental,
242 or trade of motion picture videos or video games, if the
243 business:
244 1. Requires the sellers of secondhand goods to have a
245 current account with the business;
246 2. Has on file in a readily accessible format the name,
247 current residential address, home and work telephone numbers,
248 government-issued identification number, place of employment,
249 date of birth, gender, and right thumbprint of each seller of
250 secondhand goods;
251 3. Purchases secondhand goods from the property owner or
252 his or her representative at the place of business pursuant to

253 an agreement in writing and signed by the property owner which
254 describes the property purchased, states the date and time of
255 the purchase, and states that the seller is the lawful owner of
256 the property;
257 4. Retains such purchase agreements for not less than 1
258 year; and
259 5. Pays for the purchased property in the form of a store
260 credit that is issued to the seller and is redeemable solely by
261 the seller or another authorized user of the seller's account
262 with that business.
263 (q) ~~(o)~~ A motor vehicle dealer as defined in s. 320.27.
264 (3) This part does not apply to secondary metals recyclers
265 regulated under part II, except for s. 538.11, which applies to
266 both secondhand dealers and secondary metals recyclers.
267 Section 2. Section 538.04, Florida Statutes, is amended to
268 read:
269 538.04 Recordkeeping requirements; penalties.--
270 (1) Secondhand dealers shall complete a secondhand dealers
271 transaction form at the time of the actual transaction. A
272 secondhand dealer shall maintain a copy of a completed
273 transaction form on the registered premises for at least 1 year
274 after the date of the transaction. However, the secondhand
275 dealer shall maintain a copy of the transaction form for a
276 period of no less than 3 years. ~~Secondhand dealers shall~~
277 ~~maintain records of all transactions of secondhand goods on the~~
278 ~~premises.~~ Unless other arrangements have been agreed upon by the
279 secondhand dealer and the appropriate law enforcement agency,
280 the secondhand dealer shall, within 24 hours after ~~of~~ the

281 acquisition of any secondhand goods, ~~by purchase or pledge as~~
282 ~~security for a loan, a secondhand dealer shall~~ deliver to the
283 police department of the municipality where the goods were
284 acquired ~~purchased~~ or, if the goods were acquired ~~purchased~~
285 outside of a municipality, to the sheriff's department of the
286 county where the goods were acquired ~~purchased~~, a record of the
287 transaction on a form approved by the Department of Law
288 Enforcement. Such record shall contain:
289 (a) The time, date, and place of the transaction.
290 (b) A complete and accurate description of the goods
291 acquired, including the following information, if applicable:
292 ~~any serial numbers, manufacturer's numbers, or other identifying~~
293 ~~marks or characteristics.~~
294 1. Brand name.
295 2. Model number.
296 3. Manufacturer's serial number.
297 4. Size.
298 5. Color, as apparent to the untrained eye.
299 6. Precious metal type, weight, and content, if known.
300 7. Gemstone description, including the number of stones,
301 if applicable.
302 8. In the case of firearms, the type of action, caliber or
303 gauge, number of barrels, barrel length, and finish.
304 9. Any other unique identifying marks, numbers, or
305 letters.
306 (c) A description of the person from whom the goods were
307 acquired, including:
308 1. Full name, current residential address, workplace, and

309 home and work phone numbers.
310 2. Height, weight, date of birth, race, gender, hair
311 color, eye color, and any other identifying marks.
312 3. The right thumbprint, free of smudges and smears, of
313 the person from whom the goods were acquired.
314 (d) Any other information required by the form approved by
315 the Department of Law Enforcement.
316 (2) The secondhand dealer shall require verification of
317 the identification by the exhibition of a government-issued
318 photographic identification card such as a driver's license or
319 military identification card. The record shall contain the type
320 of identification exhibited, the issuing agency, and the number
321 thereon.
322 (3) The seller shall sign a statement verifying that the
323 seller is the rightful owner of the goods or is entitled to
324 sell, consign, or trade ~~pledge~~ the goods.
325 (4) Any person who knowingly gives false verification of
326 ownership or who gives a false or altered identification, and
327 who receives money from a secondhand dealer for goods sold,
328 consigned, or traded ~~pledged~~ commits:
329 (a) If the value of the money received is less than $300,
330 a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as
331 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
332 (b) If the value of the money received is $300 or more, a
333 felony of the second ~~third~~ degree, punishable as provided in s.
334 775.082, s. 775.083, or s. 775.084.
335 (5) Secondhand dealers are exempt from the provisions of
336 this section for all transactions involving secondhand sports

337 equipment except secondhand sports equipment that is permanently
338 labeled with a serial number.
339 (6) If the appropriate law enforcement agency supplies a
340 secondhand dealer with appropriate software and the secondhand
341 dealer has computer capability, secondhand dealer transactions
342 shall be electronically transferred. If a secondhand dealer does
343 not have computer capability, the appropriate law enforcement
344 agency may provide the secondhand dealer with a computer and all
345 necessary equipment for the purpose of electronically
346 transferring secondhand dealer transactions. The appropriate law
347 enforcement agency shall retain ownership of the computer,
348 unless otherwise agreed upon. The secondhand dealer shall
349 maintain the computer in good working order, ordinary wear and
350 tear excepted. In the event the secondhand dealer transfers
351 secondhand dealer transactions electronically, the secondhand
352 dealer is not required to also deliver to the appropriate law
353 enforcement agency the original or copies of the secondhand
354 transaction forms. For the purpose of a criminal investigation,
355 the appropriate law enforcement agency may request that the
356 secondhand dealer produce an original of a transaction form that
357 has been electronically transferred. The secondhand dealer shall
358 deliver this form to the appropriate law enforcement agency
359 within 24 hours after the request.
360 (7) If the original transaction form is lost or destroyed
361 by the appropriate law enforcement agency, a copy may be used by
362 the secondhand dealer as evidence in court. When an electronic
363 image of a customer's identification is accepted for a
364 transaction, the secondhand dealer must maintain the electronic

365 image in order to meet the recordkeeping requirements applicable
366 to the original transaction form. If a criminal investigation
367 occurs, the secondhand dealer shall, upon request, provide a
368 clear and legible copy of the image to the appropriate law
369 enforcement agency.
370 Section 3. Section 538.05, Florida Statutes, is amended to
371 read:
372 538.05 Inspection of records and premises of secondhand
373 dealers.--
374 (1) The entire registered premises and required records of
375 each secondhand dealer are subject to inspection during regular
376 business hours by any law enforcement officer with jurisdiction
377 ~~the police department if the premises are located within a~~
378 ~~municipality or, if located outside a municipality, by the~~
379 ~~sheriff's department of the county in which the premises are~~
380 ~~located, and by any state law enforcement officer who has~~
381 ~~jurisdiction over the dealer~~.
382 (2) The inspection authorized by subsection (1) shall
383 consist of an examination on the registered premises of the
384 inventory and required records to determine whether the records
385 and inventory are being maintained on the registered premises as
386 required by s. 538.04 and whether the holding period required by
387 s. 538.06 is being complied with.
388 Section 4. Section 538.06, Florida Statutes, is amended to
389 read:
390 538.06 Holding period.--
391 (1) A secondhand dealer shall not sell, barter, exchange,
392 alter, adulterate, use, or in any way dispose of any secondhand

393 goods within 15 calendar days after ~~of~~ the date of acquisition
394 of the goods. Such holding periods are not applicable when the
395 person known by the secondhand dealer to be the person from whom
396 the goods were acquired desires to redeem, repurchase, or
397 recover the goods, provided the dealer can produce the record of
398 the original transaction with verification that the customer is
399 the person from whom the goods were originally acquired.
400 (2) A secondhand dealer must maintain actual physical
401 possession of all secondhand goods throughout a transaction. It
402 is unlawful for a secondhand dealer to accept title or any other
403 form of security in secondhand goods in lieu of actual physical
404 possession. A secondhand dealer who accepts title or any other
405 form of security in secondhand goods in lieu of actual physical
406 possession commits a misdemeanor of the first degree, punishable
407 as provided in s. 775.082 or s. 775.083.
408 (3) Upon probable cause that goods held by a secondhand
409 dealer are stolen, a law enforcement officer with jurisdiction
410 may place a 90-day written hold order on the goods ~~extend the~~
411 ~~holding period to a maximum of 60 days~~. However, the hold
412 ~~holding period~~ may be extended beyond 90 ~~60~~ days by a court of
413 competent jurisdiction upon a finding of probable cause that the
414 property is stolen and further holding is necessary for the
415 purposes of trial or to safeguard such property. The dealer
416 shall assume all responsibility, civil or criminal, relative to
417 the property or evidence in question, including responsibility
418 for the actions of any employee with respect thereto.
419 (4) While a hold order is in effect, the secondhand dealer
420 must, upon request, release the property subject to the hold

421 order to the custody of a law enforcement officer with
422 jurisdiction for use in a criminal investigation. The release of
423 the property to the custody of the law enforcement officer is
424 not considered a waiver or release of the secondhand dealer's
425 rights or interest in the property. Upon completion of the
426 criminal proceeding, the property must be returned to the
427 secondhand dealer unless the court orders other disposition.
428 When such other disposition is ordered, the court shall
429 additionally order the person from whom the secondhand dealer
430 acquired the property to pay restitution to the secondhand
431 dealer in the amount that the secondhand dealer paid for the
432 property together with reasonable attorney's fees and costs.
433 (5) ~~(4)~~ All dealers in secondhand property regulated by
434 this chapter shall maintain transaction records for 3 ~~5~~ years.
435 Section 5. Section 538.07, Florida Statutes, is amended to
436 read:
437 538.07 Penalty for violation of chapter.--
438 (1) Except as ~~where~~ otherwise provided herein, a person
439 who knowingly violates any provision of this chapter commits a
440 misdemeanor of the first degree, punishable as provided in s.
441 775.082 and by a fine not to exceed $10,000.
442 (2) When the lawful owner recovers stolen property from a
443 secondhand dealer and the person who sold or pledged the stolen
444 property to the secondhand dealer is convicted of theft, a
445 violation of this section, or dealing in stolen property, the
446 court shall order the defendant to make restitution to either
447 the secondhand dealer or the lawful owner, as applicable,
448 pursuant to s. 775.089.

449 Section 6. Section 538.09, Florida Statutes, is amended to
450 read:
451 538.09 Registration.--
452 (1) A secondhand dealer shall not engage in the business
453 of purchasing, consigning, or trading ~~pawning~~ secondhand goods
454 from any location without registering with the Department of
455 Revenue. A fee equal to the federal and state costs for
456 processing required fingerprints must be submitted to the
457 department with each application for registration. One
458 application is required for each dealer. If a secondhand dealer
459 is the owner of more than one secondhand store location, the
460 application must list each location, and the department shall
461 issue a duplicate registration for each location. For purposes
462 of subsections (4) and (5) of this section, these duplicate
463 registrations shall be deemed individual registrations. A dealer
464 shall pay a fee of $6 per location at the time of registration
465 and an annual renewal fee of $6 per location on October 1 of
466 each year. All fees collected, less costs of administration,
467 shall be transferred into a trust fund to be established and
468 entitled the Secondhand Dealer and Secondary Metals Recycler
469 Clearing Trust Fund. The Department of Revenue shall forward the
470 full set of fingerprints to the Department of Law Enforcement
471 for state and federal processing, provided the federal service
472 is available, to be processed for any criminal justice
473 information as defined in s. 943.045. The cost of processing
474 such fingerprints shall be payable to the Department of Law
475 Enforcement by the Department of Revenue. The department may
476 issue a temporary registration to each location pending

477 completion of the background check by state and federal law
478 enforcement agencies, but shall revoke such temporary
479 registration if the completed background check reveals a
480 prohibited criminal background. An applicant for a secondhand
481 dealer registration must be a natural person who has reached the
482 age of 18 years.
483 (a) If the applicant is a partnership, all the partners
484 must apply.
485 (b) If the applicant is a joint venture, association, or
486 other noncorporate entity, all members of such joint venture,
487 association, or other noncorporate entity must make application
488 for registration as natural persons.
489 (c) If the applicant is a corporation, the registration
490 must include the name and address of such corporation's
491 registered agent for service of process in the state and a
492 certified copy of statement from the Secretary of State that the
493 corporation is duly organized in the state or, if the
494 corporation is organized in a state other than Florida, a
495 certified copy of statement from the Secretary of State that the
496 corporation is duly qualified to do business in this state. If
497 the dealer has more than one location, the application must list
498 each location owned by the same legal entity and the department
499 shall issue a duplicate registration for each location.
500 (2) The secondhand dealer shall furnish with her or his
501 registration a complete set of her or his fingerprints,
502 certified by an authorized law enforcement officer, and a recent
503 fullface photographic identification card of herself or himself.
504 The Department of Law Enforcement shall report its findings to

505 the Department of Revenue within 30 days after the date
506 fingerprint cards are submitted for criminal justice
507 information.
508 (3) The secondhand dealer's registration shall be
509 conspicuously displayed at her or his registered location
510 ~~principal place of business~~. A secondhand dealer must hold
511 secondhand goods at the registered location until 15 days after
512 the secondhand transaction or until any extension of the holding
513 period has expired, whichever is later~~, and must retain records~~
514 ~~of each transaction which is not specifically exempted by this~~
515 ~~chapter. A secondhand dealer shall not dispose of property at~~
516 ~~any location until the holding period has expired unless the~~
517 ~~transaction is specifically exempted by this chapter~~.
518 (4) The department may impose a civil fine of up to
519 $10,000 for each violation of this section, which fine shall be
520 transferred into the General Revenue Fund. If the fine is not
521 paid within 60 days, the department may bring a civil action
522 under s. 120.69 to recover the fine.
523 (5) In addition to the fine provided in subsection (4),
524 registration under this section may be denied or any
525 registration granted may be revoked, restricted, or suspended by
526 the department if the department determines that the applicant
527 or registrant:
528 (a) Has violated any provision of this chapter or any rule
529 or order made pursuant to this chapter;
530 (b) Has made a material false statement in the application
531 for registration;
532 (c) Has been guilty of a fraudulent act in connection with

533 any purchase or sale or has been or is engaged in or is about to
534 engage in any practice, purchase, or sale which is fraudulent or
535 in violation of the law;
536 (d) Has made a misrepresentation or false statement to, or
537 concealed any essential or material fact from, any person in
538 making any purchase or sale;
539 (e) Is making purchases or sales through any business
540 associate not registered in compliance with the provisions of
541 this chapter;
542 (f) Has, within the preceding 10-year ~~5-year~~ period for
543 new registrants who apply for registration on or after October
544 1, 2005, been convicted of, or has entered a plea of guilty or
545 nolo contendere to, or had adjudication withheld for, a crime
546 against the laws of this state or any other state or of the
547 United States which relates to registration as a secondhand
548 dealer or which involves theft, larceny, dealing in stolen
549 property, receiving stolen property, burglary, embezzlement,
550 obtaining property by false pretenses, possession of altered
551 property, any felony drug offense, any violation of s. 812.015,
552 or any fraudulent ~~or dishonest~~ dealing;
553 (g) Has had a final judgment entered against her or him in
554 a civil action upon grounds of fraud, embezzlement,
555 misrepresentation, or deceit; or
556 (h) Has failed to pay any sales tax owed to the Department
557 of Revenue.
558
559
560 In the event the department determines to deny an application or

561 revoke a registration, it shall enter a final order with its
562 findings on the register of secondhand dealers and their
563 business associates, if any; and denial, suspension, or
564 revocation of the registration of a secondhand dealer shall also
565 deny, suspend, or revoke the registration of such secondhand
566 dealer's business associates.
567 (6) Upon the request of a law enforcement official, the
568 Department of Revenue shall release to the official the name and
569 address of any secondhand dealer registered to do business
570 within the official's jurisdiction.
571 Section 7. Section 538.16, Florida Statutes, is repealed.
572 Section 8. Subsection (4) of section 516.02, Florida
573 Statutes, is amended to read:
574 516.02 Loans; lines of credit; rate of interest;
575 license.--
576 (4) This chapter does not apply to any person who does
577 business under, and as permitted by, any law of this state or of
578 the United States relating to banks, savings banks, trust
579 companies, building and loan associations, credit unions, or
580 industrial loan and investment companies. ~~This chapter also does~~
581 ~~not apply to title loans as defined in s. 538.03(1)(i) or pawns~~
582 ~~as defined in s. 538.03(1)(d).~~ A pawnbroker may not be licensed
583 to transact business under this chapter.
584 Section 9. For the purpose of incorporating the amendment
585 made by this act to section 538.03, Florida Statutes, in a
586 reference thereto, paragraph (f) of subsection (3) of section
587 790.335, Florida Statutes, is reenacted to read:
588 790.335 Prohibition of registration of firearms.--

589 (3) EXCEPTIONS.--The provisions of this section shall not
590 apply to:
591 (f) Firearm records, including paper pawn transaction
592 forms and contracts on firearm transactions, required by
593 chapters 538 and 539.
594 1. Electronic firearm records held pursuant to chapter 538
595 may only be kept by a secondhand dealer for 30 days after the
596 date of the purchase of the firearm by the secondhand dealer.
597 2. Electronic firearm records held pursuant to chapter 539
598 may only be kept by a pawnbroker for 30 days after the
599 expiration of the loan that is secured by a firearm or 30 days
600 after the date of purchase of a firearm, whichever is
601 applicable.
602 3. Except as required by federal law, any firearm records
603 kept pursuant to chapter 538 or chapter 539 shall not, at any
604 time, be electronically transferred to any public or private
605 entity, agency, business, or enterprise, nor shall any such
606 records be copied or transferred for purposes of accumulation of
607 such records into lists, registries, or databases.
608 4. Notwithstanding subparagraph 3., secondhand dealers and
609 pawnbrokers may electronically submit firearm transaction
610 records to the appropriate law enforcement agencies as required
611 by chapters 538 and 539; however, the law enforcement agencies
612 may not electronically submit such records to any other person
613 or entity and must destroy such records within 60 days after
614 receipt of such records.
615 5. Notwithstanding subparagraph 3., secondhand dealers and
616 pawnbrokers may electronically submit limited firearms records

617 consisting solely of the manufacturer, model, serial number, and
618 caliber of pawned or purchased firearms to a third-party private
619 provider that is exclusively incorporated, exclusively owned,
620 and exclusively operated in the United States and that restricts
621 access to such information to only appropriate law enforcement
622 agencies for legitimate law enforcement purposes. Such records
623 must be destroyed within 30 days by the third-party provider. As
624 a condition of receipt of such records, the third-party provider
625 must agree in writing to comply with the requirements of this
626 section. Any pawnbroker or secondhand dealer who contracts with
627 a third-party provider other than as provided in this act or
628 electronically transmits any records of firearms transactions to
629 any third-party provider other than the records specifically
630 allowed by this paragraph commits a felony of the second degree,
631 punishable as provided in s. 775.082 or s. 775.083.
632 Section 10. This act shall take effect October 1, 2006.

HB 675 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 675 CS Public Records and Public Meetings
SPONSOR(S): Pickens
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N, w/CS	Bell	Mitchell
2) Local Government Council	8 Y, 0 N	Nelson	Hamby
3) Governmental Operations Committee		Mitchell	Williamson
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill expands, to include the purchaser of a public hospital, an existing provision which prevents the lessee of a public hospital from being construed to be "acting on behalf of" the lessor, unless the lease document expressly provides to the contrary.

The bill also provides that the records and certain portions of governing board meetings of a private corporation that leases or purchases a public hospital are confidential and not subject to the state's public records and open meetings laws.

The bill specifies that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The bill also specifies that certain provisions of the act apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

The bill provides the required five-year-review for new public records exemptions.

The bill contains a public necessity statement.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on local governments. The bill does not appear to have an impact on state government revenues, but may have a minimal fiscal impact on the expenditures of state government for implementation.

This bill requires passage by a two-thirds vote of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to certain public records.

B. EFFECT OF PROPOSED CHANGES:

Background on Public Records and Public Meetings Laws

Section 24(a), Art. I of the State Constitution provides the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive and judicial branches of government, except with respect to records which are exempted or specifically made confidential. Section 24(b) of Art. 1 provides the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch of state government or of any collegial public body of a county, municipality, school district or special district at which official acts are to be taken or at which public business of such body is to be transacted or discussed shall be open and noticed to the public.

The Legislature may provide by general law passed by two-thirds vote for the exemption of records and meetings from these constitutional requirements. Any such law must state with specificity the public necessity justifying the exemption, and be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records and meetings also is addressed 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, and s. 286.011, F.S., requires that all state, county or municipal meetings be open and noticed to the public.

The "Open Government Sunset Review Act"[1] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and is no broader than necessary to meet the public purpose that it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or jeopardize an individual's[2] safety; or
- Protects trade or business secrets.

Public Records Requirements of Leased Hospitals

Section 395.3036, F.S., provides that records of a private corporation that leases a public hospital or other public health care facilities are confidential and exempt from s. 119.07(1), F.S., and s.24(a), Art. I of the State Constitution, and the meetings of the governing board of such a corporation are exempt

[1] Section 119.15, F.S.
[2] Only the identity of an individual may be exempted under this provision.

from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, when the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of the following five criteria:

- The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
- The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
- Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor;
- The lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S.; and
- The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Sale or Lease of a Public Hospital

Section 155.40, F.S., authorizes any county, district or municipal hospital organized and existing under the laws of Florida, acting by and through its governing board, to sell or lease the hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities. The term of any such lease, contract or agreement and the conditions, covenants and agreements contained therein must be determined by the governing board of the county, district or municipal hospital. The governing board of the hospital must find that the sale, lease or contract is in the best interests of the public and must state the basis of the finding. If the governing board of a county, district or municipal hospital decides to lease the hospital, it must give notice and comply with the requirements of the section.

Section 155.40(6), F.S., provides that, *unless otherwise expressly stated in the lease documents*, the transaction involving the sale or lease of a hospital *may not be construed* as: a transfer of a *governmental function* from the county, district or municipality to the private purchaser or lessee; constituting a financial interest of the public lessor in the private lessee; or making a private lessee an integral part of the public lessor's decisionmaking process. Under s. 155.40(7), F.S., the lessee of a hospital, pursuant to s. 155.40, F.S., or any special act of the Legislature, operating under a lease may not be construed to be "acting on behalf of" the lessor as that term is used in statute, *unless the lease document expressly provides to the contrary.*

When a newspaper and its publisher brought an action against a private lessee of a public hospital seeking mandamus, injunctive and declaratory relief regarding a public records request for the lessee's board minutes, the First District Court of Appeal found that the apparent purpose of ss.155.40(6) and (7), F.S., are to exempt private lessees from the public records and meetings laws as argued by Baker County Medical Services, Inc., in support of its argument for nondisclosure. The court held subsections 155.40(6) and (7), F.S., unconstitutional because there were no legislative findings regarding public necessity for the exemption when the subsection was enacted by the Legislature. See, Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So.2d 189 (Fla. 1st DCA 2004).

Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews

In 1957, the Florida Legislature created the West Volusia Hospital Authority (the "Authority"), as an independent taxing district (ch. 57-2085, s.1, L.O.F.). The Authority was empowered to establish, construct, operate and maintain such hospitals as in the elected governing board's opinion were necessary for the preservation of the public health, public good, and for the use of the people of the district, and to provide care to the indigent sick residing within the taxing district without charge in those facilities. The Authority developed, owned and operated the West Volusia Memorial Hospital as a publicly-owned hospital. In 1993, the Authority entered into negotiations with Memorial Health Systems (MHS) to lease and operate West Volusia Memorial Hospital. This lease was executed on July 28, 1994.

In December 1994, News-Journal, a Florida corporation which publishes *The News-Journal*, a daily newspaper in Daytona Beach, Florida, filed a complaint in the Circuit Court seeking a declaratory decree that the records of MHS were subject to the Public Records Act and the Sunshine Law. The Circuit Court entered a final judgment in favor of MHS. On appeal, the Fifth District Court of Appeal reversed and held that MHS was subject to the Public Records Act and the Sunshine Law. The court concluded that MHS was "acting on behalf of the Authority." See, News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So. 2d. 418, (Fla. 5th DCA 1997). The Supreme Court of Florida upheld the Fifth District Court of Appeal, noting that the totality of factors demonstrated that the authorized function of the Authority was transferred and delegated to a private corporation, a lessee. See, Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 383, (Fla. 1999).

On March 23, 2000, MHS advised the Authority that it intended to terminate the lease contract as of midnight September 30, 2000. The Authority was not interested in operating the hospital and eventually worked out a sale agreement with Adventist Health Systems, a not-for-profit Florida corporation, as authorized in s.155.40, F.S. Under the new ownership the name of the hospital was changed to Florida Hospital Deland.

In a recent action, the Circuit Court in Volusia County granted the newspaper's motion for final summary judgment and denied Memorial Hospital-West Volusia, Inc.'s motion for summary judgment.[3] The Circuit Court declared that the public records law applies to the Memorial Health System, *a purchaser (not a lessee) of a public hospital*, when it engaged in the function of operating the hospital and caring for the indigent within the taxing district of the Authority under and pursuant to the terms and conditions of the transfer documents.[4] The Circuit Court ordered that, as of the effective date of the transfer documents, Memorial Health System, *a purchaser (not a lessee) of a public hospital*, must comply with the Public Records and Meetings Laws.[5]

On March 24, 2006, however, the Fifth District Court of Appeal concluded that the public disclosure laws no longer apply because Memorial Hospital-West Volusia, Inc., had purchased the hospital. The Fifth District Court of Appeal reversed the summary judgments entered in favor of the newspaper.

Effect of Proposed Changes

This bill extends s. 155.40(7), F.S., (which specifies that the *lessee* of a public hospital shall not be construed to be "acting on behalf of" the lessor unless the lease document expressly provides to the contrary) to the *purchaser* of such a hospital.

The bill also specifies that the records of a private corporation that leases or purchases a public hospital are confidential and not subject to s. 119.07(1), F.S., or s. 24(a), Art. I of the State Constitution, and that the meetings of the governing board of a private corporation that leases or purchases a public hospital are not subject to s. 286.011, F.S., or s. 24(b), Art. I of the State Constitution.

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[3] See Memorial Hospital-West Volusia, Inc. v. News-Journal Corp. and Tanner Andrews, Case No. 2002-31972, Seventh Judicial Circuit, Volusia County, (February 16, 2005).
[4] Id.
[5] Id.

The bill provides a public necessity statement that includes findings that:

- the Legislature always intended that private corporations that purchase public hospitals are not subject to public records and open meetings laws;
- private entities do not act on behalf of the public entities from which they purchase or lease a public hospital; and
- if the public records laws and open meetings laws apply to private corporations that purchase or lease public hospitals, public entities may find it difficult, if not impossible, to find a private corporation that is willing to purchase or lease a public hospital.

The bill provides for future review and repeal of the exemptions on October 2, 2011, pursuant to the Open Government Sunset Review Act.

Additionally, the bill provides that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The effective date of the bill is upon becoming law. The bill also specifies that certain provisions of the act apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

C. SECTION DIRECTORY:

Section 1.- Amends s. 155.40, F.S., to extend certain provisions to the purchaser of such hospital.

Section 2. - Provides a public necessity statement.

Section 3. – Provides that the act does not operate to change existing law relating to discovery of records and information.

Section 4. - Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues unless the local government is leasing or selling a public hospital.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures unless the local government is leasing or selling a public hospital.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a direct economic impact on lessees or purchasers of public hospitals.

D. FISCAL COMMENTS:

The provisions of the bill may impact the lease or sale of public hospitals.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Section 6, Art. III of the State Constitution requires that, "every law shall embrace but one subject and matter properly connected." The bill may violate this provision because it appears to include substantive language as well as a public records and public meetings exemption.

Section 24(c), Art. I of the State Constitution requires that laws enacted pursuant to that subsection shall contain only exemptions from the requirements of subsections (a) or (b), and shall relate to one subject.

Section 24(c), Art. I of the State Constitution also requires that all public records include a public necessity statement that is narrowly drawn. The language in the bill may need to be narrowed in scope in order to meet this provision in the Constitution.

Section 24(c), Art. I, of the State Constitution, additionally requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As a private corporation is not subject to Florida's public records and open meeting laws except when acting on behalf of a public agency,[6] such an exemption—particularly one drawn to a law which has been declared unconstitutional—may be problematic.

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[6] The definition of "agency" for purposes of ch. 119, F.S., includes a "a public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." See, also, s. 24(a) of Art. I of the State Constitution which provides that the constitutional right of acess to public records extends to "any public body, officer, or employee of the state, or persons acting on their behalf...." Recognizing the need to provide criteria for determining when a private entity is acting on behalf of a public agency, the Supreme Court has adopted a "totality of factors" approach which includes: the level of public funding; commingling of funds; whether the activity was conducted on publicly-owned property; whether services contracted for are an integral part of the public agency's chosen decision-making process; whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; the extent of the public agency's involvement with, regulation of, or control over the private entity; whether the private entity was created by the public agency; whether the public agency has a substantial financial interesting the private entity; and for whose benefit the private entity is functioning. News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So. 2d 1029 (Fla. 1992).

Section 3 of the bill appears unnecessary because public records exemptions do not impact the Florida Rules of Civil Procedure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2005, the Health Care Regulation Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment provided a public necessity statement for the public records exemption, changed the bill to a public records exemption bill, and provided that the bill will take effect upon becoming law.

CHAMBER ACTION

The Health Care Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records and public meetings; amending s. 155.40, F.S.; clarifying construction with respect to actions of a lessee or purchaser of a county, district, or municipal hospital; providing an exemption from public records requirements for the records of a private corporation that purchases or leases a public hospital; providing for retroactive effect of the exemption; providing an exemption from public meetings requirements for that portion of a meeting of the governing board of a private corporation that leases or purchases a public hospital at which confidential and exempt information is presented or discussed; providing an exemption from public records requirements for any records generated during a meeting of the governing board of the private corporation that leases or purchases a public hospital which are closed to the public; providing for retroactive effect of the exemption; providing for future

24 review and repeal; providing a finding of public
25 necessity; clarifying operation of the act; providing an
26 effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Subsection (7) of section 155.40, Florida
31 Statutes, is amended, and subsection (8) is added to that
32 section, to read:
33 155.40 Sale or lease of county, district, or municipal
34 hospital; confidentiality of records; exemption from public
35 meetings requirements.--
36 (7) The lessee or purchaser of a hospital, pursuant to
37 this section or any special act of the Legislature, ~~operating~~
38 ~~under a lease~~ shall not be construed to be "acting on behalf of"
39 the lessor or seller as that term is used in statute, unless the
40 lease or purchase document expressly provides to the contrary.
41 (8)(a) The records of a private corporation that leases or
42 purchases a public hospital pursuant to this section are
43 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
44 of the State Constitution. This paragraph applies to records
45 held by a private corporation that leases or purchases a public
46 hospital pursuant to this section before, on, or after the
47 effective date of this exemption.
48 (b) That portion of a meeting of the governing board of a
49 private corporation that leases or purchases a public hospital
50 pursuant to this section at which information is presented or
51 discussed that is confidential and exempt under paragraph (a) is

52 closed to the public and exempt from s. 286.011 and s. 24(b),
53 Art. I of the State Constitution.
54 (c) Any records generated during a meeting of the
55 governing board of the private corporation that leases or
56 purchases a public hospital pursuant to this section that are
57 closed to the public under paragraph (b), such as minutes, tape
58 recordings, videotapes, transcriptions, or notes, are
59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
60 of the State Constitution. This paragraph applies to records
61 generated during a meeting of the governing board of a private
62 corporation that leases or purchases a public hospital pursuant
63 to this section before, on, or after the effective date of this
64 exemption.
65 (d) This subsection is subject to the Open Government
66 Sunset Review Act in accordance with s. 119.15 and shall stand
67 repealed on October 2, 2011, unless reviewed and saved from
68 repeal through reenactment by the Legislature.
69 Section 2. The Legislature finds that it is a public
70 necessity that the records of a private corporation that
71 purchases a public hospital pursuant to s. 155.40, Florida
72 Statutes, be made confidential and exempt from public records
73 requirements. It is the further finding of the Legislature that
74 that portion of a meeting of the governing board of a private
75 corporation that leases or purchases a public hospital pursuant
76 to s. 155.40, Florida Statutes, at which confidential and exempt
77 information is presented or discussed be closed to the public
78 and exempt from public meetings requirements. It is the further
79 finding of the Legislature that any records generated during a

80 meeting of the governing board of the private corporation that
81 leases or purchases a public hospital pursuant to s. 155.40,
82 Florida Statutes, that are closed to the public be made
83 confidential and exempt from public records requirements. The
84 Legislature has always intended that private entities that
85 purchase public hospitals are not subject to the public records
86 and public meetings laws of the state because the private
87 entities do not act on behalf of the public entities from whom
88 they purchase a public hospital. Some recent court decisions,
89 however, have found that private entities that purchase public
90 hospitals are subject to public records and public meetings laws
91 and have failed to recognize that the public entity does not
92 retain any control over the private entity or the formerly
93 public hospital following the sale of a public hospital to a
94 private entity. Therefore, the Legislature finds that it is a
95 public necessity to confirm its intent that private entities
96 that purchase formerly public hospitals are not subject to the
97 public records laws or public meetings laws of the state. With
98 respect to lessees of public hospitals, such lessees also do not
99 act on behalf of the public entity except as provided in this
100 section and are not subject to the public records or public
101 meetings laws of the state. To find otherwise would place
102 private entities that purchase or lease public hospitals at a
103 competitive disadvantage compared to other private entities that
104 own or lease private hospitals that were not formerly public
105 hospitals and would serve as a disincentive to private entities
106 considering the purchase or lease of a public hospital. Public
107 entities choose to sell or lease their public hospitals to

108 private corporations when the public entity is no longer able to
109 operate the hospital in a fiscally responsible manner and where
110 taxpayers would otherwise be required to finance the operations
111 of the hospital beyond indigent care. If the public records laws
112 and public meetings laws apply to private corporations that
113 purchase or lease public hospitals, public entities may find it
114 difficult, if not impossible, to find a private corporation that
115 is willing to purchase or lease a public hospital. This could
116 force the public entity to close the hospital, which would
117 result in a reduction in health care services to the public, or
118 continue operating the hospital using public tax dollars to
119 subsidize recurring losses. Neither of these options is in the
120 best interest of the public. The Legislature, therefore, finds
121 that it is a public necessity to confirm that the state's public
122 records laws and public meetings laws do not apply to private
123 corporations that lease public hospitals where the lessee does
124 not act on behalf of the public entity. The Legislature further
125 finds that any private corporation that purchases a public
126 hospital, regardless of whether the corporation had previously
127 leased that public hospital, does not act on behalf of the
128 public entity.
129 Section 3. This act does not operate to change existing
130 law relating to discovery of records and information that are
131 otherwise discoverable under the Florida Rules of Civil
132 Procedure or any statutory provision allowing discovery or
133 presuit disclosure of such records and information for the
134 purpose of civil actions.
135 Section 4. This act shall take effect upon becoming a law.

HB 775 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 775 CS Psychologist Specialties
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	9 Y, 0 N, w/CS	Hamrick	Mitchell
2) Governmental Operations Committee		Mitchell	Williamson
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides criteria and rulemaking authority for the Board of Psychology to approve certifying bodies that recognize a psychologist or school psychologist as a "certified psychology specialist" or a "psychology diplomate." The bill defines the terms "specialist" and "diplomate."

The bill prohibits a licensed psychologist or school psychologist from representing that he or she is a certified psychology specialist or a psychology diplomate unless that recognition is from a certifying body that has been approved by the Board of Psychology.

The bill permits a licensed psychologist or school psychologist to indicate the services offered and whether his or her practice is limited to one or more types of services as long as it accurately reflects their scope of practice.

The bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government expenditures appears to be minimal implementation costs of rulemaking and processing.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill authorizes the Board of Psychology to adopt rules for approving entities that recognize psychology specialists and psychology diplomates.

Safeguard individual liberty – The bill prohibits a licensed psychologist or school psychologist from making certain professional titles unless those titles were conferred by an entity approved by the Board of Psychology.

Promote Personal Responsibility – The bill limits the use of certain professional titles by psychologists and school psychologists.

B. EFFECT OF PROPOSED CHANGES:

Psychology and School Psychology Licensing and Specialties

Chapter 490, Florida Statutes, is the Psychological Services Act.[1] The Psychological Services Act creates the Board of Psychology within the Department of Health.[2] The Board of Psychology is responsible for certifying that applicants meet the criteria for licensure by examination[3] or licensure by endorsement.[4] The Department of Health then issues the applicant a license[5] as a psychologist or a school psychologist.[6] There are approximately 3,439 active licensed psychologists and 572 active school psychologists.[7]

There is, however, no authority for the Board of Psychology or the Department of Health to recognize specialties in psychology. As such, licensed psychologists and school psychologists, may use a psychological specialty recognized by a private entity or certifying body as long as the use of the specialty recognition does not violate statutory disciplinary standards.[8]

The use of psychological specialties, however, has implications for the public and the legal system,[9] which must evaluate the varying specialty credentials of psychologists and school psychologists. Some certifying entities require review of credentials, documentation, and work sample, as well as a comprehensive oral or written examination.[10] Yet, other boards are referred to as "vanity boards" and require very little documentation other than a brief one-page or two-page application form and a fee.[11]

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[1] Fla. Stat. § 490.001 (2005).
[2] Fla. Stat. § 490.004 (2005) (The Board of Psychology is composed of seven members appointed by the Governor and confirmed by the Senate. Five members of the Board of Psychology must be state-licensed psychologists and two members must be citizens with no connection to the practice of psychology. Members of the Board of Psychology serve four year terms.).
[3] Fla. Stat. § 490.005 (2005).
[4] Fla. Stat. § 490.006 (2005).
[5] *See, e.g.,* § 490.005(1) (2005).
[6] *See*, e.g., § 490.003(4) (2005) (defining the "practice of psychology" as the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health).
[7] Fla. Dep't of Health, 2004-2005 Annual Report, available at http://www.doh.state.fl.us/mqa/Publications/04-05mqa_ar.pdf, p. 34 (last visited Apr. 11, 2006).
[8] *See, e.g.,* Fla. Stat. § 490.009(1)(d) (2005) (false, deceptive, or misleading advertising).
[9] Psychologists, for example, render opinions to courts on issues such as competency to stand trial.
[10] Frank M. Dattilio & Robert L. Sadoff, How Expert is Your Mental Health Expert?, 27 Pa. Law. 28, 31 (Jan./Feb. 2005) (specifically referencing the American Board of Professional Psychology).
[11] *Id.* at 32.

Recognizing Psychology Specialties

This bill allows the Board of Psychology to establish criteria, by rule, to approve certifying bodies that recognize a psychologist or a school psychologist as a "certified psychology specialist or a "psychology diplomate." The bill requires the Board of Psychology to utilize the following criteria in approving certifying bodies:

- Peer review and self study;
- Established standards;
- Assessment of competency characteristics of the specialty;
- Administrative support; and
- Unified relationship to the public and the profession.

The bill also defines the term "specialist" or "diplomate" to mean a psychologist with recognized competency acquired through an organized sequence of formal education, training, experience, and professional standing.

The bill prohibits a licensed psychologist or school psychologist from representing that he or she is a certified psychology specialist or a psychology diplomate unless that recognition is from a certifying body that has been approved by the Board of Psychology.

The bill permits a licensed psychologist or school psychologist to indicate the services offered or whether his or her practice is limited to one or more types of services as long as it accurately reflects their scope of practice.

C. SECTION DIRECTORY:

Section 1: Creates section 490.0149, Florida Statutes, to provide a definition; to limit the use of certain specialty titles; to authorize rulemaking; and to allow offered or limited services to be indicated.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill appears to have a fiscal impact on state government expenditures through minimal increases in rulemaking, entity processing, and complaint processing costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct economic impact on the representation and advertising of psychologists and school psychologists who utilize psychological specialties. This bill also will have a direct economic impact on certifying bodies of psychological specialties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties municipalities have to raise revenue.

2. Other:

First Amendment

To the extent this bill permits restrictions on professional advertising, it may be subject to challenge under the First Amendment of the United States Constitution. Courts, however, have previously upheld similar restrictions.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Board of Psychology to adopt rules for approving entities that recognize psychology specialists and psychology diplomates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Consistent Terminology

The bill uses the terms "specialist," "diplomate," "certified psychology specialist," "psychology diplomate," and "board-certified psychology specialist." The sponsor may wish to use consistent terminology throughout the bill.

Drafting Issue: Criteria

The sponsor may wish to consider two changes to the section of the bill that provides the criteria for the Board of Psychology to use in approving certifying bodies. First, the reference to subsection (2) is potentially confusing. Second, the criteria may not be stringent enough to prevent a "vanity board" from meeting the criteria and being approved.

Drafting Issue: More Specific Rulemaking Authority

As the Department of Health is responsible for rulemaking for school psychologists, the sponsor may wish to provide more specific rulemaking authority.[12]

[12] Dep't of Heath, HB 775 CS (2006) Bill Analysis, Economic Statement, and Fiscal Note (Apr. 11, 2006).

Other Comments: American Psychological Association

According to a telephone conversation between the Health Care Regulation Committee and staff of the American Psychology Association ("APA"), the APA recognizes that there is a problem nationally with individuals who hold themselves out as a board-certified specialist or a diplomate, but who have "suspect training" or "vanity credentials."

The APA has discussed the possibility of developing criteria that may be used to identify an appropriate certifying body of legitimate psychology specialties. To date, there has been no policy action by the APA.[13]

Other Comments: The American Board of Professional Psychology

One example of a certifying body is the American Board of Professional Psychology (ABPP), which was incorporated in 1947 with the support of the American Psychological Association. The American Board of Professional Psychology currently recognizes 13 specialty boards.[14]

The ABPP provides the following criteria for organizations to determine the competency of certifying bodies that provide certified specialties in professional psychology:[15]

- National in scope, appropriately incorporating standards of the profession and collaborating closely with organizations related to specialization in psychology.
- Have clearly described purposes, related by-laws, policies, and procedures which are accountable to the public, its certified specialists, and the profession.
- Develop and implement examinations designed to assess the competencies required to provide quality services in the specialties it certifies.
- Not be a governmental, membership, advocacy, or accrediting body.
- Have organizational and financial stability with professional and office support staff.
- Be governed by a single, national in scope, not-for-profit corporation comprised of a certified specialist Trustee (Board Member) from each of its multiple, member Specialty Boards as well as public member representation. The multiple board structure provides a continuing peer review of the organization's activities. The governing board has formal procedures for the selection and tenure of Trustees.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Health Care Regulation Committee adopted a "strike-all" amendment that made the following changes:

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[13] E-mail from the Deputy Exec. Dir. for Educ., Am. Psychological Ass'n (on file with the Heath Care Regulation Comm.).

[14] (1) The American Board of Cognitive and Behavioral Psychology; (2) The American Board of Clinical Psychology; (3) The American Board of Clinical Child and Adolescent Psychology; (4) The American Board of Clinical Health Psychology; (5) The American Board of Clinical Neuropsychology; (6) The American Board of Counseling Psychology; (7) The American Board of Family Psychology, (8) The American Board of Forensic Psychology, (9) The American Board of Group Psychology, (10) The American Board of Psychoanalysis in Psychology, (11) The American Board of Rehabilitation Psychology, (12) The American Board of School Psychology, and (13) The American Board of Organizational and Business Consulting Psychology. According the ABPP, practice activities in any specialty seldom are exclusive to the specialty and most practice activities are shared with the general practice of professional psychology. The pattern of practice activities, including limiting the scope of practice, and focus upon more complex or unique problems or technologies is more relevant in defining a specialty together with advanced education, training, and experience.

[15] American Board of Professional Psychology, Standards for the Purpose and Structure of a Body Certifying Psychologists as Specialists in Professional Psychology, available at http://www.abpp.org/brochures/general_brochure.htm (last visited Apr. 5, 2006).

- Removed the specific mention of the American Board of Professional Psychology as a recognized agency;
- Added a definition of specialist or diplomate;
- Provided the criteria that the board must use in establishing specific criteria for the approval of certifying bodies; and
- Made a more specific reference to "certified psychology specialists" or "psychology diplomate" and removes the general reference to "specialist" or "diplomate".

The bill, as amended, was reported favorably as a committee substitute.

CHAMBER ACTION

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1 The Health Care Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to psychologist specialties; creating s.
7 490.0149, F.S.; providing a definition; specifying the
8 circumstances under which a psychologist may hold himself
9 or herself out as a certified psychology specialist or
10 psychology diplomate; requiring the Board of Psychology to
11 adopt rules and establish specified criteria for the
12 approval of certifying bodies; specifying that a person
13 licensed under ch. 490, F.S., may specify the types of
14 services he or she provides; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 490.0149, Florida Statutes, is created
19 to read:
20 490.0149 Specialties.--
21 (1) As used in this section, the term "specialist" or
22 "diplomate" means a psychologist with recognized special

23 competency acquired through an organized sequence of formal
24 education, training, experience, and professional standing.
25 (2) A person licensed as a psychologist or school
26 psychologist may not hold himself or herself out as a certified
27 psychology specialist or psychology diplomate unless the person
28 has received formal recognition as a board-certified psychology
29 specialist or psychology diplomate from a recognized certifying
30 body that has been approved by the board.
31 (3) The board shall adopt rules pursuant to ss. 120.536(1)
32 and 120.54 to establish criteria for approval of certifying
33 bodies pursuant to the requirements of subsection (2). The
34 criteria shall include:
35 (a) Peer review and self study.
36 (b) Established standards.
37 (c) Assessments of competencies characteristic of the
38 specialty.
39 (d) Administrative support.
40 (e) A unified relationship to the public and the
41 profession.
42 (4) A person licensed under this chapter may indicate the
43 services he or she offers and may indicate that his or her
44 practice is limited to one or more types of services when this
45 accurately reflects his or her scope of practice.
46 Section 2. This act shall take effect July 1, 2006.

HB 911 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 CS Department of Management Services
SPONSOR(S): Bullard
TIED BILLS: **IDEN./SIM. BILLS:** SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) State Administration Appropriations Committee	7 Y, 0 N	Dobbs	Belcher
3) Governmental Operations Committee		Brown	Williamson
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill requires the Department of Management Services to include in its annual state facilities inventory report a list of state-owned facilities that have unoccupied space suitable for use as an emergency shelter. The list must be updated annually by May 31 and must be listed by county and municipality.

The Department of Management Services has not reported a fiscal impact for the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates an additional reporting requirement.

Maintain Public Security -The list of potential shelters created by this legislation may allow counties and municipalities to better know what buildings may be used as shelters in an emergency.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Pursuant to the "Capital Facilities Planning and Budgeting Act" in ss. 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.[1] To fully comply with this requirement, DMS produces an annual report, which is available online.[2] Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.[3]

There are several components to the annual inventory. For example, the State Facility Inventory program includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and a record of the ownership of the facilities, square footage, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. DMS also is required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space.[4]

The Department of Community Affairs, Division of Emergency Management ("Division"), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the "State Emergency Management Act" in ss. 252.31-252.60, F.S.[5] The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operation, registration, inventory, power generation capability, information management, and staffing; and provide guidance for sheltering people with

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[1] Section 216.015(3)(b), F.S.
[2] http://fcn.state.f.l.us/dms/dbc/mgt/inventory.html
[3] According to the Executive Summary of the 2005 Inventory Annual Report.
[4] Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or, in a combination of rooms, having a minimum of 400 square feet in each room. [Section 252.385 (4)(b), F.S.]
[5] Section 252.35 (2)(a), F.S.

special needs.[6] The Division has integrated the State Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.[7]

The Division currently manages a program for surveying existing public and private buildings, with written owner agreement, to identify which facilities are appropriately designed and located to serve as shelters.[8] Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals 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.[9]

Proposed Changes

The bill requires DMS to compile a list of state-owned facilities that have unoccupied space which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year.
The bill defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse."

C. SECTION DIRECTORY:

Section 1 amends s. 252.385, F.S., to require DMS to maintain a list of state-owned facilities that have unoccupied space for use as emergency shelters during storms or other catastrophic events.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[6] Section 252.35 (2)(a)2., F.S.
[7] Rule 9G-2.002, F.A.C.
[8] Section 252.385(2), F.S.
[9] Section 252.385(4)(a), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006 the Domestic Security committee adopted the amendment that requires DMS to compile and annually update a list of state-owned facilities that have unoccupied space suitable for use as emergency shelter. The amendment defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse." The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Domestic Security Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; requiring the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing requirements with respect to such listing; defining terms; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or

24 nursing homes, which are suitable for use as public hurricane
25 evacuation shelters shall be made available at the request of
26 the local emergency management agencies. Such agencies shall
27 coordinate with the appropriate school board, university,
28 community college, state agency, or local governing board when
29 requesting the use of such facilities as public hurricane
30 evacuation shelters.
31 (d) The Department of Management Services shall include in
32 the annual state facilities inventory report required under ss.
33 216.015-216.016 a separate list of state-owned facilities,
34 including, but not limited to, meeting halls, auditoriums,
35 conference centers, and training centers that have unoccupied
36 space suitable for use as an emergency shelter during a storm or
37 other catastrophic event. Facilities must be listed by the
38 county and municipality where the facility is located and must
39 be made available in accordance with paragraph (a). As used in
40 this paragraph, the term "suitable for use as an emergency
41 shelter" means meeting the standards set by the American Red
42 Cross for a hurricane evacuation shelter, and the term
43 "unoccupied" means vacant due to suspended operation or nonuse.
44 The list must be updated by May 31 of each year.
45 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 Public Records
SPONSOR(S): Greenstein
TIED BILLS: HB 1115 **IDEN./SIM. BILLS:** SB 2076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Pugh	Miller
2) Governmental Operations Committee		Williamson	Williamson
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

In 2003, the South Florida Regional Transportation Authority was created to replace the Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning and infrastructure for Miami-Dade, Broward, and Palm Beach counties. It is a public agency supported by federal, state, and local tax dollars. Among its powers is the ability to acquire, purchase, and lease real property.

HB 1117 creates a public records exemption for appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (the authority) until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The bill allows the authority to disclose, at its discretion, appraisal reports to property owners or to third parties that are assisting in land acquisition, who must maintain the confidentiality of the appraisals.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill could have a minimal fiscal impact on the authority.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- HB 1117 delays public access to appraisal reports, offers, and counteroffers related to land purchases by the South Florida Regional Transportation Authority.

B. EFFECT OF PROPOSED CHANGES:

South Florida Regional Transportation Authority

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, the Department of Transportation purchased an 81-mile rail corridor from CSXT for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintained the tracks, buildings, and signaling; and dispatched all trains using the tracks. In 1989, the Legislature made the temporary commuter rail more permanent, passing the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., and creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature passed SB 686, which replaced the "Tri-Rail" authority with the "South Florida Regional Transportation Authority." The new transportation authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance. It has a nine-member board comprised of county commissioners, citizens, and a Florida Department of Transportation district secretary. Currently, it is supported by contributions of local tax revenues from the three member counties, along with federal and state transportation funds to finance its capital projects.

Open Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issues of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Effect of Proposed Changes

The bill creates a public records exemption for appraisal reports, offers, and counteroffers related to the authority's land acquisitions until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The authority may disclose such confidential and exempt[1] information to private property owners or to third parties assisting in the land acquisition. The third parties must maintain the confidential and exempt status of the records. In addition, the authority may share and disclose appraisal reports, offers, and counteroffers when joint acquisition of property is contemplated.

In the event that the authority terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

Finally, the bill authorizes the authority to "use as its own appraisals obtained by a third party under contract with the authority to provide such services, provided the appraisals are reviewed and approved by the authority."

C. SECTION DIRECTORY:

Section 1: Creates s. 343.59, F.S., to create a public records exemption for the South Florida Regional Transportation Authority.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See "D.FISCAL COMMENTS" below.

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[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See 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 certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The authority believes withholding immediate disclosure of appraisals, offers, and counteroffers from the public will result in lower acquisition costs for land on which future mass transit projects will be built. These savings could be invested in future land acquisitions to further expand or improve the commuter rail and other public-transit facilities within its service area.

The bill likely could create a fiscal impact on the authority, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the authority could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

Separate Bill
Article I, s. 24(c) of the Florida Constitution, requires the creation of public records exemptions in a separate bill. Lines 47 through 50 appear to contain a substantive provision unrelated to the public records exemption, which appears in violation of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Confidentiality Travels
The bill requires a third party with access to such confidential and exempt information to maintain the confidential and exempt status of that information. In *Ragsdale v. State*,[2] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in

[2] 720 So.2d 203 (Fla. 1998).

determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.[3]

In *City of Riviera Beach v. Barfield*,[4] the court stated, "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[5] As such, the provision is *unnecessary*, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

Drafting Issues: Open Government Sunset Review Act
The bill makes the exemption subject to the Open Government Sunset Review Act *of 1995* pursuant to s. 119.15, F.S. In 2005, the Act was renamed the Open Government Sunset Review Act. As such, an amendment is recommended to remove "of 1995".

Drafting Issues: Public Necessity Statement
Section 1 of the bill creates a public records exemption for appraisal reports, offers, and counteroffers relating to land acquisition by the authority. The public necessity statement, however, discusses the necessity to protect proprietary confidential business information contained in those reports, offers, and counteroffers. It is recommended that the public necessity statement be amended to conform to the public records exemption.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[3] *Id.* at 206, 207.
[4] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined, "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.
[5] *Id.* at 1137.

1 A bill to be entitled
2 An act relating to public records; creating s. 343.59,
3 F.S.; providing an exemption from public records
4 requirements for certain appraisal reports, offers, and
5 counteroffers relating to land acquisition by the South
6 Florida Regional Transportation Authority; providing that
7 the exemption expires upon execution of a certain contract
8 or at a certain time before a purchase contract or
9 agreement is considered for approval; providing exceptions
10 to the exemption; providing for future legislative review
11 and repeal; providing a finding of public necessity;
12 providing a contingent effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 343.59, Florida Statutes, is created to
17 read:
18 343.59 Confidentiality of appraisal reports, offers, and
19 counteroffers.--
20 (1) Appraisal reports, offers, and counteroffers relating
21 to land acquisition by the authority are confidential and exempt
22 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
23 State Constitution until an option contract is executed or, if
24 no option contract is executed, until 30 days before a contract
25 or agreement for purchase is considered for approval by the
26 authority's governing board. However, the authority may, at its
27 discretion, disclose appraisal reports to private landowners
28 during negotiations for acquisitions using alternatives to fee

29 simple techniques if the authority determines that disclosure of
30 such reports will bring the proposed acquisition to closure. In
31 the event that negotiations are terminated by the authority, the
32 appraisal reports, offers, and counteroffers shall become
33 available pursuant to s. 119.07(1). Notwithstanding the
34 provisions of this section, the authority may share and disclose
35 appraisal reports, appraisal information, offers, and
36 counteroffers when joint acquisition of property is
37 contemplated. The authority shall maintain the confidentiality
38 of such appraisal reports, appraisal information, offers, and
39 counteroffers in conformance with this section except in those
40 cases in which the authority has exercised discretion to
41 disclose such information. The authority may disclose appraisal
42 information, offers, and counteroffers to a third party who has
43 entered into a contractual agreement with the authority to work
44 with or on the behalf of or to assist the authority in
45 connection with land acquisitions. The third party shall
46 maintain the confidentiality of such information in conformance
47 with this section. In addition, the authority may use as its own
48 appraisals obtained by a third party under contract with the
49 authority to provide such services, provided the appraisals are
50 reviewed and approved by the authority.
51 (2) Subsection (1) is subject to the Open Government
52 Sunset Review Act of 1995 in accordance with s. 119.15 and shall
53 stand repealed on October 2, 2011, unless reviewed and saved
54 from repeal through reenactment by the Legislature.
55 Section 2. The Legislature finds that it is a public
56 necessity that proprietary confidential business information

57 contained in appraisal reports, offers, and counteroffers be
58 kept confidential when held by a local governmental entity or
59 agency. Disclosure of this proprietary confidential business
60 information in a local governmental entity's or agency's
61 possession would adversely affect the goal of the purchase of
62 lands for the public good using public funds at competitive
63 prices resulting from negotiations between parties. Further,
64 each party is entitled to independently obtain appraisal reports
65 and property value information regarding said property.
66 Disclosure of the appraisal report or property information by
67 the governmental entity or agency could create an unfair
68 disadvantage for the governmental entity or agency during
69 negotiations. Release of appraisal reports, offers, and
70 counteroffers could impair full and fair competition between the
71 negotiating parties. Thus, the public and private harm in
72 disclosing this information significantly outweighs any public
73 benefit derived from disclosure, and the public's ability to
74 scrutinize and monitor agency action is not diminished by
75 nondisclosure of this information.
76 Section 3. This act shall take effect on the same date
77 that HB 1115 or similar legislation takes effect, if such
78 legislation is adopted in the same legislative session or an
79 extension thereof and becomes law.

HB 1223

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1223 Florida Retirement System
SPONSOR(S): Machek and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Mitchell	Williamson
2) Local Government Council			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

This bill continues the expansion of the Special Risk Class of the Florida Retirement System by including nine additional classes of employees of correctional and forensic facilities or institutions: unit treatment and rehabilitation specialists; unit treatment and rehabilitation senior supervisors; licensed practical nurses; behavioral program associates; behavioral program specialists; human service workers; and rehabilitation therapists.

The bill makes legislative findings and declares an important state interest.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to impact local government revenues or expenditures. The bill, however, requires the state, as the public employer of these employees, to pay an additional contribution rate of 10.70 percent of employees' salaries at an estimated statewide cost of $2,068,546 in Fiscal Year 2006-2007. This increase in the required contribution rate *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include additional classes of employees of correctional and forensic facilities or institutions.

B. EFFECT OF PROPOSED CHANGES:

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[1]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[2] The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.[3]

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[4] Members of the FRS belong to one of five membership classes:

Regular Class[5]	570,888 members	88.00%
Special Risk Class[6]	68,466 members	10.59%
Special Risk Administrative Support Class[7]	80 members	0.01%
Senior Management Service Class[8]	6,823 members	1.10%
Elected Officers Class[9]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.[10]

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.[11] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[12] Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[3] *Id.*
[4] *Id.*
[5] Fla. Stat. § 121.021(12) (2005).
[6] Fla. Stat. § 121.0515 (2005).
[7] Fla. Stat. § 121.0515(7) (2005).
[8] Fla. Stat. § 121.055 (2005).
[9] Fla. Stat. § 121.052 (2005).
[10] *See, e.g.,* Fla. Stat. 121.055(3)(a)1. (2005).
[11] *Id.*
[12] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

member's average final compensation.[13] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[14]

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.[15] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[16]
2000	Community-Based Correctional Probation Officers[17]
2000	The following 24 types of employees of correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates: dietitians; public health nutrition consultants; psychological specialists; psychologists; senior psychologists; regional mental health consultants; psychological services directors-DCF; pharmacists; senior pharmacists; dentists; senior dentists; registered nurses; senior registered nurses; registered nurse specialists; clinical associates; advanced registered nurse practitioners; advanced registered nurse practitioner specialists; registered nurse supervisors; senior registered nurse supervisors; registered nursing consultants; quality management program supervisors; executive nursing directors; speech and hearing therapists; and pharmacy managers.
2001	Youth Custody Officers[18]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[19]

These additions to the Special Risk Class have caused it to grow by more than 25 percent in the last six years:

> There were 54,683 active Special Risk Class members as of June 30, 1999, and 2,355 Deferred Retirement Option Program participants; as of June 30, 2005, there were 71,383 members filling Special Risk Class positions, 68,466 active members and 2,917 Deferred Retirement Option Program participants. Currently, the Special Risk Class makes up nearly 11% of the active FRS membership.[20]

Continued Expansion of the Special Risk Class

This bill continues the expansion of the Special Risk Class by adding seven classes of employees of

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[13] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[14] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[15] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[16] Ch. 99-392, Laws of Fla., § 23.
[17] Ch. 2000-169, Laws of Fla. § 29.
[18] Ch. 2001-125, Laws of Fla., § 43.
[19] Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See also* Int'l Ass'n for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[20] Dep't of Mgmt. Serv., HB 1223 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't) at pp. 3-4) [hereinafter "DMS Analysis"].

correctional or forensic facilities or institutions who spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation specialist-F/C (class code 5791);
- Licensed practical nurse F/C (class code 5599);
- Behavioral program associate F/C (class code 5762);
- Behavioral program specialist F/C (class code 5763);
- Human service worker I-F/C (class code 5781);
- Human service worker II-F/C (class code 5784); and
- Rehabilitation therapist F/C (class code 5563).

The bill also expands the Special Risk class by adding two classes of employees of correctional or forensic facilities or institutions who work for the Department of Children and Family Services and spend at least 75 percent of their time performing duties which involve contact with patients or inmates:

- Unit treatment and rehabilitation senior supervisor I-F/C (class code 5793); and
- Unit treatment and rehabilitation senior supervisor II-F/C (class code 5796).

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide *any increase in benefits* to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.[21] Because employers will pay an additional 10.70 percent of salary for these additional classes of employees of correctional and forensic facilities or institutions, the bill appears to satisfy this constitutional requirement.[22]

C. SECTION DIRECTORY:

Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of special risk member to include two types of Department of Children and Family Services employees.

Section 2: Amends subsection (2)(f) and creates subsection (2)(i) of section 121.0515, Florida Statutes, to include additional types of employees of correctional and forensic facilities or institutions.

Section 3: Declares a statement of important state interest.

Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased contributions for the additional types of employees of correctional and forensic facilities or institutions.

[21] Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

[22] DMS Analysis at p. 8.

2. Expenditures:

This bill is expected to have the following fiscal impact on state government expenditures:[23]

Fiscal Year 2006-2007	$2,068,546
Fiscal Year 2007-2008	$2,151,287
Fiscal Year 2008-2009	$2,237,339

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

> The total cost of $2,068,546.14 that was calculated for the 2006-07 fiscal year was based upon the current contribution rates for 2005-06 and a 4% payroll growth assumption. The fiscal impact of providing Special Risk Class coverage on a prospective basis for these positions will be funded through the payment of higher required contributions and investment returns on those contributions. Any fiscal impact resulting from a change in class demographics or experience due to the provisions of this bill would be reflected in rates recommended by future valuations and experience studies of the FRS and impact all employers with Special Risk Class members.[24]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The Department of Management Services concludes that the bill complies with this constitutional requirement.

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[23] *Id.* at p. 8 (these expenditures are based on a payroll growth assumption of 4 percent per annum and use current employer contribution rates).
[24] *Id.* at p. 9.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Classes of Employees

The sponsor may wish to consider adding these employees to the Special Risk Class based on their job duties and responsibilities rather than by class code. The Department of Management Services accurately reflects the problems with using class codes:

- Historically when positions have been added to the Special Risk Class, the positions have been added by title with certification requirements and giving the primary job duties and responsibilities that comprise more than 50% of the employees' required duties in the official position description at the time of being added to the class. This method of adding positions makes it clear what duties are required of the positions being added to the Special Risk Class.

- In the case of State positions, it would also allow Human Resource Management within the Department of Management Services to identify the affected positions and class codes that are covered by the Special Risk Class, thereby maintaining flexibility within the state personnel system as needed without having positions inadvertently covered by the Special Risk Class because the statute specifies the class code. The evaluation would be determined by the identified primary job duties and not only by broadband class codes and position titles. Another draw back to using this type of position listing is that the Department of Corrections has indicated that they only utilize 2 of the positions being added to the Special Risk Class and this bill includes the position of behavior program associate that is not utilized by the Department of Children and Families. Meanwhile, there are more than 500 senior licensed practical nurses at the Department of Corrections that would not be covered by this bill because their position title and class code are not specifically included.[25]

Drafting Issue: Location of Additions

This bill expands the Special Risk Class by amending an existing paragraph and creating a new paragraph. Changes to the Special Risk Class, however, are generally made as separate additions so it is clear when specific positions were added.[26]

Other Comments: Continued Expansion of Special Risk

This bill proposes an additional expansion of the Special Risk Class. The Legislature must ultimately determine whether these additional types of employees of correctional and forensic facilities or institutions perform work that is consistent with the intent of the Special Risk Class.[27] The Legislature also must be cognizant, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.[28]

- Specifically, further expansion of Special Risk Class health care positions only at state correctional and forensic facilities will lead to greater disparity of treatment for similarly situated employees within the Florida Retirement System and lead to even more pressure for similar positions at non-state detention facilities to become included in this class of membership.

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[25] *Id.* at p. 4.
[26] *Id.* at p. 3.
[27] Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).
[28] *Id.*

- In general, expansion of the membership of the Special Risk Class encourages other employee groups to seek the higher benefits provided to the Special Risk Class compared to the Regular Class. Such requests are generally based in seeking equity for similar positions not included, member perceptions of working in risky positions, or their proximity to working with other employees covered by the Special Risk Class membership instead of meeting the legislative intent for this membership class.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 ss. 121.021 and 121.0515, F.S.; providing membership in
4 the Special Risk Class for persons employed as certain
5 treatment and rehabilitation personnel at correctional or
6 forensic facilities; providing a declaration of important
7 state interest; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (f) is added to subsection (15) of
12 section 121.021, Florida Statutes, to read:
13 121.021 Definitions.--The following words and phrases as
14 used in this chapter have the respective meanings set forth
15 unless a different meaning is plainly required by the context:
16 (15)
17 (f) Effective July 1, 2006, the term "special risk member"
18 includes any member who is employed by the Department of
19 Children and Family Services and meets the special criteria set
20 forth in s. 121.0515(2)(i).
21 Section 2. Subsection (2) of section 121.0515, Florida
22 Statutes, is amended to read:
23 121.0515 Special risk membership.--
24 (2) CRITERIA.--A member, to be designated as a special
25 risk member, must meet the following criteria:
26 (a) The member must be employed as a law enforcement
27 officer and be certified, or required to be certified, in
28 compliance with s. 943.1395; however, sheriffs and elected

29 police chiefs shall be excluded from meeting the certification
30 requirements of this paragraph. In addition, the member's duties
31 and responsibilities must include the pursuit, apprehension, and
32 arrest of law violators or suspected law violators; or the
33 member must be an active member of a bomb disposal unit whose
34 primary responsibility is the location, handling, and disposal
35 of explosive devices; or the member must be the supervisor or
36 command officer of a member or members who have such
37 responsibilities; provided, however, administrative support
38 personnel, including, but not limited to, those whose primary
39 duties and responsibilities are in accounting, purchasing,
40 legal, and personnel, shall not be included;
41 (b) The member must be employed as a firefighter and be
42 certified, or required to be certified, in compliance with s.
43 633.35 and be employed solely within the fire department of a
44 local government employer or an agency of state government with
45 firefighting responsibilities. In addition, the member's duties
46 and responsibilities must include on-the-scene fighting of
47 fires, fire prevention, or firefighter training; direct
48 supervision of firefighting units, fire prevention, or
49 firefighter training; or aerial firefighting surveillance
50 performed by fixed-wing aircraft pilots employed by the Division
51 of Forestry of the Department of Agriculture and Consumer
52 Services; or the member must be the supervisor or command
53 officer of a member or members who have such responsibilities;
54 provided, however, administrative support personnel, including,
55 but not limited to, those whose primary duties and
56 responsibilities are in accounting, purchasing, legal, and

57 personnel, shall not be included and further provided that all
58 periods of creditable service in fire prevention or firefighter
59 training, or as the supervisor or command officer of a member or
60 members who have such responsibilities, and for which the
61 employer paid the special risk contribution rate, shall be
62 included;
63 (c) The member must be employed as a correctional officer
64 and be certified, or required to be certified, in compliance
65 with s. 943.1395. In addition, the member's primary duties and
66 responsibilities must be the custody, and physical restraint
67 when necessary, of prisoners or inmates within a prison, jail,
68 or other criminal detention facility, or while on work detail
69 outside the facility, or while being transported; or the member
70 must be the supervisor or command officer of a member or members
71 who have such responsibilities; provided, however,
72 administrative support personnel, including, but not limited to,
73 those whose primary duties and responsibilities are in
74 accounting, purchasing, legal, and personnel, shall not be
75 included; however, wardens and assistant wardens, as defined by
76 rule, shall participate in the Special Risk Class;
77 (d) The member must be employed by a licensed Advance Life
78 Support (ALS) or Basic Life Support (BLS) employer as an
79 emergency medical technician or a paramedic and be certified in
80 compliance with s. 401.27. In addition, the member's primary
81 duties and responsibilities must include on-the-scene emergency
82 medical care or direct supervision of emergency medical
83 technicians or paramedics, or the member must be the supervisor
84 or command officer of one or more members who have such

85 responsibility. However, administrative support personnel,
86 including, but not limited to, those whose primary
87 responsibilities are in accounting, purchasing, legal, and
88 personnel, shall not be included;
89 (e) The member must be employed as a community-based
90 correctional probation officer and be certified, or required to
91 be certified, in compliance with s. 943.1395. In addition, the
92 member's primary duties and responsibilities must be the
93 supervised custody, surveillance, control, investigation, and
94 counseling of assigned inmates, probationers, parolees, or
95 community controllees within the community; or the member must
96 be the supervisor of a member or members who have such
97 responsibilities. Administrative support personnel, including,
98 but not limited to, those whose primary duties and
99 responsibilities are in accounting, purchasing, legal services,
100 and personnel management, shall not be included; however,
101 probation and parole circuit and deputy circuit administrators
102 shall participate in the Special Risk Class;
103 (f) The member must be employed in one of the following
104 classes and must spend at least 75 percent of his or her time
105 performing duties which involve contact with patients or inmates
106 in a correctional or forensic facility or institution:
107 1. Dietitian (class codes 5203 and 5204);
108 2. Public health nutrition consultant (class code 5224);
109 3. Psychological specialist (class codes 5230 and 5231);
110 4. Psychologist (class code 5234);
111 5. Senior psychologist (class codes 5237 and 5238);
112 6. Regional mental health consultant (class code 5240);

113 7. Psychological Services Director--DCF (class code 5242);
114 8. Pharmacist (class codes 5245 and 5246);
115 9. Senior pharmacist (class codes 5248 and 5249);
116 10. Dentist (class code 5266);
117 11. Senior dentist (class code 5269);
118 12. Registered nurse (class codes 5290 and 5291);
119 13. Senior registered nurse (class codes 5292 and 5293);
120 14. Registered nurse specialist (class codes 5294 and
121 5295);
122 15. Clinical associate (class codes 5298 and 5299);
123 16. Advanced registered nurse practitioner (class codes
124 5297 and 5300);
125 17. Advanced registered nurse practitioner specialist
126 (class codes 5304 and 5305);
127 18. Registered nurse supervisor (class codes 5306 and
128 5307);
129 19. Senior registered nurse supervisor (class codes 5308
130 and 5309);
131 20. Registered nursing consultant (class codes 5312 and
132 5313);
133 21. Quality management program supervisor (class code
134 5314);
135 22. Executive nursing director (class codes 5320 and
136 5321);
137 23. Speech and hearing therapist (class code 5406); ~~or~~
138 24. Pharmacy manager (class code 5251);
139 25. Unit treatment and rehabilitation specialist-F/C
140 (class code 5791);

141 26. Licensed practical nurse F/C (class code 5599);
142 27. Behavioral program associate F/C (class code 5762);
143 28. Behavioral program specialist F/C (class code 5763);
144 29. Human service worker I-F/C (class code 5781);
145 30. Human service worker II-F/C (class code 5784); or
146 31. Rehabilitation therapist F/C (class code 5563);
147 (g) The member must be employed as a youth custody officer
148 and be certified, or required to be certified, in compliance
149 with s. 943.1395. In addition, the member's primary duties and
150 responsibilities must be the supervised custody, surveillance,
151 control, investigation, apprehension, arrest, and counseling of
152 assigned juveniles within the community; ~~or~~
153 (h) The member must be employed by a law enforcement
154 agency or medical examiner's office in a forensic discipline
155 recognized by the International Association for Identification
156 and must qualify for active membership in the International
157 Association for Identification. The member's primary duties and
158 responsibilities must include the collection, examination,
159 preservation, documentation, preparation, or analysis of
160 physical evidence or testimony, or both, or the member must be
161 the direct supervisor, quality management supervisor, or command
162 officer of one or more individuals with such responsibility.
163 Administrative support personnel, including, but not limited to,
164 those whose primary responsibilities are clerical or in
165 accounting, purchasing, legal, and personnel, shall not be
166 included; or~~.~~
167 (i) The member must be employed by the Department of
168 Children and Family Services in one of the following classes and

169 must spend at least 75 percent of his or her time performing
170 duties that involve contact with patients or inmates in a
171 forensic facility or institution:
172 1. Unit treatment and rehabilitation senior supervisor I-
173 F/C (class code 5793); or
174 2. Unit treatment and rehabilitation senior supervisor II-
175 F/C (class code 5796).
176 Section 3. The Legislature finds that a proper and
177 legitimate state purpose is served when employees and retirees
178 of the state and its political subdivisions and the dependents,
179 survivors, and beneficiaries of such employees and retirees are
180 extended the basic protections afforded by governmental
181 retirement systems. These persons must be provided benefits that
182 are fair and adequate and that are managed, administered, and
183 funded in a sound actuarial manner, as required by s. 14, Art. X
184 of the State Constitution and part VII of chapter 112, Florida
185 Statutes. Therefore, the Legislature hereby determines and
186 declares that this act fulfills an important state interest.
187 Section 4. This act shall take effect July 1, 2006.

HB 1285

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285 Public Records Exemptions
SPONSOR(S): Attkisson
TIED BILLS: HB 1283 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	6 Y, 4 N	Carlson	Carlson
2) Governmental Operations Committee		Williamson	Williamson
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Current law provides an exemption from public records requirements for certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses.

The bill will expand the existing exemption to include specific information relating to the "Innovation Incentive Program." The bill expands the existing exemption, provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

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

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Public Records Exemption for Incentive Programs

Section 288.1067, F.S., provides that certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses[1] is confidential and exempt[2] from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The specific information includes:

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[1] The incentive programs are the Capital Investment Tax Credit Program (s. 220.191), Qualified Defense Contractor Tax Refund Program (s. 288.1045), Qualified Target Industry Tax Refund Program (s. 288.106), High Impact Performance Grant Program (s. 288.108) and the Quick Action Closing Fund (s. 288.1088).

[2] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See 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 certain information and records confidential and exempt from public disclosure, such information and records

- An employer's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number;
- Trade secret information as defined in s. 812.081, F.S.;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

Effect of Proposed Changes

The bill expands the public records exemption provided in s. 288.1067, F.S., to include information held by the Office of Tourism, Trade and Economic Development; Enterprise Florida, Inc.; or county or municipal governmental entities and their employees or agents pursuant to s. 288.1089, F.S., the "Innovation Incentive Program" created by HB 1283.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1283 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.1067, F.S., to expand the existing public records exemption to include information held pursuant to the Innovation Incentive Program under s. 288.1089, F.S.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1283 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See Fiscal Comments.

may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created or expanded public records or public meetings exemption. The bill expands a current public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or expanded public records or public meetings exemption. The bill expands a current public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

Lines 94 through 96 of the bill reference the need to protect "private information, such as employee names and social security numbers" concerning employees of a business seeking participation in the Innovation Incentive Program. The exemption, however, does not protect such information from public disclosure. The sponsor may want to consider an amendment to remove those lines from the bill to conform the public necessity statement to the public records exemption.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to public records exemptions; amending s.
3 288.1067, F.S.; expanding the public records exemption for
4 incentive programs to include the Innovation Incentive
5 Program under s. 288.1089, F.S.; providing for future
6 review and repeal; providing a statement of public
7 necessity; providing a contingent effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsections (1) and (4) of section 288.1067,
12 Florida Statutes, are amended to read:
13 288.1067 Confidentiality of records.--
14 (1) The following information held by the Office of
15 Tourism, Trade, and Economic Development, Enterprise Florida,
16 Inc., or county or municipal governmental entities, and their
17 employees or agents, pursuant to the incentive programs for
18 qualified businesses as provided in s. 220.191, s. 288.1045, s.
19 288.106, s. 288.108, ~~or~~ s. 288.1088, or s. 288.1089 is
20 confidential and exempt from the provisions of s. 119.07(1) and
21 s. 24(a), Art. I of the State Constitution, for a period not to
22 exceed the duration of the relevant tax refund, tax credit, or
23 incentive agreement:
24 (a) The business's federal employer identification number,
25 unemployment compensation account number, and Florida sales tax
26 registration number.
27 (b) Any trade secret information as defined in s. 812.081.
28 Notwithstanding any provision of this section, trade secret

29 information shall continue to be confidential and exempt after
30 the duration of the tax refund, tax credit, or incentive
31 agreement.
32 (c) The percentage of the business's sales occurring
33 outside this state and, for businesses applying under s.
34 288.1045, the percentage of the business's gross receipts
35 derived from Department of Defense contracts during the 5 years
36 immediately preceding the date the business's application is
37 submitted.
38 (d) The anticipated wages for the project jobs that the
39 business plans to create, as reported on the application for
40 certification.
41 (e) The average wage actually paid by the business for
42 those jobs created by the project and any detailed proprietary
43 business information or an employee's personal identifying
44 information, held as evidence of the achievement or
45 nonachievement of the wage requirements of the tax refund, tax
46 credit, or incentive agreement programs or of the job creation
47 requirements of such programs.
48 (f) Any proprietary business information regarding capital
49 investment in eligible building and equipment made by the
50 qualified business project when held by the Office of Tourism,
51 Trade, and Economic Development as evidence of the achievement
52 or nonachievement of the investment requirements for the tax
53 credit certification under s. 220.191, for the high-impact
54 performance agreement under s. 288.108, ~~or~~ for the Quick Action
55 Closing Fund agreement under s. 288.1088<u>, or for the Innovation</u>
56 <u>Incentive Program agreement under s. 288.1089</u>.

57 (g) The amount of:
58 1. Taxes on sales, use, and other transactions paid
59 pursuant to chapter 212;
60 2. Corporate income taxes paid pursuant to chapter 220;
61 3. Intangible personal property taxes paid pursuant to
62 chapter 199;
63 4. Emergency excise taxes paid pursuant to chapter 221;
64 5. Insurance premium taxes paid pursuant to chapter 624;
65 6. Excise taxes paid on documents pursuant to chapter 201;
66 or
67 7. Ad valorem taxes paid, as defined in s. 220.03(1),
68
69 which the qualified business reports on its application for
70 certification or reports during the term of the tax refund
71 agreement, and for which the qualified business claims a tax
72 refund under s. 288.1045 or s. 288.106, and any such information
73 held as evidence of the achievement or nonachievement of
74 performance items contained in the tax refund agreement.
75 (4) This section is subject to the Open Government Sunset
76 Review Act ~~of 1995~~ in accordance with s. 119.15 and shall stand
77 repealed on October 2, 2011 ~~2007~~, unless reviewed and saved from
78 repeal through reenactment by the Legislature.
79 Section 2. The Legislature finds that it is a public
80 necessity to provide confidentiality for certain information
81 concerning businesses that is obtained through the
82 administration of the Innovation Incentive Program for qualified
83 innovation businesses under s. 288.1089, Florida Statutes. The
84 disclosure of information such as trade secrets, tax

85 identification numbers, analyses of gross receipts, the amount
86 of taxes paid, the amount of capital investment, and the amount
87 of employee wages paid, and the detailed documentation to
88 substantiate such performance information, could injure a
89 business in the marketplace by providing its competitors with
90 detailed insights into the financial status and the strategic
91 plans of the business, thereby diminishing the advantage that
92 the business maintains over those that do not possess such
93 information. Some of the documentation supplied to support a
94 business's incentive claims could reveal private information,
95 such as employee names and social security numbers, concerning
96 that business's employees. Without this exemption, private
97 sector businesses, whose records generally are not required to
98 be open to the public, might refrain from participating in the
99 economic development program and thus would not be able to use
100 the incentives available under the program. If a business were
101 unable to use the incentives, the business might choose to
102 locate its employment and other investment activities outside
103 the state, depriving the state and the public of the potential
104 economic benefits associated with such business activities in
105 this state. The harm to businesses in the marketplace and to the
106 effective administration of the economic development program
107 caused by the public disclosure of such information far
108 outweighs the public benefits derived from its release. In
109 addition, because the confidentiality provided by s. 288.1067,
110 Florida Statutes, does not preclude the reporting of statistics
111 in the aggregate concerning the program, as well as the names of
112 businesses participating in the program and the amount of

113 incentives awarded and claimed, the public has access to
114 information important to an assessment of the performance of the
115 program.
116 Section 3. This act shall take effect July 1, 2006, if
117 House Bill 1283 or similar legislation is adopted in the same
118 legislative session or an extension thereof and becomes a law.

HB 1369

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1369 Public Records
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Williamson	Williamson
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an invitation to bid or request for proposal. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. Current law does not provide a public records exemption for an invitation to negotiate.

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an invitation to bid (ITB) or a request for proposal (RFP) and concurrently provides notice of its intent to reopen the ITB or RFP. The bill provides for expiration of the exemption.

The bill also includes within the expanded exemption negotiations submitted in response to an invitation to negotiate.

The bill provides for future review and repeal of the exemption and provides a public necessity statement.

The bill does not grant rule-making authority to any administrative agency.

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

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Agency Procurement

Agency procurements of commodities or contractual services that exceed $25,000 are governed by statute and rule that requires utilization of one of the following three types of competitive solicitations, unless otherwise authorized by law:[1]

- Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.[2] The contract must be awarded to the responsible[3] and responsive vendor[4] that submits the lowest responsive bid.[5]

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[1] *See, infra,* at pp. (discussing general exceptions and emergency, sole source, and state term contract purchases).
[2] Section 287.012(16), F.S.
[3] The term "responsible vendor" means, ". . . a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.
[4] "Responsive vendor" means, ". . . a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

- Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to define specifically the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.[6] Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award must be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.[7]
- Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.[8] After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.[9]

Public Records Exemption for Bids and Proposals

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.[10] Current law does not provide a public records exemption for an ITN.

Effect of Bill

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an ITB or RFP and concurrently provides notice of its intent to reopen the ITB or RFP. The exemption expires once:

- Notice of a decision or intended decision is provided concerning the reopened ITB or RFP, or
- The agency withdraws the reopened ITB or RFP.

The bill also includes within the expanded exemption negotiations submitted in response to an ITN.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a public necessity statement.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the current exemption for sealed bids or proposals.

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[5] Section 287.057(1), F.S.; "Responsive bid," "responsive proposal," or "responsive reply" means, ". . . a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.
[6] Sections 287.017(22) and 287.057(2), F.S.
[7] Section 287.057(2), F.S.
[8] Sections 287.012(17) and 287.057(3), F.S.; "Best value" means, ". . . the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.
[9] Section 287.057(3), F.S.
[10] Section 119.071(1)(b), F.S.

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The exemption could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

   Public Necessity Statement

   Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Invitations to Negotiate

The bill only protects a "negotiation" submitted in response to an ITN if the agency rejects all negotiations and concurrently provides notice of its intent to reopen the ITN. The original submission, however, is not protected from public disclosure. As such, the exemption appears irrelevant, as the information is public until the agency rejects all negotiations. The sponsor may want to consider including within the original exemption negotiations in response to an ITN.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to public records; amending s. 119.071,
3 F.S.; creating an exemption from public-records
4 requirements for information contained in materials
5 relating to rejected bids, negotiations, and proposals
6 received by a state agency; requiring that the information
7 remain confidential until the agency provides notice of a
8 decision or withdraws its invitation to bid, invitation to
9 negotiate, or request for proposals; providing for future
10 legislative review and repeal of such exemption under the
11 Open Government Sunset Review Act; providing a statement
12 of public necessity; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraph (b) of subsection (1) of section
17 119.071, Florida Statutes, is amended to read:
18 119.071 General exemptions from inspection or copying of
19 public records.--
20 (1) AGENCY ADMINISTRATION.--
21 (b)<u>1.</u> Sealed bids or proposals received by an agency
22 pursuant to invitations to bid or requests for proposals are
23 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution until such time as the agency provides notice of a
25 decision or intended decision pursuant to s. 120.57(3)(a) or
26 within 10 days after bid or proposal opening, whichever is
27 earlier.
28 <u>2. Notwithstanding subparagraph 1., if an agency rejects</u>

29 all bids, negotiations, or proposals submitted in response to an
30 invitation to bid, invitation to negotiate, or request for
31 proposals and the agency concurrently provides notice of its
32 intent to reopen the invitation to bid, invitation to negotiate,
33 or request for proposals, the rejected bids, negotiations, or
34 proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I
35 of the State Constitution until notice of a decision or intended
36 decision is provided concerning the reopened invitation to bid,
37 invitation to negotiate, or request for proposals or until the
38 agency withdraws the reopened invitation to bid, invitation to
39 negotiate, or request for proposals.
40 3. Subparagraph 2. is subject to the Open Government
41 Sunset Review Act in accordance with s. 119.15, and shall stand
42 repealed on October 2, 2011, unless reviewed and saved from
43 repeal through reenactment by the Legislature.
44 Section 2. The Legislature finds that it is a public
45 necessity that information contained in materials related to a
46 state agency's rejected bids, negotiations, or proposals be made
47 confidential and exempt from disclosure under s. 119.07(1),
48 Florida Statutes, and s. 24(a), Art. I of the State Constitution
49 except as otherwise provided by law. The Legislature further
50 finds that the public policy provided by this exemption will be
51 best served by maintaining the confidentiality of the
52 information contained in materials related to rejected bids,
53 negotiations, or proposals by an agency.
54 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1421 Department of Public Safety
SPONSOR(S): Needelman
TIED BILLS: **IDEN./SIM. BILLS:** SB 2684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Brown RB	Williamson
2) Criminal Justice Committee			
3) Criminal Justice Appropriations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill creates a new executive branch department – the Department of Public Safety.

Within this new department, the bill inserts the Florida Highway Patrol (removed from the Department of Highway Safety and Motor Vehicles) and the Florida Marine Patrol (removed from the Fish and Wildlife Conservation Commission's Division of Law Enforcement and subsequently renamed). The bill grants certain duties, powers, and control of personnel matters to the Florida Marine Patrol, similar or identical to current Florida Highway Patrol powers and duties.

The bill will have a significant though indeterminate fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates a new department within the executive branch.

Maintain public security – The bill moves certain disparate law enforcement entities into a single department.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Highway Patrol

The Department of Highway Safety and Motor Vehicles (HSMV) is created by s. 20.24, F.S. The Florida Highway Patrol (FHP) is a division of HSMV.[1] The other divisions that constitute HSMV are the Division of Drivers' Licenses and the Division of Motor Vehicles.

Chapter 321, F.S., details the duties of the Florida Highway Patrol. Specifically, the FHP must:

- Patrol the state highways and regulate, control, and direct the movement of traffic thereon;
- Maintain the public peace by preventing violence on highways;
- Apprehend fugitives from justice;
- Enforce all laws regulating and governing traffic, travel, and public safety upon the public highways and provide for the protection of the public highways and public property thereon;
- Make arrests without warrant for the violation of any state law committed in their presence;
- Regulate and direct traffic concentrations and congestions;
- Enforce laws governing the operation, licensing, and taxing and limiting the size, weight, width, length, and speed of vehicles and licensing and controlling the operations of drivers and operators of vehicles;
- Cooperate with officials designated by law to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose;
- Require the drivers of vehicles to stop and exhibit their driver's licenses, registration cards, or documents required by law to be carried by such vehicles; to investigate traffic accidents, secure testimony of witnesses and of persons involved, and make report thereof with copy, when requested in writing, to any person in interest or his or her attorney; and
- Investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.[2]

Fish and Wildlife Conservation Commission

The State Constitution mandates the existence of the Fish and Wildlife Conservation Commission (FWCC).[3] Section 20.331, F.S., implements the FWCC, and creates five divisions within it, as follows:

- Freshwater Fisheries Management;
- Marine Fisheries Management;
- Hunting and Game Management;
- Habitat and Species Conservation; and
- Law Enforcement.

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[1] Section 20.24(2)(a), F.S.
[2] Section 321.05(1), F.S.
[3] Section 9, Art. IV, Constitution of the State of Florida.

The duties of the Division of Law Enforcement are to ensure enforcement of laws and rules regarding marine life and waterways.[4] As sworn law enforcement officers, the division's officers also enforce boating laws, provide public safety services on land and water, provide search-and-rescue operations, assist in the enforcement of all general laws, and coordinate with local, state, and federal entities on law enforcement issues.[5]

Section 20.331(4), F.S., creates the Boating and Waterways section (BWS) within the FWCC Division of Law Enforcement. The BWS section of the Division of Law Enforcement is empowered to manage and promote the use of state waterways for safe and enjoyable boating, including oversight and coordination of waterway markers, providing boating education, improving boating access, coordinating removal of derelict vessels, implementing economic development programs to promote boating, and coordinating the submission of state comments on marine events.[6]

Type One Transfer

Section 20.06, F.S., provides for the reorganization of executive branch agencies, or portions thereof. A type one transfer describes the process of moving an intact agency[7] or department so that the agency or department becomes a unit of another agency or department.[8] In a type one transfer, the moving agency's powers and duties remain intact, administrative rules remain valid, and all property and personnel transfer to the receiving agency. Segregated funds are transferred in a manner that retains the relationship between program and revenue source.[9]

Limitation on Executive Branch Departments

Section 20.02(2), F.S., declares that the executive branch may not consist of more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. There are currently 22 distinct departments created in chapter 20, F.S., including those authorized by the Constitution (the Fish and Wildlife Conservation Commission, the Department of Veterans' Affairs, and the Department of Elderly Affairs).

Proposed Changes

The bill creates a new Department of Public Safety (DPS). The DPS is made up of two divisions, transferred by type one transfer from other agencies. These two divisions are the Florida Highway Patrol (transferred from the HSMV) and the Florida Marine Patrol (the BWS, transferred from the division of Law Enforcement at FWCC).

A majority of the bill makes conforming changes to various statutes involving the FHP. The bill also creates new sections of law regarding the Florida Marine Patrol (FMP). It grants the division powers and duties similar or identical to current powers and duties of the FHP.[10] These statutes include provisions regarding employee qualifications, supplies and equipment, a color scheme, impersonation of officers or official vehicles, and the duties of law enforcement officers.[11]

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[4] Section 20.331(7)(e), F.S.
[5] *Id.*
[6] Section 20.331(7)(e)1., F.S.
[7] For purposes of Chapter 20, F.S., the term "agency" includes divisions, sections, or other units or entities of government. [s. 20.03, F.S.]
[8] Section 20.06(1), F.S.
[9] *Id.*
[10] The new statutes are placed in a new Part II of Chapter 327, F.S. Chapter 327, F.S., currently covers "Vessel Safety," and this title is retained for Part I of the revised chapter. The legislation directs the Division of Statutory Revision to title Part II, "Florida Marine Patrol."
[11] See fn. 10. These provisions are placed in new sections 327.901 – 327.9065, F.S.

With regard to the removal of the current BWS, the bill states that the number of sworn law enforcement FTE positions transferred to the new DPS "shall be one-half the number of such positions in the Fish and Wildlife Conservation Commission." The remaining half of the FTE law enforcement positions remain with the FWCC's Division of Law Enforcement.

The bill also addresses the number of management positions in each division. The bill amends s. 321.04, F.S., to assert that within the FHP, "management positions shall not exceed 6 percent [6%] of the total workforce."[12] It also creates s. 327.904, F.S., which asserts the same six percent management cap for the FMP.

The bill authorizes the DPS to employ boating accident investigation officers who "must complete any applicable standards adopted by the patrol including, but not limited to: cognitive testing, drug testing, polygraph testing, psychological testing, and an extensive background check, including a credit check."

C. SECTION DIRECTORY:

Section 1 creates s. 20.60, F.S., creating the Department of Public Safety, containing the Division of the Florida Highway Patrol and the Division of the Florida Marine Patrol.

Section 2 transfers the Florida Highway Patrol to the Department of Public Safety by Type One transfer.

Section 3 transfers the Boating and Waterways Section of the Fish and Wildlife Conservation Commission's Law Enforcement Division to the Department of Public Safety by Type One transfer.

Sections 4 – 20 make conforming changes.

Section 21 amends s. 321.04, F.S., to make conforming changes, to assert that management positions within the division will not exceed six percent of the total workforce, and to provide that the Governor shall select the patrol officer assigned to the Executive Office of the Governor.

Sections 22 – 25 make conforming changes.

Section 26 amends s. 321.25, F.S., to make conforming changes and to permit the Florida Marine Patrol to establish training criteria for its candidates.

Section 27 directs the Division of Statutory Revision to title the existing provisions of chapter 327, F.S., as Part I – "Vessel Safety," and to create a new Part II – "Florida Marine Patrol."

Section 28 creates s. 327.901, F.S., providing definitions.

Section 29 creates s. 327.902, F.S., granting powers and duties to the Department of Public Safety regarding personnel matters, supplies and equipment, and authority to prescribe a color scheme.

Section 30 creates s. 327.903, F.S., prohibiting impersonation of a Florida Marine Patrol employee or vehicle.

Section 31 creates s. 327.904, F.S., providing provisions regarding personnel and to assert that management positions within the division will not exceed six percent of the total workforce.

Section 32 creates s. 327.905, F.S., providing provisions detailing the duties of Florida Marine Patrol officers.

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[12] Along with this change and some conforming changes, Section 21 also clarifies that the Governor, rather than the department, shall select the FHP officer assigned to the Executive Office of the Governor.

Section 33 creates s. 327.9065, F.S., allowing the employment of boating accident investigation officers.

Sections 34 – 42 make conforming changes.

Section 43 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not explicitly create, modify, amend, or eliminate a state revenue source, but see D. FISCAL COMMENTS, below.

2. Expenditures:

   The bill does not explicitly create, modify, amend, or eliminate a state expenditure, but see D. FISCAL COMMENTS, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The HSMV has stated that the FHP currently has 2,360 positions and an appropriation of $202,181,558.[13] Of these amounts, $131,398,580 is funded from the General Revenue Fund and the remaining amount is funded from trust funds.[14] Additionally 85 positions funded at approximately $6.0 million provide administrative and data processing support to the Florida Highway Patrol.[15] The HSMV opines that if the legislation becomes law, approximately $50 million of the amount funded from trust funds will need to be supplemented from the General Revenue Fund or other sources, "as this portion is currently funded from driver license and motor vehicle revenue sources."[16]

Implementation of this legislation also will require programming modifications to the Driver License Information System. HSMV states that the cost will be absorbed within existing resources.[17]

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[13] *2006 DHSMV Bill Analysis, HB 1421*, Department of Highway Safety and Motor Vehicles, March 6, 2006.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

To the extent that the bill contains provisions making conforming changes, there are some grants of rulemaking implicated. These provisions are merely current law, with the current grants of authority transferred to the new DPS. Pursuant to the type one transfer provisions, current rules will remain in effect.[18] However, there are two new grants of rulemaking authority:

- The bill grants DPS rulemaking authority to adopt Florida Marine Patrol officer training, education, suspension, and other personnel rules. The provision is nearly identical to the current s. 321.02, F.S., granting DHSMV authority to promulgate the same rules for the current Florida Highway Patrol.

- The bill allows the DPS to employ boating accident investigation officers and lists certain applicable standards such officers must meet. These standards require rulemaking, under the general grant given in the new statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Rulemaking

The intent of the grant of rulemaking authority contained in s. 327.905, F.S., appears to cover Part II in its entirety. If this is the case, the Joint Administrative Procedures Committee recommends moving the grant into a new section, or into s. 327.902, F.S., to clarify its application to the entire part.[19]

Drafting Issues – Definition

The HSMV has expressed a concern that the bill does not specifically define what constitutes a "management position" for purposes of interpreting the six percent management cap contained in Sections 21 and 31 of the bill.[20]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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[18] Section 20.06(1), F.S.
[19] E-mail from Joint Administrative Procedures Committee, April 13, 2006.
[20] *2006 DHSMV Bill Analysis, HB 1421*, Department of Highway Safety and Motor Vehicles, March 6, 2006.

1 A bill to be entitled
2 An act relating to the Department of Public Safety;
3 creating s. 20.60, F.S.; creating the Department of Public
4 Safety; transferring the Florida Highway Patrol from the
5 Department of Highway Safety and Motor Vehicles to the
6 Department of Public Safety; transferring the Boating and
7 Waterways Section of the Division of Law Enforcement of
8 the Fish and Wildlife Conservation Commission to the
9 Department of Public Safety; transferring certain law
10 enforcement officers within the Fish and Wildlife
11 Conservation Commission to the Department of Public
12 Safety; providing a limit on the number of such sworn law
13 enforcement positions transferred; amending ss. 20.24,
14 20.331, 23.1231, 120.80, 282.1095, 316.003, 316.065,
15 316.066, 316.068, 316.1905, 316.1906, 316.611, 316.614,
16 and 316.640, F.S.; conforming provisions to the creation
17 of the Department of Public Safety and the transfers of
18 powers, duties, and personnel to the department; creating
19 s. 321.011, F.S.; providing definitions; amending ss.
20 321.02, 321.03, 321.04, 321.05, 321.051, 321.065, 321.23,
21 and 321.25, F.S.; conforming provisions to the creation of
22 the Department of Public Safety and the transfers of
23 powers, duties, and personnel to the department; providing
24 a directive to the Division of Statutory Revision;
25 creating ss. 327.901, 327.902, 327.903, 327.904, 327.905,
26 and 327.9065, F.S.; providing definitions; providing for
27 duties, powers, and organization of the Florida Marine
28 Patrol; providing for uniforms, emblems, and distinctive

29 colors for the patrol; prohibiting imitations; providing
30 penalties; providing for rulemaking; providing for boating
31 accident investigators; amending ss. 337.406, 338.239,
32 339.281, 370.0603, 401.245, 403.413, 790.25, 843.08, and
33 870.04, F.S.; conforming provisions to the creation of the
34 Department of Public Safety and the transfers of powers,
35 duties, and personnel to the department; providing an
36 effective date.
37
38 Be It Enacted by the Legislature of the State of Florida:
39
40 Section 1. Section 20.60, Florida Statutes, is created to
41 read:
42 20.60 Department of Public Safety.--
43 (1) There is created a Department of Public Safety.
44 (2) The head of the Department of Public Safety is the
45 Governor and Cabinet.
46 (3) The following divisions of the Department of Public
47 Safety are established:
48 (a) Division of the Florida Highway Patrol.
49 (b) Division of the Florida Marine Patrol. The division
50 shall have all powers, duties, responsibilities, and functions
51 as are necessary to manage and promote the use of state
52 waterways for safe and enjoyable boating. Duties and
53 responsibilities of the division include enforcement of all laws
54 relating to boating, oversight, and coordination of waterway
55 markers on state waters; providing boating education and boating
56 safety programs; improving boating access; coordinating the

57 removal of derelict vessels from state waters; implementing
58 economic development initiatives to promote boating in the
59 state; and coordinating the submission of state comments on
60 marine events.
61 (4) The department's officers also shall, when necessary,
62 assist in the enforcement of all general laws, provide search-
63 and-rescue and disaster response services, and coordinate with
64 local, state, and federal entities on law enforcement issues.
65 Section 2. All statutory powers, duties, and functions of
66 the Florida Highway Patrol within the Department of Highway
67 Safety and Motor Vehicles are transferred from the Department of
68 Highway Safety and Motor Vehicles to the Division of the Florida
69 Highway Patrol within the Department of Public Safety by a type
70 one transfer, as defined in s. 20.06, Florida Statutes.
71 Section 3. All statutory powers, duties, and functions of
72 the Boating and Waterways Section within the Fish and Wildlife
73 Conservation Commission are transferred from the Fish and
74 Wildlife Conservation Commission to the Division of the Florida
75 Marine Patrol within the Department of Public Safety by a type
76 one transfer, as defined in s. 20.06, Florida Statutes. This
77 transfer shall include the transfer of all law enforcement
78 officers within the Fish and Wildlife Conservation Commission
79 whose primary duties are to enforce laws relating to boating.
80 The number of sworn law enforcement FTE positions transferred
81 under this section shall be one-half the number of such
82 positions in the Fish and Wildlife Conservation Commission.
83 Section 4. Subsection (2) of section 20.24, Florida
84 Statutes, is amended to read:

85 20.24 Department of Highway Safety and Motor
86 Vehicles.--There is created a Department of Highway Safety and
87 Motor Vehicles.
88 (2) The following divisions, and bureaus within the
89 divisions, of the Department of Highway Safety and Motor
90 Vehicles are established:
91 ~~(a) Division of the Florida Highway Patrol.~~
92 (a) ~~(b)~~ Division of Driver Licenses.
93 (b) ~~(c)~~ Division of Motor Vehicles.
94 1. Bureau of Motor Vehicle Inspection.
95 Section 5. Paragraph (a) of subsection (4) and paragraph
96 (e) of subsection (7) of section 20.331, Florida Statutes, are
97 amended to read:
98 20.331 Fish and Wildlife Conservation Commission.--
99 (4) PROGRAM AND RESEARCH SERVICES.--Within the Fish and
100 Wildlife Conservation Commission, the principal unit for program
101 services is a "division" headed by a "director." The principal
102 subunit of the division is a "section" headed by a "leader." The
103 principal subunit of the section is a "subsection" headed by an
104 "administrator."
105 (a) The following divisions and section are created within
106 the commission:
107 1. Division of Freshwater Fisheries Management.
108 2. Division of Habitat and Species Conservation.
109 3. Division of Hunting and Game Management.
110 4. Division of Law Enforcement. ~~There is created within~~
111 ~~the division the Boating and Waterways Section with duties and~~
112 ~~responsibilities as provided in paragraph (7)(e).~~

113 5. Division of Marine Fisheries Management.
114 (7) ASSIGNMENT OF DUTIES AND RESPONSIBILITIES.--The
115 commission, and the Legislature as provided in s. 9, Art. IV of
116 the State Constitution, shall assign to the:
117 (e) Division of Law Enforcement such powers, duties,
118 responsibilities, and functions as are necessary to ensure
119 enforcement of laws and rules governing the management,
120 protection, conservation, improvement, and expansion of wild
121 animal life, freshwater aquatic life, and marine life resources.
122 In performance of their duties as sworn law enforcement officers
123 for the State of Florida, the division's officers also shall,
124 ~~enforce all laws relating to boating, provide public safety~~
125 ~~services for citizens on lands and waters of the state~~
126 ~~particularly in remote areas, provide search-and-rescue and~~
127 ~~disaster response services~~ when necessary, assist in the
128 enforcement of all general laws, provide search-and-rescue and
129 disaster response services, and coordinate with local, state,
130 and federal entities on law enforcement issues.
131 ~~1. The Boating and Waterways Section such powers, duties,~~
132 ~~responsibilities, and functions as are necessary to manage and~~
133 ~~promote the use of state waterways for safe and enjoyable~~
134 ~~boating. Duties and responsibilities of the section include~~
135 ~~oversight and coordination of waterway markers on state waters,~~
136 ~~providing boating education and boating safety programs,~~
137 ~~improving boating access, coordinating the removal of derelict~~
138 ~~vessels from state waters, implementing economic development~~
139 ~~initiatives to promote boating in the state, and coordinating~~
140 ~~the submission of state comments on marine events.~~

141 Section 6. Paragraph (e) of subsection (2) of section
142 23.1231, Florida Statutes, is amended to read:
143 23.1231 Florida Mutual Aid Plan; powers and duties.--
144 (2) The executive director of the Department of Law
145 Enforcement acting under the Governor as the state's chief law
146 enforcement officer is the director of the Florida Mutual Aid
147 Plan. The director of the Florida Mutual Aid Plan shall:
148 (e) Act as the liaison with the Division of the Florida
149 Highway Patrol of the Department of Public ~~Highway~~ Safety ~~and~~
150 ~~Motor Vehicles~~ in order to coordinate and integrate plans for
151 traffic control and the participation of the department in the
152 law enforcement operation;
153 Section 7. Subsection (8) of section 120.80, Florida
154 Statutes, is amended, and paragraph (b) of that subsection is
155 renumbered as subsection (18) of that section, to read:
156 120.80 Exceptions and special requirements; agencies.--
157 (8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.--
158 ~~(a) Drivers' licenses.--~~
159 (a)~~1.~~ Notwithstanding s. 120.57(1)(a), hearings regarding
160 drivers' licensing pursuant to chapter 322 need not be conducted
161 by an administrative law judge assigned by the division.
162 (b)~~2.~~ Notwithstanding s. 120.60(5), cancellation,
163 suspension, or revocation of a driver's license shall be by
164 personal delivery to the licensee or by first-class mail as
165 provided in s. 322.251.
166 (18)~~(b)~~ DEPARTMENT OF PUBLIC SAFETY ~~Wrecker~~
167 ~~operators~~.--Notwithstanding s. 120.57(1)(a), hearings held by
168 the Division of the Florida Highway Patrol of the Department of

169 Public ~~Highway~~ Safety ~~and Motor Vehicles~~ to deny, suspend, or
170 remove a wrecker operator from participating in the wrecker
171 rotation system established by s. 321.051 need not be conducted
172 by an administrative law judge assigned by the division. These
173 hearings shall be held by a hearing officer appointed by the
174 director of the Division of the Florida Highway Patrol.
175 Section 8. Paragraph (a) of subsection (2) of section
176 282.1095, Florida Statutes, is amended to read:
177 282.1095 State agency law enforcement radio system and
178 interoperability network.--
179 (2)(a) The Joint Task Force on State Agency Law
180 Enforcement Communications shall consist of nine ~~eight~~ members,
181 as follows:
182 1. A representative of the Division of Alcoholic Beverages
183 and Tobacco of the Department of Business and Professional
184 Regulation who shall be appointed by the secretary of the
185 department.
186 2. A representative of the Division of the Florida Highway
187 Patrol and a representative of the Division of the Florida
188 Marine Patrol of the Department of Public ~~Highway~~ Safety ~~and~~
189 ~~Motor Vehicles~~ who each shall be appointed by the executive
190 director of the department.
191 3. A representative of the Department of Law Enforcement
192 who shall be appointed by the executive director of the
193 department.
194 4. A representative of the Fish and Wildlife Conservation
195 Commission who shall be appointed by the executive director of
196 the commission.

197 5. A representative of the Division of Law Enforcement of
198 the Department of Environmental Protection who shall be
199 appointed by the secretary of the department.
200 6. A representative of the Department of Corrections who
201 shall be appointed by the secretary of the department.
202 7. A representative of the Division of State Fire Marshal
203 of the Department of Financial Services who shall be appointed
204 by the State Fire Marshal.
205 8. A representative of the Department of Transportation
206 who shall be appointed by the secretary of the department.
207 Section 9. Subsection (9) of section 316.003, Florida
208 Statutes, is amended to read:
209 316.003 Definitions.--The following words and phrases,
210 when used in this chapter, shall have the meanings respectively
211 ascribed to them in this section, except where the context
212 otherwise requires:
213 (9) DIRECTOR.--The Director of the Division of the Florida
214 Highway Patrol of the Department of Public ~~Highway~~ Safety ~~and~~
215 ~~Motor Vehicles~~.
216 Section 10. Subsection (2) of section 316.065, Florida
217 Statutes, is amended to read:
218 316.065 Crashes; reports; penalties.--
219 (2) Every coroner or other official performing like
220 functions, upon learning of the death of a person in his or her
221 jurisdiction as the result of a traffic crash, shall immediately
222 notify the nearest office or station of the Department of Public
223 Safety.

224 Section 11. Subsections (1) and (2) and paragraph (a) of
225 subsection (3) of section 316.066, Florida Statutes, are amended
226 to read:
227 316.066 Written reports of crashes.--
228 (1) The driver of a vehicle which is in any manner
229 involved in a crash resulting in bodily injury to or death of
230 any person or damage to any vehicle or other property in an
231 apparent amount of at least $500 shall, within 10 days after the
232 crash, forward a written report of such crash to the Department
233 of Public Safety or traffic records center. However, when the
234 investigating officer has made a written report of the crash
235 pursuant to paragraph (3)(a), no written report need be
236 forwarded to the Department of Public Safety or traffic records
237 center by the driver.
238 (2) The receiving entity may require any driver of a
239 vehicle involved in a crash of which a written report must be
240 made as provided in this section to file supplemental written
241 reports whenever the original report is insufficient in the
242 opinion of the Department of Public Safety and may require
243 witnesses of crashes to render reports to the Department of
244 Public Safety.
245 (3)(a) Every law enforcement officer who in the regular
246 course of duty investigates a motor vehicle crash:
247 1. Which crash resulted in death or personal injury shall,
248 within 10 days after completing the investigation, forward a
249 written report of the crash to the Department of Public Safety
250 or traffic records center.

251 2. Which crash involved a violation of s. 316.061(1) or s.
252 316.193 shall, within 10 days after completing the
253 investigation, forward a written report of the crash to the
254 Department of Public Safety or traffic records center.
255 3. In which crash a vehicle was rendered inoperative to a
256 degree which required a wrecker to remove it from traffic may,
257 within 10 days after completing the investigation, forward a
258 written report of the crash to the Department of Public Safety
259 or traffic records center if such action is appropriate, in the
260 officer's discretion.
261
262 However, in every case in which a crash report is required by
263 this section and a written report to a law enforcement officer
264 is not prepared, the law enforcement officer shall provide each
265 party involved in the crash a short-form report, prescribed by
266 the state, to be completed by the party. The short-form report
267 must include, but is not limited to: the date, time, and
268 location of the crash; a description of the vehicles involved;
269 the names and addresses of the parties involved; the names and
270 addresses of witnesses; the name, badge number, and law
271 enforcement agency of the officer investigating the crash; and
272 the names of the insurance companies for the respective parties
273 involved in the crash. Each party to the crash shall provide the
274 law enforcement officer with proof of insurance to be included
275 in the crash report. If a law enforcement officer submits a
276 report on the accident, proof of insurance must be provided to
277 the officer by each party involved in the crash. Any party who
278 fails to provide the required information commits ~~is guilty of~~

279 an infraction for a nonmoving violation, punishable as provided
280 in chapter 318 unless the officer determines that due to
281 injuries or other special circumstances such insurance
282 information cannot be provided immediately. If the person
283 provides the law enforcement agency, within 24 hours after the
284 crash, proof of insurance that was valid at the time of the
285 crash, the law enforcement agency may void the citation.
286 Section 12. Section 316.068, Florida Statutes, is amended
287 to read:
288 316.068 Crash report forms.--
289 (1) The Department of Public Safety shall prepare and,
290 upon request, supply to police departments, sheriffs, and other
291 appropriate agencies or individuals forms for crash reports as
292 required in this chapter, suitable with respect to the persons
293 required to make such reports and the purposes to be served. The
294 form must call for sufficiently detailed information to
295 disclose, with reference to a vehicle crash, the cause and
296 conditions then existing and the persons and vehicles involved.
297 Every crash report form must call for the policy numbers of
298 liability insurance and the names of carriers covering any
299 vehicle involved in a crash required to be reported by this
300 chapter.
301 (2) Every crash report required to be made in writing must
302 be made on the appropriate form approved by the Department of
303 Public Safety and must contain all the information required
304 therein unless not available. Notwithstanding any other
305 provisions of this section, a crash report produced
306 electronically by a law enforcement officer must, at a minimum,

307 contain the same information as is called for on those forms
308 approved by the Department of Public Safety.
309 Section 13. Subsection (1) and paragraph (a) of subsection
310 (3) of section 316.1905, Florida Statutes, are amended to read:
311 316.1905 Electrical, mechanical, or other speed
312 calculating devices; power of arrest; evidence.--
313 (1) Whenever any peace officer engaged in the enforcement
314 of the motor vehicle laws of this state uses an electronic,
315 electrical, mechanical, or other device used to determine the
316 speed of a motor vehicle on any highway, road, street, or other
317 public way, such device shall be of a type approved by the
318 Department of Public Safety and shall have been tested to
319 determine that it is operating accurately. Tests for this
320 purpose shall be made not less than once each 6 months,
321 according to procedures and at regular intervals of time
322 prescribed by the Department of Public Safety.
323 (3)(a) A witness otherwise qualified to testify shall be
324 competent to give testimony against an accused violator of the
325 motor vehicle laws of this state when such testimony is derived
326 from the use of such an electronic, electrical, mechanical, or
327 other device used in the calculation of speed, upon showing that
328 the speed calculating device which was used had been tested.
329 However, the operator of any visual average speed computer
330 device shall first be certified as a competent operator of such
331 device by the Department of Public Safety.
332 Section 14. Paragraph (f) of subsection (2) of section
333 316.1906, Florida Statutes, is amended to read:

334 316.1906 Radar speed-measuring devices; evidence,
335 admissibility.--
336 (2) Evidence of the speed of a vehicle measured by any
337 radar speed-measuring device shall be inadmissible in any
338 proceeding with respect to an alleged violation of provisions of
339 law regulating the lawful speed of vehicles, unless such
340 evidence of speed is obtained by an officer who:
341 (f) Is using a radar unit that ~~which~~ meets the minimum
342 design criteria for such units established by the Department of
343 Public ~~Highway~~ Safety ~~and Motor Vehicles~~.
344 Section 15. Section 316.611, Florida Statutes, is amended
345 to read:
346 316.611 Tandem trailer equipment and use.--The Department
347 of Transportation shall adopt rules to regulate tandem trailer
348 truck equipment and use in the interest of safety, public
349 convenience, and preservation of public road facilities. The
350 rules shall apply according to their terms to all jurisdictions
351 of the state except the Florida Turnpike. Such rules shall be
352 enforced by the Department of Transportation, the Department of
353 Public ~~Highway~~ Safety ~~and Motor Vehicles~~, and local authorities.
354 Section 16. Subsection (9) of section 316.614, Florida
355 Statutes, is amended to read:
356 316.614 Safety belt usage.--
357 (9) By January 1, 2006, each law enforcement agency in
358 this state shall adopt departmental policies to prohibit the
359 practice of racial profiling. When a law enforcement officer
360 issues a citation for a violation of this section, the law
361 enforcement officer must record the race and ethnicity of the

362 violator. All law enforcement agencies must maintain such
363 information and forward the information to the Department of
364 Public Safety in a form and manner determined by that ~~the~~
365 department. The Department of Public Safety shall collect this
366 information by jurisdiction and annually report the data to the
367 Governor, the President of the Senate, and the Speaker of the
368 House of Representatives. The report must show separate
369 statewide totals for the state's county sheriffs and municipal
370 law enforcement agencies, state law enforcement agencies, and
371 state university law enforcement agencies.
372 Section 17. Paragraph (a) of subsection (1) of section
373 316.640, Florida Statutes, is amended to read:
374 316.640 Enforcement.--The enforcement of the traffic laws
375 of this state is vested as follows:
376 (1) STATE.--
377 (a)1.a. The Division of the Florida Highway Patrol and the
378 Division of the Florida Marine Patrol of the Department of
379 Public ~~Highway~~ Safety ~~and Motor Vehicles~~; the Division of Law
380 Enforcement of the Fish and Wildlife Conservation Commission;
381 the Division of Law Enforcement of the Department of
382 Environmental Protection; law enforcement officers of the
383 Department of Transportation; and the agents, inspectors, and
384 officers of the Department of Law Enforcement each have
385 authority to enforce all of the traffic laws of this state on
386 all the streets and highways thereof and elsewhere throughout
387 the state wherever the public has a right to travel by motor
388 vehicle.

389 b. University police officers shall have authority to
390 enforce all of the traffic laws of this state when such
391 violations occur on or about any property or facilities that are
392 under the guidance, supervision, regulation, or control of a
393 state university, a direct-support organization of such state
394 university, or any other organization controlled by the state
395 university or a direct-support organization of the state
396 university, except that traffic laws may be enforced off-campus
397 when hot pursuit originates on or adjacent to any such property
398 or facilities.
399 c. Community college police officers shall have the
400 authority to enforce all the traffic laws of this state only
401 when such violations occur on any property or facilities that
402 are under the guidance, supervision, regulation, or control of
403 the community college system.
404 d. Police officers employed by an airport authority shall
405 have the authority to enforce all of the traffic laws of this
406 state only when such violations occur on any property or
407 facilities that are owned or operated by an airport authority.
408 (I) An airport authority may employ as a parking
409 enforcement specialist any individual who successfully completes
410 a training program established and approved by the Criminal
411 Justice Standards and Training Commission for parking
412 enforcement specialists but who does not otherwise meet the
413 uniform minimum standards established by the commission for law
414 enforcement officers or auxiliary or part-time officers under s.
415 943.12. Nothing in this sub-sub-subparagraph shall be construed

416 to permit the carrying of firearms or other weapons, nor shall
417 such parking enforcement specialist have arrest authority.
418 (II) A parking enforcement specialist employed by an
419 airport authority is authorized to enforce all state, county,
420 and municipal laws and ordinances governing parking only when
421 such violations are on property or facilities owned or operated
422 by the airport authority employing the specialist, by
423 appropriate state, county, or municipal traffic citation.
424 e. The Office of Agricultural Law Enforcement of the
425 Department of Agriculture and Consumer Services shall have the
426 authority to enforce traffic laws of this state.
427 f. School safety officers shall have the authority to
428 enforce all of the traffic laws of this state when such
429 violations occur on or about any property or facilities which
430 are under the guidance, supervision, regulation, or control of
431 the district school board.
432 2. An agency of the state as described in subparagraph 1.
433 is prohibited from establishing a traffic citation quota. A
434 violation of this subparagraph is not subject to the penalties
435 provided in chapter 318.
436 3. Any disciplinary action taken or performance evaluation
437 conducted by an agency of the state as described in subparagraph
438 1. of a law enforcement officer's traffic enforcement activity
439 must be in accordance with written work-performance standards.
440 Such standards must be approved by the agency and any collective
441 bargaining unit representing such law enforcement officer. A
442 violation of this subparagraph is not subject to the penalties
443 provided in chapter 318.

444 4. The Division of the Florida Highway Patrol may employ
445 as a traffic accident investigation officer any individual who
446 successfully completes instruction in traffic accident
447 investigation and court presentation through the Selective
448 Traffic Enforcement Program as approved by the Criminal Justice
449 Standards and Training Commission and funded through the
450 National Highway Traffic Safety Administration or a similar
451 program approved by the commission, but who does not necessarily
452 meet the uniform minimum standards established by the commission
453 for law enforcement officers or auxiliary law enforcement
454 officers under chapter 943. Any such traffic accident
455 investigation officer who makes an investigation at the scene of
456 a traffic accident may issue traffic citations, based upon
457 personal investigation, when he or she has reasonable and
458 probable grounds to believe that a person who was involved in
459 the accident committed an offense under this chapter, chapter
460 319, chapter 320, or chapter 322 in connection with the
461 accident. This subparagraph does not permit the officer to carry
462 firearms or other weapons, and such an officer does not have
463 authority to make arrests.
464 Section 18. Section 321.011, Florida Statutes, is created
465 to read:
466 321.011 Definitions.--As used in this chapter, the term:
467 (1) "Department" means the Department of Public Safety
468 created in s. 20.60.
469 (2) "Director" means the executive director of the
470 Department of Public Safety.

471 (3) "Division" means the Division of the Highway Patrol of
472 the department.
473 Section 19. Section 321.02, Florida Statutes, is amended
474 to read:
475 321.02 Powers and duties of department~~, highway patrol~~.--
476 (1) The director ~~of the Division of Highway Patrol of the~~
477 ~~Department of Highway Safety and Motor Vehicles~~ shall also be
478 the commander of the Florida Highway Patrol. The ~~said~~ department
479 shall adopt ~~set up and promulgate~~ rules ~~and regulations~~ by which
480 ~~the personnel of the~~ Florida Highway Patrol officers shall be
481 examined, employed, trained, located, suspended, reduced in
482 rank, discharged, recruited, paid and pensioned, subject to
483 civil service provisions hereafter set out.
484 (2) The department may enter into contracts or agreements,
485 with or without competitive bidding or procurement, to make
486 available, on a fair, reasonable, nonexclusive, and
487 nondiscriminatory basis, property and other structures under
488 division control for the placement of new facilities by any
489 wireless provider of mobile service as defined in 47 U.S.C. s.
490 153(n) or s. 332(d), and any telecommunications company as
491 defined in s. 364.02 when it is determined to be practical and
492 feasible to make such property or other structures available.
493 The department may, without adopting a rule, charge a just,
494 reasonable, and nondiscriminatory fee for placement of the
495 facilities, payable annually, based on the fair market value of
496 space used by comparable communications facilities in the state.
497 The department and a wireless provider or telecommunications
498 company may negotiate the reduction or elimination of a fee in

499 consideration of services provided to the division by the
500 wireless provider or the telecommunications company. All such
501 fees collected by the department shall be deposited directly
502 into the State Agency Law Enforcement Radio System Trust Fund,
503 and may be used to construct, maintain, or support the system.
504 (3) The department is further specifically authorized to
505 purchase, sell, trade, rent, lease and maintain all necessary
506 equipment, uniforms, motor vehicles, communication systems,
507 housing facilities, and office space~~,~~ and perform any other acts
508 necessary for the proper administration and enforcement of this
509 chapter. However, all supplies and equipment consisting of
510 single items or in lots shall be purchased under the
511 requirements of s. 287.057. Purchases shall be made by accepting
512 the bid of the lowest responsive bidder, the right being
513 reserved to reject all bids.
514 (4) The department shall prescribe a distinctive uniform
515 and distinctive emblem to be worn by all officers of the Florida
516 Highway Patrol. It shall be unlawful for any other person or
517 persons to wear a similar uniform or emblem, or any part or
518 parts thereof. The department shall also prescribe distinctive
519 colors for use on motor vehicles and motorcycles operated by the
520 Florida Highway Patrol. The prescribed colors shall be referred
521 to as "Florida Highway Patrol black and tan."
522 Section 20. Section 321.03, Florida Statutes, is amended
523 to read:
524 321.03 Imitations prohibited; penalty.--It shall be
525 unlawful for any person or persons in the state to color or
526 cause to be colored any motor vehicle or motorcycle the same or

527 similar color as the color or colors so prescribed for the
528 Florida Highway Patrol. Any person violating any of the
529 provisions of this section or s. 321.02 with respect to
530 uniforms, emblems, motor vehicles and motorcycles commits ~~shall~~
531 ~~be guilty of~~ a misdemeanor of the first degree, punishable as
532 provided in s. 775.082 or s. 775.083. The department ~~of Highway~~
533 ~~Safety and Motor Vehicles~~ shall employ such clerical help and
534 mechanics as may be necessary for its ~~the~~ economical and
535 efficient operation ~~of such department~~.
536 Section 21. Subsections (1) and (3) of section 321.04,
537 Florida Statutes, are amended to read:
538 321.04 Personnel ~~of the highway patrol~~; rank
539 classifications; probationary status of new ~~patrol~~ officers;
540 subsistence; special assignments.--
541 (1) The department ~~of Highway Safety and Motor Vehicles~~
542 shall employ patrol officers, as authorized by the Legislature
543 in appropriating funds for their salaries exclusive of those
544 members of the patrol who are assigned to and paid by special
545 departments, ~~;~~ and shall establish the necessary supervisory
546 ranks within the Florida Highway Patrol to efficiently supervise
547 and carry out its ~~the designated~~ functions ~~of the patrol~~ and
548 those of the department in accordance with the regulations
549 established by the Department of Management Services. Management
550 positions shall not exceed 6 percent of the total workforce.
551 (3) The Governor shall select ~~department of Highway Safety~~
552 ~~and Motor Vehicles shall assign~~ one patrol officer to be
553 assigned by the department to the office of the Governor. ~~; said~~
554 ~~patrol~~ The officer ~~so assigned shall be selected by the Governor~~

555 ~~and~~ shall have rank and pay not less than that of a lieutenant
556 within the department ~~of the Florida Highway Patrol~~, ~~and said~~
557 ~~patrol officer so assigned~~ shall be paid by the ~~said~~ department
558 from the department's appropriation, ~~made to said department;~~
559 and ~~said patrol officer~~ shall have and receive all other
560 benefits provided for officers of that rank ~~in this chapter or~~
561 ~~any other statute now in existence or hereinafter enacted~~.
562 Section 22. Section 321.05, Florida Statutes, is amended
563 to read:
564 321.05 Duties, functions, and powers of patrol
565 officers.--The members of the Florida Highway Patrol are hereby
566 declared to be conservators of the peace and law enforcement
567 officers of the state, with the common-law right to arrest a
568 person who, in the presence of the arresting officer, commits a
569 felony or commits an affray or breach of the peace constituting
570 a misdemeanor, with full power to bear arms; and they shall
571 apprehend, without warrant, any person in the unlawful
572 commission of any of the acts over which the members of the
573 Florida Highway Patrol are given jurisdiction as hereinafter set
574 out and deliver him or her to the sheriff of the county that
575 further proceedings may be had against him or her according to
576 law. In the performance of any of the powers, duties, and
577 functions authorized by law, members of the Florida Highway
578 Patrol shall have the same protections and immunities afforded
579 other peace officers, which shall be recognized by all courts
580 having jurisdiction over offenses against the laws of this
581 state, and shall have authority to apply for, serve, and execute
582 search warrants, arrest warrants, capias, and other process of

583 the court in those matters in which patrol officers have primary
584 responsibility as set forth in subsection (1). The patrol
585 officers under the direction and supervision of the department
586 ~~of Highway Safety and Motor Vehicles~~ shall perform and exercise
587 throughout the state the following duties, functions, and
588 powers:
589 (1) To patrol the state highways and regulate, control,
590 and direct the movement of traffic thereon; to maintain the
591 public peace by preventing violence on highways; to apprehend
592 fugitives from justice; to enforce all laws now in effect
593 regulating and governing traffic, travel, and public safety upon
594 the public highways and providing for the protection of the
595 public highways and public property thereon; to make arrests
596 without warrant for the violation of any state law committed in
597 their presence in accordance with the laws of this state;
598 providing that no search shall be made unless it is incident to
599 a lawful arrest, to regulate and direct traffic concentrations
600 and congestions; to enforce laws governing the operation,
601 licensing, and taxing and limiting the size, weight, width,
602 length, and speed of vehicles and licensing and controlling the
603 operations of drivers and operators of vehicles; to cooperate
604 with officials designated by law to collect all state fees and
605 revenues levied as an incident to the use or right to use the
606 highways for any purpose; to require the drivers of vehicles to
607 stop and exhibit their driver's licenses, registration cards, or
608 documents required by law to be carried by such vehicles; to
609 investigate traffic accidents, secure testimony of witnesses and
610 of persons involved, and make report thereof with copy, when

611 requested in writing, to any person in interest or his or her
612 attorney; to investigate reported thefts of vehicles and to
613 seize contraband or stolen property on or being transported on
614 the highways.
615 (2) To assist other constituted law enforcement officers
616 of the state to quell mobs and riots, guard prisoners, and
617 police disaster areas.
618 (3)(a) To make arrests while in fresh pursuit of a person
619 believed to have violated the traffic and other laws.
620 (b) To make arrest of a person wanted for a felony or
621 against whom a warrant has been issued on any charge in
622 violation of federal, state, or county laws or municipal
623 ordinances.
624 (4)(a) All fines and costs and the proceeds of the
625 forfeiture of bail bonds and recognizances resulting from the
626 enforcement of this chapter by patrol officers shall be paid
627 into the fine and forfeiture fund established pursuant to s.
628 142.01 of the county where the offense is committed. In all
629 cases of arrest by patrol officers, the person arrested shall be
630 delivered forthwith by said officer to the sheriff of the
631 county, or he or she shall obtain from such person arrested a
632 recognizance or, if deemed necessary, a cash bond or other
633 sufficient security conditioned for his or her appearance before
634 the proper tribunal of such county to answer the charge for
635 which he or she has been arrested; and all fees accruing shall
636 be taxed against the party arrested, which fees are hereby
637 declared to be part of the compensation of said sheriffs
638 authorized to be fixed by the Legislature under s. 5(c), Art. II

639 of the State Constitution, to be paid such sheriffs in the same
640 manner as fees are paid for like services in other criminal
641 cases. All patrol officers are hereby directed to deliver all
642 bonds accepted and approved by them to the sheriff of the county
643 in which the offense is alleged to have been committed. However,
644 no sheriff shall be paid any arrest fee for the arrest of a
645 person for violation of any section of chapter 316 when the
646 arresting officer was transported in a Florida Highway Patrol
647 car to the vicinity where the arrest was made; and no sheriff
648 shall be paid any fee for mileage for himself or herself or a
649 prisoner for miles traveled in a Florida Highway Patrol car. No
650 patrol officer shall be entitled to any fee or mileage cost
651 except when responding to a subpoena in a civil cause or except
652 when such patrol officer is appearing as an official witness to
653 testify at any hearing or law action in any court of this state
654 as a direct result of his or her employment as a patrol officer
655 during time not compensated as a part of his or her normal
656 duties. Nothing herein shall be construed as limiting the power
657 to locate and to take from any person under arrest or about to
658 be arrested deadly weapons. Nothing contained in this section
659 shall be construed as a limitation upon existing powers and
660 duties of sheriffs or police officers.
661 (b) Any person so arrested and released on his or her own
662 recognizance by an officer and who shall fail to appear or
663 respond to a notice to appear shall, in addition to the traffic
664 violation charge, commits ~~be guilty of~~ a noncriminal traffic
665 infraction subject to the penalty provided in s. 318.18(2).

666 (5) The department may employ or assign some fit and
667 suitable person with experience in the field of public relations
668 who shall have the duty to promote, coordinate, and publicize
669 the traffic safety activities in the state and assign such
670 person to the office of the Governor at a salary to be fixed by
671 the department. The person so assigned or employed shall be a
672 uniformed member of the ~~uniform division of the~~ Florida Highway
673 Patrol, and he or she shall have the pay and rank of lieutenant
674 while on such assignment.
675 (6) The department may adopt ~~division of Florida Highway~~
676 ~~Patrol is authorized to promulgate~~ rules under ss. 120.536(1)
677 and 120.54 ~~and regulations which may be~~ necessary to implement
678 ~~the provisions of~~ chapter 316.
679 Section 23. Subsection (2) of section 321.051, Florida
680 Statutes, is amended to read:
681 321.051 Florida Highway Patrol wrecker operator system;
682 penalties for operation outside of system.--
683 (2) The division ~~of Florida Highway Patrol of the~~
684 ~~Department of Highway Safety and Motor Vehicles~~ is authorized to
685 establish within areas designated by the patrol a wrecker
686 operator system using qualified, reputable wrecker operators for
687 removal and storage of wrecked or disabled vehicles from a crash
688 scene or for removal and storage of abandoned vehicles, in the
689 event the owner or operator is incapacitated or unavailable or
690 leaves the procurement of wrecker service to the officer at the
691 scene. All reputable wrecker operators shall be eligible for use
692 in the system provided their equipment and drivers meet
693 recognized safety qualifications and mechanical standards set by

694 rules of the division ~~of Florida Highway Patrol~~ for the size of
695 vehicle it is designed to handle. The division is authorized to
696 limit the number of wrecker operators participating in the
697 wrecker operator system, which authority shall not affect
698 wrecker operators currently participating in the system
699 established by this section. The division is authorized to
700 establish maximum rates for the towing and storage of vehicles
701 removed at the division's request, where such rates have not
702 been set by a county or municipality pursuant to s. 125.0103 or
703 s. 166.043. Such rates shall not be considered rules for the
704 purpose of chapter 120; however, the department shall establish
705 by rule a procedure for setting such rates. Any provision in
706 chapter 120 to the contrary notwithstanding, a final order of
707 the department denying, suspending, or revoking a wrecker
708 operator's participation in the system shall be reviewable in
709 the manner and within the time provided by the Florida Rules of
710 Appellate Procedure only by a writ of certiorari issued by the
711 circuit court in the county wherein such wrecker operator
712 resides.
713 Section 24. Section 321.065, Florida Statutes, is amended
714 to read:
715 321.065 Traffic accident investigation officers~~;~~
716 ~~employment; standards~~.--The department may employ traffic
717 accident investigation officers who must complete any applicable
718 standards adopted by the division ~~Florida Highway Patrol~~,
719 including, but not limited to: cognitive testing, drug testing,
720 polygraph testing, psychological testing, and an extensive
721 background check, including a credit check.

722 Section 25. Subsection (1) of section 321.23, Florida
723 Statutes, is amended to read:
724 321.23 Public records; fees for copies; destruction of
725 obsolete records; photographing records; effect as evidence.--
726 (1) The purpose of this section is to make available for
727 the department's use ~~of the Department of Highway Safety and~~
728 ~~Motor Vehicles~~ sufficient floor space to enable it to
729 efficiently administer its ~~the~~ affairs ~~of the department~~ and to
730 provide fees for copies of public records.
731 Section 26. Section 321.25, Florida Statutes, is amended
732 to read:
733 321.25 Training provided at patrol schools.--The
734 department ~~of Highway Safety and Motor Vehicles~~ is authorized to
735 provide for the training of law enforcement officials and
736 individuals in matters relating to the duties, functions, and
737 powers of the Florida Highway Patrol and the Florida Marine
738 Patrol in the schools established by the department for the
739 training of highway patrol and marine patrol candidates and
740 officers. The department ~~of Highway Safety and Motor Vehicles~~ is
741 authorized to charge a fee for providing the training authorized
742 by this section. The fee shall be charged to persons attending
743 the training. The fee shall be based on the department's
744 ~~Department of Highway Safety and Motor Vehicles'~~ costs for
745 providing the training, and such costs may include, but are not
746 limited to, tuition, lodging, and meals. Revenues from the fees
747 shall be used to offset the department's ~~Department of Highway~~
748 ~~Safety and Motor Vehicles'~~ costs for providing the training. The
749 cost of training local enforcement officers shall be paid for by

750 their respective offices, counties, or municipalities, as the
751 case may be. Such cost shall be deemed a proper county or
752 municipal expense or a proper expenditure of the office of
753 sheriff.
754 Section 27. The Division of Statutory Revision is
755 requested to designate ss. 327.01-327.804, Florida Statutes, as
756 part I of chapter 327, Florida Statutes, entitled "Vessel
757 Safety," and ss. 327.901-327.9065, Florida Statutes, as created
758 by this act, as part II of that chapter, entitled "Florida
759 Marine Patrol." The title of chapter 327, Florida Statutes,
760 shall remain "Vessel Safety."
761 Section 28. Section 327.901, Florida Statutes, is created
762 to read:
763 327.901 Definitions.--As used in this part, the term:
764 (1) "Department" means the Department of Public Safety
765 created in s. 20.60.
766 (2) "Director" means the executive director of the
767 Department of Public Safety.
768 (3) "Patrol" means the Florida Marine Patrol.
769 Section 29. Section 327.902, Florida Statutes, is created
770 to read:
771 327.902 Powers and duties of department.--
772 (1) The department shall adopt rules by which the officers
773 of the patrol shall be examined, employed, trained, located,
774 suspended, reduced in rank, discharged, recruited, paid, and
775 pensioned, subject to civil service provisions hereinafter set
776 out.

777 (2) The department shall have the same powers and duties
778 regarding supplies and equipment for the patrol as are provided
779 for the Florida Highway Patrol in s. 321.02(3).
780 (3) The department shall prescribe a distinctive uniform
781 and distinctive emblem to be worn by all patrol officers. It
782 shall be unlawful for any other person or persons to wear a
783 similar uniform or emblem or any part or parts thereof. The
784 department shall also prescribe distinctive colors for use on
785 motor vehicles and vessels operated by the patrol. The
786 prescribed colors for the patrol shall be referred to as
787 "Florida Marine Patrol black and gray."
788 Section 30. Section 327.903, Florida Statutes, is created
789 to read:
790 327.903 Imitations prohibited; penalty.--It shall be
791 unlawful for any person or persons in the state to color or
792 cause to be colored any motor vehicle, vessel, or motorcycle the
793 same or similar color as the color or colors so prescribed for
794 the patrol. Any person violating any of the provisions of this
795 section or s. 327.902 with respect to uniforms, emblems, motor
796 vehicles, vessels, and motorcycles commits a misdemeanor of the
797 first degree, punishable as provided in s. 775.082 or s.
798 775.083.
799 Section 31. Section 327.904, Florida Statutes, is created
800 to read:
801 327.904 Personnel.--
802 (1) The department shall employ patrol officers as
803 authorized by legislative appropriation, exclusive of those who
804 are assigned to and paid by special departments, and shall

805 establish the necessary supervisory ranks within the patrol to
806 efficiently supervise and carry out its functions and those of
807 the department in accordance with the personnel regulations of
808 the Department of Management Services. Management positions
809 shall not exceed 6 percent of the total workforce.
810 (2) Each person who is employed as a patrol officer shall
811 be carried on a probationary status for the period of 1 year
812 from date of employment, during which period he or she may be
813 dismissed without recourse. Patrol officers when sent on special
814 detail or missions out of their regular assigned territories or
815 headquarters shall be reimbursed for travel expenses as provided
816 in s. 112.061.
817 Section 32. Section 327.905, Florida Statutes, is created
818 to read:
819 327.905 Duties and powers of officers; rulemaking.--
820 (1) The patrol officers are declared to be conservators of
821 the peace and law enforcement officers of the state, with the
822 common-law right to arrest a person who, in the presence of the
823 arresting officer, commits a felony or commits an affray or
824 breach of the peace constituting a misdemeanor, with full power
825 to bear arms; and they shall apprehend, without warrant, any
826 person in the unlawful commission of any of the acts over which
827 the officers of the patrol are given jurisdiction as hereinafter
828 set out and deliver him or her to the sheriff of the county
829 wherein such unlawful act occurred in order that further
830 proceedings may be had against him or her according to law. In
831 the performance of any of the powers, duties, and functions
832 authorized by law, patrol officers shall have the same

833 protections and immunities afforded other peace officers, which
834 shall be recognized by all courts having jurisdiction over
835 offenses against the laws of this state, and shall have
836 authority to apply for, serve, and execute search warrants,
837 arrest warrants, capias, and other process of the court in those
838 matters in which patrol officers have primary responsibility as
839 set forth in paragraph (2)(a).
840 (2)(a) Patrol officers shall perform and exercise
841 throughout the state the duties, functions, and powers provided
842 in s. 20.60(3)(b) as required by the director.
843 (b) In addition, patrol officers shall have all duties and
844 powers as provided for the officers of the Florida Highway
845 Patrol in s. 321.05(2) and (3).
846 (3) The department may adopt rules under ss. 120.536(1)
847 and 120.54 to implement this part.
848 Section 33. Section 327.9065, Florida Statutes, is created
849 to read:
850 327.9065 Boating accident investigation officers.--The
851 department may employ boating accident investigation officers
852 who must complete any applicable standards adopted by the
853 patrol, including, but not limited to: cognitive testing, drug
854 testing, polygraph testing, psychological testing, and an
855 extensive background check, including a credit check.
856 Section 34. Subsection (3) of section 337.406, Florida
857 Statutes, is amended to read:
858 337.406 Unlawful use of state transportation facility
859 right-of-way; penalties.--

860 (3) The Department of Public ~~Highway~~ Safety ~~and Motor~~
861 ~~Vehicles~~ and other law enforcement agencies are authorized and
862 directed to enforce this statute.
863 Section 35. Subsection (2) of section 338.239, Florida
864 Statutes, is amended to read:
865 338.239 Traffic control on the turnpike system.--
866 (2) Members of the Florida Highway Patrol are vested with
867 the power, and charged with the duty, to enforce the rules of
868 the department. Approved expenditures incurred by the Florida
869 Highway Patrol in carrying out its powers and duties under ss.
870 338.22-338.241 may be treated as a part of the cost of the
871 operation of the turnpike system, and the Department of Public
872 ~~Highway~~ Safety ~~and Motor Vehicles~~ shall be reimbursed by the
873 turnpike enterprise for such expenses incurred on the turnpike
874 system. Florida Highway Patrol Troop K shall be headquartered
875 with the turnpike enterprise and shall be the official and
876 preferred law enforcement troop for the turnpike system. The
877 Department of Public ~~Highway~~ Safety ~~and Motor Vehicles~~ may, upon
878 request of the executive director of the turnpike enterprise and
879 approval of the Legislature, increase the number of authorized
880 positions for Troop K, or the executive director of the turnpike
881 enterprise may contract with the Department of Public ~~Highway~~
882 Safety ~~and Motor Vehicles~~ for additional troops to patrol the
883 turnpike system.
884 Section 36. Subsection (1) of section 339.281, Florida
885 Statutes, is amended to read:
886 339.281 Damage to transportation facility by vessel;
887 marine accident report; investigative authorities; penalties.--

888 (1) Whenever any vessel has caused damage to a
889 transportation facility, the managing owner, agent, or master of
890 such vessel shall immediately, or as soon thereafter as
891 possible, report the same to the nearest Fish and Wildlife
892 Conservation Commission officer, an officer of the Florida
893 Marine Patrol, the sheriff of the county wherein such accident
894 occurred, or the Florida Highway Patrol, who shall immediately
895 go to the scene of the accident and, if necessary, board the
896 vessel subsequent to the accident in pursuance of its
897 investigation. The law enforcement agency investigating the
898 accident shall submit a copy of its report to the department.
899 Section 37. Subsection (4) of section 370.0603, Florida
900 Statutes, is amended to read:
901 370.0603 Marine Resources Conservation Trust Fund;
902 purposes.--
903 (4) Funds transferred to the Marine Resources Conservation
904 Trust Fund from the Fuel Tax Collection Trust Fund pursuant to
905 s. 206.606 shall be used for the following purposes:
906 (a) To provide additional water-related law enforcement
907 positions within the Fish and Wildlife Conservation Commission
908 primarily for the purpose of enforcing laws designed to protect
909 manatee populations. Law enforcement positions funded under this
910 provision shall be assigned to counties having the highest
911 incidence of manatee deaths and injuries.
912 (b) For the placement of uniform waterway markers on state
913 waters.

914 (c) To provide funding for construction and maintenance of
915 publicly owned boat ramps, piers, and docks, directly and
916 through grants to counties and municipalities.
917 (d) To implement and administer programs related to
918 boating safety and education, manatee technical avoidance
919 technology, and economic development initiatives to promote
920 boating in the state, including competitive grants programs as
921 provided in s. 327.47.
922 (e) For other activities of the Florida Marine Patrol
923 ~~Boating and Waterways Section~~ such as coordinating the
924 submission of state comments on boating-related events.
925
926 Funds not used in one fiscal year must be carried over for use
927 in subsequent years.
928 Section 38. Paragraph (b) of subsection (2) of section
929 401.245, Florida Statutes, is amended to read:
930 401.245 Emergency Medical Services Advisory Council.--
931 (2)
932 (b) Representation on the Emergency Medical Services
933 Advisory Council shall include: two licensed physicians who are
934 "medical directors" as defined in s. 401.23(15) or whose medical
935 practice is closely related to emergency medical services; two
936 emergency medical service administrators, one of whom is
937 employed by a fire service; two certified paramedics, one of
938 whom is employed by a fire service; two certified emergency
939 medical technicians, one of whom is employed by a fire service;
940 one emergency medical services educator; one emergency nurse;
941 one hospital administrator; one representative of air ambulance

942 services; one representative of a commercial ambulance operator;
943 and two laypersons who are in no way connected with emergency
944 medical services, one of whom is a representative of the
945 elderly. Ex officio members of the advisory council from state
946 agencies shall include, but shall not be limited to,
947 representatives from the Department of Education, the Department
948 of Management Services, the State Fire Marshal, the Department
949 of Public ~~Highway~~ Safety ~~and Motor Vehicles~~, the Department of
950 Transportation, and the Department of Community Affairs.
951 Section 39. Paragraph (c) of subsection (2) of section
952 403.413, Florida Statutes, is amended to read:
953 403.413 Florida Litter Law.--
954 (2) DEFINITIONS.--As used in this section:
955 (c) "Law enforcement officer" means any officer of the
956 Florida Highway Patrol, the Florida Marine Patrol, a county
957 sheriff's department, a municipal law enforcement department, a
958 law enforcement department of any other political subdivision,
959 the department, or the Fish and Wildlife Conservation
960 Commission. In addition, and solely for the purposes of this
961 section, "law enforcement officer" means any employee of a
962 county or municipal park or recreation department designated by
963 the department head as a litter enforcement officer.
964 Section 40. Paragraph (d) of subsection (3) of section
965 790.25, Florida Statutes, is amended to read:
966 790.25 Lawful ownership, possession, and use of firearms
967 and other weapons.--
968 (3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06
969 do not apply in the following instances, and, despite such

970 sections, it is lawful for the following persons to own,
971 possess, and lawfully use firearms and other weapons,
972 ammunition, and supplies for lawful purposes:
973 (d) Sheriffs, marshals, prison or jail wardens, police
974 officers, Florida Highway Patrol officers, Florida Marine Patrol
975 officers, game wardens, revenue officers, forest officials,
976 special officers appointed under the provisions of chapter 354,
977 and other peace and law enforcement officers and their deputies
978 and assistants and full-time paid peace officers of other states
979 and of the Federal Government who are carrying out official
980 duties while in this state;
981 Section 41. Section 843.08, Florida Statutes, is amended
982 to read:
983 843.08 Falsely personating officer, etc.--A person who
984 falsely assumes or pretends to be a sheriff, officer of the
985 Florida Highway Patrol, officer of the Florida Marine Patrol,
986 officer of the Fish and Wildlife Conservation Commission,
987 officer of the Department of Environmental Protection, officer
988 of the Department of Transportation, officer of the Department
989 of Corrections, correctional probation officer, deputy sheriff,
990 state attorney or assistant state attorney, statewide prosecutor
991 or assistant statewide prosecutor, state attorney investigator,
992 coroner, police officer, lottery special agent or lottery
993 investigator, beverage enforcement agent, or watchman, or any
994 member of the Parole Commission and any administrative aide or
995 supervisor employed by the commission, or any personnel or
996 representative of the Department of Law Enforcement, and takes
997 upon himself or herself to act as such, or to require any other

998 person to aid or assist him or her in a matter pertaining to the
999 duty of any such officer, commits a felony of the third degree,
1000 punishable as provided in s. 775.082, s. 775.083, or s. 775.084;
1001 however, a person who falsely personates any such officer during
1002 the course of the commission of a felony commits a felony of the
1003 second degree, punishable as provided in s. 775.082, s. 775.083,
1004 or s. 775.084; except that if the commission of the felony
1005 results in the death or personal injury of another human being,
1006 the person commits a felony of the first degree, punishable as
1007 provided in s. 775.082, s. 775.083, or s. 775.084.
1008 Section 42. Section 870.04, Florida Statutes, is amended
1009 to read:
1010 870.04 Specified officers to disperse riotous
1011 assembly.--If any number of persons, whether armed or not, are
1012 unlawfully, riotously or tumultuously assembled in any county,
1013 city or municipality, the sheriff or the sheriff's deputies, or
1014 the mayor, or any commissioner, council member, alderman or
1015 police officer of the said city or municipality, or any officer
1016 or member of the Florida Highway Patrol, <u>any officer of the</u>
1017 <u>Florida Marine Patrol,</u> or any officer or agent of the Fish and
1018 Wildlife Conservation Commission, Department of Environmental
1019 Protection, or beverage enforcement agent, any personnel or
1020 representatives of the Department of Law Enforcement or its
1021 successor, or any other peace officer, shall go among the
1022 persons so assembled, or as near to them as may be with safety,
1023 and shall in the name of the state command all the persons so
1024 assembled immediately and peaceably to disperse; and if such
1025 persons do not thereupon immediately and peaceably disperse,

1026 said officers shall command the assistance of all such persons
1027 in seizing, arresting and securing such persons in custody; and
1028 if any person present being so commanded to aid and assist in
1029 seizing and securing such rioter or persons so unlawfully
1030 assembled, or in suppressing such riot or unlawful assembly,
1031 refuses or neglects to obey such command, or, when required by
1032 such officers to depart from the place, refuses and neglects to
1033 do so, the person shall be deemed one of the rioters or persons
1034 unlawfully assembled, and may be prosecuted and punished
1035 accordingly.
1036 Section 43. This act shall take effect July 1, 2006.

HB 1451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1451 Public Records
SPONSOR(S): Gannon
TIED BILLS: HB 1449 **IDEN./SIM. BILLS:** SB 2564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	9 Y, 0 N	Ciccone	Brown-Barrios
2) Governmental Operations Committee		Williamson	Williamson
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1451 creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt from public records requirements: an individual's medical record and any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt. The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

This bill does not grant rule-making authority to any administrative agency.

This bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Effect of Bill

This bill creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt[1] from public records requirements:

- An individual's medical record.
- Information received from an individual from another state or nation or the Federal Government, which is confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See 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 certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.8531, F.S., to create a public records exemption for the Florida Center for Brain Tumor Research.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date that is contingent upon the passage of HB 1449 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill could create a fiscal impact on the Florida Center for Brain Tumor Research, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the center could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24 (c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Title of the Bill

Lines 3 through 6 of the title provide that the bill creates a public records exemption for personal identifying information contained in records of the Florida Center for Brain Tumor Research. The bill, however, creates a public records exemption for medical records and information received from another state or nation or the Federal Government, which is confidential or exempt. The sponsor may want to consider an amendment to conform the title to the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to public records; creating s. 381.8531,
3 F.S.; providing an exemption from public records
4 requirements for personal identifying information
5 contained in records of the Florida Center for Brain Tumor
6 Research; providing for future review and repeal;
7 providing a finding of public necessity; providing a
8 contingent effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 381.8531, Florida Statutes, is created
13 to read:
14 381.8531 Florida Center for Brain Tumor Research; public
15 records exemption.--
16 (1) The following information held by the Florida Center
17 for Brain Tumor Research is confidential and exempt from s.
18 119.07(1) and s. 24, Art. I of the State Constitution:
19 (a) An individual's medical record.
20 (b) Any information received from an individual from
21 another state or nation or the Federal Government that is
22 otherwise confidential or exempt pursuant to the laws of that
23 state or nation or pursuant to federal law.
24 (2) This section is subject to the Open Government Sunset
25 Review Act in accordance with s. 119.15 and shall stand repealed
26 on October 2, 2011, unless reviewed and saved from repeal
27 through reenactment by the Legislature.

28 Section 2. The Legislature finds that it is a public
29 necessity that an individual's medical record held by the brain
30 tumor registry developed pursuant to s. 381.853(3), Florida
31 Statutes, be made confidential and exempt from public records
32 requirements. Matters of personal health are traditionally
33 private and confidential concerns between the patient and the
34 health care provider. The private and confidential nature of
35 personal health matters pervades both the public and private
36 health care sectors. For these reasons, the individual's
37 expectation of and right to privacy in all matters regarding his
38 or her personal health necessitates this exemption. The
39 Legislature further finds that it is a public necessity to
40 protect a patient's medical record because the release of such
41 record could be defamatory to the patient or could cause
42 unwarranted damage to the name or reputation of that patient.
43 Finally, the Legislature finds that it is a public necessity to
44 protect information received by the brain tumor registry from an
45 individual from another state or nation or the Federal
46 Government that is otherwise exempt or confidential pursuant to
47 the laws of that state or nation or pursuant to federal law.
48 Without this protection, another state or nation or the Federal
49 Government might be less likely to provide information to the
50 registry in the furtherance of its duties and responsibilities.
51 Section 3. This act shall take effect July 1, 2006, if
52 House Bill 1449 or similar legislation is adopted in the same
53 legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1469 CS Public Records
SPONSOR(S): Grant
TIED BILLS: HB 1467 **IDEN./SIM. BILLS:** SB 2656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Carlson	Carlson
2) Governmental Operations Committee		Williamson	Williamson
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for certain information and trade secrets relating to venture capital investment in Florida businesses under the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes the following information confidential and exempt from public records requirements:

- Trade secrets, as defined in the Uniform Trade Secrets Act;
- Tax identification numbers;
- Analyses of gross receipts;
- Amount of taxes paid;
- Amount of capital investment;
- Amount of employee wages paid; and
- Detailed documentation to substantiate performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

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

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill will reduce access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Florida Capital Formation Act

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a "fund of funds" basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold $75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;

- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

Effect of Proposes Changes

The bill creates a public records exemption for certain information and trade secrets relating to the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes the following information confidential and exempt[1] from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets, as defined in the Uniform Trade Secrets Act,[2] held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation;
- Tax identification numbers;
- Analyses of gross receipts;
- Amount of taxes paid;
- Amount of capital investment;
- Amount of employee wages paid; and
- Detailed documentation to substantiate performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1467 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.96275, F.S., creating a public records exemption for information relating to the Florida Capital Formation Act.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1467 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

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[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See 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 certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

[2] Chapter 688, F.S.; *see* s. 688.002, F.S.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Vagueness Issue

Lines 31 through 37 of the CS are not clearly defined and may not give appropriate guidance as to the specific kinds of information intended to be excluded from public records. In particular, the information

included in "the amount of capital investment" and "the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within portfolios of venture capital funds receiving investment..." is unclear and should be further defined.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill on March 30, 2006. The amendment removed references to the exemption of social security numbers, which are already exempted from public records under ch. 119, F.S., revised the references to the definition of "trade secret" as it is defined in s. 688.002, F.S., and made related technical clarifying and conforming changes.

CHAMBER ACTION

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1 The Economic Development, Trade & Banking Committee recommends
2 the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6
7 A bill to be entitled
8 An act relating to public records; creating s. 288.96275,
9 F.S.; providing an exemption from public records
10 requirements for information held by the Florida
11 Opportunity Fund that is a trade secret; providing an
12 exemption from public records requirements for tax
13 identification numbers, analyses of gross receipts, amount
14 of taxes paid, amount of capital investment, amount of
15 employee wages paid, and detailed documentation to
16 substantiate such performance information included in
17 portfolio data pertaining to specific companies within the
18 portfolios of venture capital funds receiving investment
19 from the Florida Opportunity Fund; providing for review
20 and repeal; providing a statement of public necessity;
21 providing a contingent effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:

24

25 Section 1. Section 288.96275, Florida Statutes, is created
26 to read:
27 288.96275 Trade secret information; identification and
28 performance information; public records exemption.--A trade
29 secret, as defined in s. 688.002, held by the Florida
30 Opportunity Fund is confidential and exempt from s. 119.07(1)
31 and s. 24(a), Art. I of the State Constitution. Tax
32 identification numbers, analyses of gross receipts, the amount
33 of taxes paid, the amount of capital investment, the amount of
34 employee wages paid, and the detailed documentation to
35 substantiate such performance information included in portfolio
36 data pertaining to specific companies within the portfolios of
37 venture capital funds receiving investment from the Florida
38 Opportunity Fund are confidential and exempt from s. 119.07(1)
39 and s. 24(a), Art. I of the State Constitution. This section is
40 subject to the Open Government Sunset Review Act in accordance
41 with s. 119.15 and shall stand repealed on October 2, 2011,
42 unless reviewed and saved from repeal through reenactment by the
43 Legislature.
44 Section 2. The Legislature finds that it is a public
45 necessity that a trade secret, as defined in the Uniform Trade
46 Secrets Act, held by the Florida Opportunity Fund be held
47 confidential and exempt from s. 119.07(1), Florida Statutes, and
48 s. 24(a), Art. I of the State Constitution. In addition, the
49 Legislature finds that it is a public necessity that tax
50 identification numbers, analyses of gross receipts, amount of
51 taxes paid, amount of capital investment, amount of employee

52 wages paid, and detailed documentation to substantiate such
53 performance information included in portfolio data pertaining to
54 specific companies within the portfolios of venture capital
55 funds receiving investment from the Florida Opportunity Fund be
56 held confidential and exempt from s. 119.07(1), Florida
57 Statutes, and s. 24(a), Art. I of the State Constitution. The
58 disclosure of information concerning businesses that is obtained
59 through the administration of the Florida Opportunity Fund under
60 ss. 288.9621-288.9628, Florida Statutes, the "Florida Capital
61 Formation Act," could injure a business in the marketplace by
62 providing its competitors with detailed insights into the
63 financial status and the strategic plans of the business,
64 thereby diminishing the advantage that the business maintains
65 over those that do not possess such information. Without this
66 exemption, private sector businesses, whose records generally
67 are not required to be open to the public, might refrain from
68 participating in the economic development program, and thus
69 would not be able to use the incentives available under the
70 program. If a business were unable to use the incentives, the
71 business might choose not to invest venture capital in the State
72 of Florida, depriving the state and the public of the potential
73 economic benefits associated with such investment activities in
74 this state. The harm to businesses in the marketplace and to the
75 effective administration of the economic development program
76 caused by the public disclosure of such information far
77 outweighs the public benefits derived from its release.

78 Section 3. This act shall take effect July 1, 2006, if
79 House Bill 1467 or similar legislation is adopted in the same
80 legislative session or an extension thereof and becomes law.

PCS FOR HB 1563

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1563 Public Records
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Mitchell	Williamson
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

The bill shields the clerk of the circuit court and county recorders from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, in certain records filed on or before January 1, 2008.

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.

The bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to have an impact on state or local government revenues, but may have a minimal fiscal impact on the expenditures of state and local governments for implementation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill shields the clerk of the circuit court or county recorder from liability for the inadvertent release of certain confidential and exempt information.

B. EFFECT OF PROPOSED CHANGES:

Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.[1]

Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law.[2] This general law must "state with specificity the public necessity justifying the exemption" and be "no broader than necessary to accomplish the stated purpose of the law."[3] The Legislature has created numerous public records exemptions.

Public Records Exemptions for Social Security Numbers and Account Information

In 2002, the Legislature created a public records exemption for all social security numbers held by an agency[4] that did not have an agency-specific exemption for social security numbers.[5] In 2002, the Legislature also recreated[6] a public records exemption for bank account numbers, debit, charge and credit card numbers held by an agency.[7] The Legislature also created a number of exceptions for these exemptions. One of those exceptions related to court records; another exception related to documents presented to the county recorder for recording in the official records of the county.

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[1] Fla. Stat. § 119.07(1)(a) (2005).
[2] Fla. Const. art. 1, § 24.
[3] *Id.*
[4] Fla. Stat. § 119.011(2) (2005) (defining "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency").
[5] Ch. 2002-256, Laws of Fla.
[6] A previously existing exemption repealed on October 1, 2001. *See* Fla. Stat. § 119.07(3)(z) (2000).
[7] Ch. 2002-257, Laws of Fla.

Court Records and Official Records Exceptions

In 2002, the Legislature allowed social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a court file, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.[8] The Legislature provided the ability for a person to request the redaction of this information.[9]

In 2002, the Legislature also permitted social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a document presented to the county recorder for recording in the official records of the county, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.[10] The Legislature also prohibited any person who prepares or files a document to be recorded in the official records by the county recorder from including a person's social security number or complete bank account, debit, charge, or credit card number in that document unless expressly required by law.[11]

In 2005, the Legislature delayed until January 1, 2007, the requirements for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.[12]

Further Delay

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

Liability Shields

The bill shields the clerk of the circuit court from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were in court records filed with the clerk of the circuit court on or before January 1, 2008, and which were unknown to the clerk of the circuit court.

The bill also shields the county recorder from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were filed with the county recorder on or before January 1, 2008.

County Recorders and Electronic Records

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

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[8] Ch. 2002-391, Laws of Fla. This exception was originally created as paragraph (ff) of subsection (3) of section 119.07, Florida Statutes. This exception was later paragraph (gg) of subsection (6) of section 119.07, Florida Statutes.

[9] Fla. Stat. § 119.071(5)(a)7.d. (2005) (requiring the holder of the social security number or complete bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, to submit a signed, legibly written request that is delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court and specifies the case name, case number, document heading, and page number).

[10] Ch. 2002-391, Laws of Fla., *supra* note 8.

[11] *Id.*

[12] Ch. 2005-236, Laws of Fla., § 41. *See also* ch. 2005-251, Laws of Fla., § 24 (which transferred and redesignated paragraph (gg) of subsection (6) of section 119.07, Florida Statutes, to section 119.071(5)(a), Florida Statutes).

Stylistic Changes

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.[13]

C. SECTION DIRECTORY:

Section 1: Amends section 119.071, Florida Statutes, to limit the liability of the clerk of the circuit court and the county recorder; to require the clerk of the circuit court to make certain notices; and to require best efforts in redaction.

Section 2: Reenacting section 1007.35(8)(b), Florida Statutes, to incorporate amendments.

Section 3: Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill may have a fiscal impact on local government expenditures because the staffs of the clerk of the circuit court or county recorder who are responsible for complying with public records requests will require training relating to the newly created public records exemption. There will also be costs to notify the public of these changes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[13] One example is "shall not" to "may not."

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill may require counties, through the clerks of the circuit court or county recorders, to spend funds or to take an action requiring the expenditure of funds, the amount of this expenditure is expected to be fiscally insignificant.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Unknown to the Clerk of the Circuit Court

Rather than using the phrase "unknown to the Clerk of the Circuit Court," the sponsor of the originally filed bill may wish to consider referencing the request for redaction.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to public records; amending s. 119.071,
7 F.S.; providing that the clerk of the circuit court has no
8 liability for the inadvertent release of certain
9 confidential or exempt information; requiring the clerk of
10 the circuit court to provide notice regarding the
11 inclusion of a social security number or a complete bank
12 account, debit, charge, or credit card number in a court
13 document or copy of a court document; requiring the county
14 recorder to use his or her best efforts to redact all
15 social security numbers or complete bank account, debit,
16 charge, or credit card numbers from electronic copies of
17 official records documents; providing that the county
18 recorder is not liable for the inadvertent release of
19 certain confidential or exempt information; reenacting s.
20 1007.35(8)(b), F.S., relating to access to information
21 necessary to evaluate the effectiveness of delivered
22 services from the Florida Partnership for Minority and
23 Underrepresented Student Achievement, to incorporate the

24 amendments made to s. 119.071, F.S., in a reference
25 thereto; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Paragraph (a) of subsection (5) of section
30 119.071, Florida Statutes, is amended to read:
31 119.071 General exemptions from inspection or copying of
32 public records.--
33 (5) OTHER PERSONAL INFORMATION.--
34 (a)1. The Legislature acknowledges that the social
35 security number was never intended to be used for business
36 purposes but was intended to be used solely for the
37 administration of the federal Social Security System. The
38 Legislature is further aware that over time this unique numeric
39 identifier has been used extensively for identity verification
40 purposes and other legitimate consensual purposes. The
41 Legislature is also cognizant of the fact that the social
42 security number can be used as a tool to perpetuate fraud
43 against a person and to acquire sensitive personal, financial,
44 medical, and familial information, the release of which could
45 cause great financial or personal harm to an individual. The
46 Legislature intends to monitor the commercial use of social
47 security numbers held by state agencies in order to maintain a
48 balanced public policy.
49 2. An agency may ~~shall~~ not collect an individual's social
50 security number unless authorized by law to do so or unless the
51 collection of the social security number is otherwise imperative

52 for the performance of that agency's duties and responsibilities
53 as prescribed by law. Social security numbers collected by an
54 agency must be relevant to the purpose for which collected and
55 may ~~shall~~ not be collected until and unless the need for social
56 security numbers has been clearly documented. An agency that
57 collects social security numbers shall also segregate that
58 number on a separate page from the rest of the record, or as
59 otherwise appropriate, in order that the social security number
60 be more easily redacted, if required, pursuant to a public
61 records request. An agency collecting a person's social security
62 number shall, upon that person's request, at the time of or
63 prior to the actual collection of the social security number by
64 that agency, provide that person with a statement of the purpose
65 or purposes for which the social security number is being
66 collected and used. Social security numbers collected by an
67 agency may ~~shall~~ not be used by that agency for any purpose
68 other than the purpose stated. Social security numbers collected
69 by an agency before ~~prior to~~ May 13, 2002, shall be reviewed for
70 compliance with this subparagraph. If the collection of a social
71 security number before ~~prior to~~ May 13, 2002, is found to be
72 unwarranted, the agency shall immediately discontinue the
73 collection of social security numbers for that purpose.
74 3. Effective October 1, 2002, all social security numbers
75 held by an agency are confidential and exempt from s. 119.07(1)
76 and s. 24(a), Art. I of the State Constitution. This exemption
77 applies to all social security numbers held by an agency before,
78 on, or after the effective date of this exemption.

79 4. Social security numbers may be disclosed to another
80 governmental entity or its agents, employees, or contractors if
81 disclosure is necessary for the receiving entity to perform its
82 duties and responsibilities. The receiving governmental entity
83 and its agents, employees, and contractors shall maintain the
84 confidential and exempt status of the ~~such~~ numbers.
85 5. An agency may ~~shall~~ not deny a commercial entity
86 engaged in the performance of a commercial activity as defined
87 in s. 14.203 or its agents, employees, or contractors access to
88 social security numbers, provided the social security numbers
89 will be used only in the normal course of business for
90 legitimate business purposes, and provided the commercial entity
91 makes a written request for social security numbers, verified as
92 provided in s. 92.525, legibly signed by an authorized officer,
93 employee, or agent of the commercial entity. The verified
94 written request must contain the commercial entity's name,
95 business mailing and location addresses, business telephone
96 number, and a statement of the specific purposes for which it
97 needs the social security numbers and how the social security
98 numbers will be used in the normal course of business for
99 legitimate business purposes. The aggregate of these requests
100 shall serve as the basis for the agency report required in
101 subparagraph 8. An agency may request any other information
102 reasonably necessary to verify the identity of the entity
103 requesting the social security numbers and the specific purposes
104 for which the ~~such~~ numbers will be used; however, an agency has
105 no duty to inquire beyond the information contained in the
106 verified written request. A legitimate business purpose includes

107 verification of the accuracy of personal information received by
108 a commercial entity in the normal course of its business; use in
109 a civil, criminal, or administrative proceeding; use for
110 insurance purposes; use in law enforcement and investigation of
111 crimes; use in identifying and preventing fraud; use in
112 matching, verifying, or retrieving information; and use in
113 research activities. A legitimate business purpose does not
114 include the display or bulk sale of social security numbers to
115 the general public or the distribution of such numbers to any
116 customer that is not identifiable by the distributor.
117 6. Any person who makes a false representation in order to
118 obtain a social security number pursuant to this paragraph, or
119 any person who willfully and knowingly violates this paragraph,
120 commits a felony of the third degree, punishable as provided in
121 s. 775.082 or s. 775.083. Any public officer who violates this
122 paragraph is guilty of a noncriminal infraction, punishable by a
123 fine not exceeding $500. A commercial entity that provides
124 access to public records containing social security numbers in
125 accordance with this paragraph is not subject to the penalty
126 provisions of this subparagraph.
127 7.a. On or after October 1, 2002, a person preparing or
128 filing a document to be recorded in the official records by the
129 county recorder as provided for in chapter 28 may not include
130 any person's social security number in that document, unless
131 otherwise expressly required by law. If a social security number
132 is or has been included in a document presented to the county
133 recorder for recording in the official records of the county
134 before, on, or after October 1, 2002, it may be made available

135 as part of the official record available for public inspection
136 and copying.
137 b. Any person, or his or her attorney or legal guardian,
138 has the right to request that a county recorder remove, from an
139 image or copy of an official record placed on a county
140 recorder's publicly available Internet website or a publicly
141 available Internet website used by a county recorder to display
142 public records or otherwise made electronically available to the
143 general public by such recorder, his or her social security
144 number contained in that official record. The ~~Such~~ request must
145 be made in writing, legibly signed by the requester and
146 delivered by mail, facsimile, or electronic transmission, or
147 delivered in person, to the county recorder. The request must
148 specify the identification page number that contains the social
149 security number to be redacted. The county recorder has no duty
150 to inquire beyond the written request to verify the identity of
151 a person requesting redaction. A fee may ~~shall~~ not be charged
152 for the redaction of a social security number pursuant to such
153 request.
154 c. A county recorder shall immediately and conspicuously
155 post signs throughout his or her offices for public viewing and
156 shall immediately and conspicuously post, on any Internet
157 website or remote electronic site made available by the county
158 recorder and used for the ordering or display of official
159 records or images or copies of official records, a notice
160 stating, in substantially similar form, the following:
161 (I) On or after October 1, 2002, any person preparing or
162 filing a document for recordation in the official records may

163 not include a social security number in such document, unless
164 required by law.
165 (II) Any person has a right to request a county recorder
166 to remove, from an image or copy of an official record placed on
167 a county recorder's publicly available Internet website or on a
168 publicly available Internet website used by a county recorder to
169 display public records or otherwise made electronically
170 available to the general public, any social security number
171 contained in an official record. Such request must be made in
172 writing and delivered by mail, facsimile, or electronic
173 transmission, or delivered in person, to the county recorder.
174 The request must specify the identification page number that
175 contains the social security number to be redacted. A ~~No~~ fee may
176 not ~~will~~ be charged for the redaction of a social security
177 number pursuant to such a request.
178 d. Until January 1, 2008 ~~2007~~, if a social security
179 number, made confidential and exempt pursuant to this paragraph,
180 or a complete bank account, debit, charge, or credit card number
181 made exempt pursuant to paragraph (b) is or has been included in
182 a court file, such number may be included as part of the court
183 record available for public inspection and copying unless
184 redaction is requested by the holder of such number, or by the
185 holder's attorney or legal guardian, in a signed, legibly
186 written request specifying the case name, case number, document
187 heading, and page number. The request must be delivered by mail,
188 facsimile, electronic transmission, or in person to the clerk of
189 the circuit court. The clerk of the circuit court does not have
190 a duty to inquire beyond the written request to verify the

191 identity of a person requesting redaction. A fee may not be
192 charged for the redaction of a social security number or a bank
193 account, debit, charge, or credit card number pursuant to such
194 request. The clerk of the circuit court has no liability for the
195 inadvertent release of confidential and exempt social security
196 numbers or exempt bank account, debit, charge, or credit card
197 numbers, unknown to the clerk of the circuit court in court
198 records filed with the clerk of the circuit court on or before
199 January 1, 2008.
200 e. Any person who prepares or files a document to be
201 recorded in the official records by the county recorder as
202 provided in chapter 28 may not include a person's social
203 security number or complete bank account, debit, charge, or
204 credit card number in that document unless otherwise expressly
205 required by law. Until January 1, 2008 ~~2007~~, If a social
206 security number or a complete bank account, debit, charge, or
207 credit card number is or has been included in a document
208 presented to the county recorder for recording in the official
209 records of the county, such number may be made available as part
210 of the official record available for public inspection and
211 copying. Any person, or his or her attorney or legal guardian,
212 may request that a county recorder remove from an image or copy
213 of an official record placed on a county recorder's publicly
214 available Internet website, or a publicly available Internet
215 website used by a county recorder to display public records
216 outside the office or otherwise made electronically available
217 outside the county recorder's office to the general public, his
218 or her social security number or complete account, debit,

219 charge, or credit card number contained in that official record.
220 Such request must be legibly written, signed by the requester,
221 and delivered by mail, facsimile, electronic transmission, or in
222 person to the county recorder. The request must specify the
223 identification page number of the document that contains the
224 number to be redacted. The county recorder does not have a duty
225 to inquire beyond the written request to verify the identity of
226 a person requesting redaction. A fee may not be charged for
227 redacting such numbers. If the county recorder accepts or stores
228 official records in an electronic format, the county recorder
229 must use his or her best efforts to redact all social security
230 numbers or complete bank account, debit, charge, or credit card
231 numbers from electronic copies of the official record. The use
232 of an automated program for redaction shall be deemed the best
233 effort and complies with the requirements of this sub-
234 subparagraph. The county recorder is not liable for the
235 inadvertent release of confidential and exempt social security
236 numbers or exempt bank account, debit, charge or credit card
237 numbers, filed with the county recorder on or before January 1,
238 2008.
239 f. Subparagraphs 2. and 3. do not apply to the clerks of
240 the court or the county recorder with respect to circuit court
241 records and official records.
242 g. On January 1, 2008 ~~2007~~, and thereafter, the clerk of
243 the circuit court and the county recorder must keep complete
244 bank account, debit, charge, and credit card numbers exempt as
245 provided for in paragraph (b), and must keep social security

246 numbers confidential and exempt as provided for in subparagraph
247 3., without any person having to request redaction.
248 8. Beginning January 31, 2004, and each January 31
249 thereafter, every agency must file a report with the Secretary
250 of State, the President of the Senate, and the Speaker of the
251 House of Representatives listing the identity of all commercial
252 entities that have requested social security numbers during the
253 preceding calendar year and the specific purpose or purposes
254 stated by each commercial entity regarding its need for social
255 security numbers. If no disclosure requests were made, the
256 agency shall so indicate.
257 9. Any affected person may petition the circuit court for
258 an order directing compliance with this paragraph.
259 10. This paragraph does not supersede any other applicable
260 public records exemptions existing prior to May 13, 2002, or
261 created thereafter.
262 11. This paragraph is subject to the Open Government
263 Sunset Review Act in accordance with s. 119.15 and shall stand
264 repealed October 2, 2007, unless reviewed and saved from repeal
265 through reenactment by the Legislature.
266 Section 2. For the purpose of incorporating the amendments
267 made by this act to section 119.071, Florida Statutes, in a
268 reference thereto, paragraph (b) of subsection (8) of section
269 1007.35, Florida Statutes, is reenacted to read:
270 1007.35 Florida Partnership for Minority and
271 Underrepresented Student Achievement.--
272 (8)

273 (b) The department shall contribute to the evaluation
274 process by providing access, consistent with s. 119.071(5)(a),
275 to student and teacher information necessary to match against
276 databases containing teacher professional development data and
277 databases containing assessment data for the PSAT/NMSQT, SAT,
278 AP, and other appropriate measures. The department shall also
279 provide student-level data on student progress from middle
280 school through high school and into college and the workforce,
281 if available, in order to support longitudinal studies. The
282 partnership shall analyze and report student performance data in
283 a manner that protects the rights of students and parents as
284 required in 20 U.S.C. s. 1232g and s. 1002.22.
285 Section 3. This act shall take effect July 1, 2006.
286

Governmental Operations Committee

Monday, April 17, 2006
1:00 - 2:00 PM
Morris Hall

Amendment Packet

Allan Bense
Speaker

David Rivera
Chairman

Bill No. **675 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Pickens offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Section 155.40, Florida Statutes, is amended to
8 read:
9 155.40 Sale or lease of county, district, or municipal
10 hospital; effect of sale.--
11 (1) In order that citizens and residents of the state may
12 receive quality health care, any county, district, or municipal
13 hospital organized and existing under the laws of this state,
14 acting by and through its governing board, shall have the
15 authority to sell or lease such hospital to a for-profit or not-
16 for-profit Florida corporation, and enter into leases or other
17 contracts with a for-profit or not-for-profit Florida
18 corporation for the purpose of operating and managing such
19 hospital and any or all of its facilities of whatsoever kind and
20 nature. The term of any such lease, contract, or agreement and
21 the conditions, covenants, and agreements to be contained

22 therein shall be determined by the governing board of such
23 county, district, or municipal hospital. The governing board of
24 the hospital must find that the sale, lease, or contract is in
25 the best interests of the public and must state the basis of
26 such finding. If the governing board of a county, district, or
27 municipal hospital decides to lease the hospital, it must give
28 notice in accordance with paragraph (4)(a) or paragraph (4)(b).
29 (2) Any such lease, contract, or agreement made pursuant
30 hereto shall:
31 (a) Provide that the articles of incorporation of such
32 for-profit or not-for-profit corporation be subject to the
33 approval of the board of directors or board of trustees of such
34 hospital;
35 (b) Require that any not-for-profit corporation become
36 qualified under s. 501(c)(3) of the United States Internal
37 Revenue Code;
38 (c) Provide for the orderly transition of the operation
39 and management of such facilities;
40 (d) Provide for the return of such facility to the county,
41 municipality, or district upon the termination of such lease,
42 contract, or agreement; and
43 (e) Provide for the continued treatment of indigent
44 patients pursuant to the Florida Health Care Responsibility Act
45 and pursuant to chapter 87-92, Laws of Florida.
46 (3) Any sale, lease, or contract entered into pursuant to
47 this section prior to the effective date of this act must have
48 complied with the requirements of subsection (2) in effect at
49 the time of the sale, lease, or contract. It is the intent of
50 the Legislature that this section does not impose any further
51 requirements with respect to the formation of any for-profit or

52 not-for-profit Florida corporation, the composition of the board
53 of directors of any Florida corporation, or the manner in which
54 control of the hospital is transferred to the Florida
55 corporation.
56 (4) In the event the governing board of a county,
57 district, or municipal hospital elects to sell or lease the
58 hospital, the board shall:
59 (a) Negotiate the terms of the sale or lease with a for-
60 profit or not-for-profit Florida corporation and publicly
61 advertise the meeting at which the proposed sale or lease will
62 be considered by the governing board of the hospital in
63 accordance with s. 286.0105; or
64 (b) Publicly advertise the offer to accept proposals in
65 accordance with s. 255.0525 and receive proposals from all
66 interested and qualified purchasers.
67
68 Any sale must be for fair market value, and any sale or lease
69 must comply with all applicable state and federal antitrust
70 laws.
71 (5) In the event a hospital operated by a for-profit or
72 not-for-profit Florida corporation receives annually more than
73 $100,000 in revenues from the county, district, or municipality
74 that owns the hospital, the Florida corporation must be
75 accountable to the county, district, or municipality with
76 respect to the manner in which the funds are expended by either:
77 (a) Having the revenues subject to annual appropriations
78 by the county, district, or municipality; or
79 (b) Where there is a contract to provide revenues to the
80 hospital, the term of which is longer than 12 months, the
81 governing board of the county, district, or municipality must be

82 able to modify the contract upon 12 months notice to the
83 hospital.
84
85 A not-for-profit corporation that is subject to this subsection
86 and that does not currently comply with the accountability
87 requirements in this subsection shall have 12 months after the
88 effective date of this act to modify any contracts with the
89 county, district, or municipality in a manner that is consistent
90 with this subsection.
91 (6) Unless otherwise expressly stated in the lease
92 documents, the transaction involving the ~~sale or~~ lease of a
93 hospital shall not be construed as:
94 (a) A transfer of a governmental function from the county,
95 district, or municipality to the private ~~purchaser or~~ lessee;
96 (b) Constituting a financial interest of the public lessor
97 in the private lessee; or
98 (c) Making a private lessee an integral part of the public
99 lessor's decisionmaking process.
100 (7) The lessee of a hospital, under ~~pursuant to~~ this
101 section or any special act of the Legislature, operating under a
102 lease is ~~shall~~ not ~~be construed to be~~ "acting on behalf of" the
103 lessor as that term is used in statute, unless the lease
104 document expressly provides to the contrary.
105 (8) Unless otherwise expressly stated in the sale
106 documents, the transaction involving the sale of a hospital
107 shall not be construed as:
108 (a) A transfer of a governmental function from the county,
109 district, or municipality to the private purchaser;
110 (b) Constituting a financial interest of the public seller
111 in the private purchaser; or

112 (c) Making a private purchaser an integral part of the
113 public seller's decisionmaking process.
114 (9)(a) The purchaser of a hospital, under this section or
115 any special act of the Legislature, operating after a sale of
116 the hospital is not "acting on behalf of" the seller as that
117 term is used in statute, unless the sale document expressly
118 provides to the contrary.
119 (b) The purchaser of a hospital, under this section or any
120 special act of the Legislature, operating after a sale of the
121 hospital shall not be construed as an "agency" within the
122 meaning of s. 119.011(2), unless the sale document expressly
123 provides to the contrary.
124 Section 2. This act shall take effect July 1, 2006.
125
126 ========== T I T L E A M E N D M E N T ==========
127 Remove the entire title and insert:
128 A bill to be entitled
129 An act relating to the sale or lease of a county, district, or
130 municipal hospital; amending s. 155.40, F.S.; providing for the
131 effect of the sale of a public hospital to a private purchaser;
132 providing that the purchaser of a public hospital is not acting
133 on behalf of the public entity seller and is not an agency
134 within the meaning of ch. 119, F.S., unless the sale document
135 expressly provides to the contrary; providing an effective date.

Bill No. **1117**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Greenstein offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 343.59, Florida Statutes, is created to
7 read:
8 343.59 Confidentiality of appraisal reports, offers, and
9 counteroffers.--
10 (1) Appraisal reports, offers, and counteroffers relating
11 to land acquisition by the authority are confidential and exempt
12 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
13 until an option contract is executed or, if no option contract
14 is executed, until 30 days before a contract or agreement for
15 purchase is considered for approval by the authority's governing
16 board.
17 (2) The authority may, at its discretion, disclose
18 appraisal reports to private landowners during negotiations for
19 acquisitions using alternatives to fee simple techniques if the
20 authority determines that disclosure of such reports will bring
21 the proposed acquisition to closure. In the event that
22 negotiations are terminated by the authority, the appraisal

23 reports, offers, and counteroffers shall become available
24 pursuant to s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution.
26 (3) The authority may share and disclose appraisal
27 reports, appraisal information, offers, and counteroffers when
28 joint acquisition of property is contemplated.
29 (4) The authority may disclose appraisal information,
30 offers, and counteroffers to a third party who has entered into
31 a contractual agreement with the authority to work with or on
32 the behalf of or to assist the authority in connection with land
33 acquisitions.
34 (5) This section is subject to the Open Government Sunset
35 Review Act in accordance with s. 119.15 and shall stand repealed
36 on October 2, 2011, unless reviewed and saved from repeal
37 through reenactment by the Legislature.
38 Section 2. The Legislature finds that it is a public
39 necessity that appraisal reports, offers, and counteroffers be
40 kept confidential and exempt from public records requirements
41 when held by the authority. Disclosure would adversely affect
42 the goal of the purchase of lands for the public good using
43 public funds at competitive prices resulting from negotiations
44 between parties. Further, each party is entitled to
45 independently obtain appraisal reports and property value
46 information regarding said property. Disclosure of the appraisal
47 report or property information by the authority could create an
48 unfair disadvantage for the authority during negotiations.
49 Release of appraisal reports, offers, and counteroffers could
50 impair full and fair competition between the negotiating
51 parties. Thus, the public and private harm in disclosing this
52 information significantly outweighs any public benefit derived
53 from disclosure, and the public's ability to scrutinize and

54 monitor agency action is not diminished by nondisclosure of this
55 information.
56 Section 3. This act shall take effect on the same date
57 that HB 1115 or similar legislation takes effect, if such
58 legislation is adopted in the same legislative session or an
59 extension thereof and becomes law.
60
61 ========== T I T L E A M E N D M E N T ==========
62 Remove the entire title and insert:
63 A bill to be entitled
64 An act relating to public records; creating s. 343.59,
65 F.S.; providing an exemption from public records
66 requirements for certain appraisal reports, offers, and
67 counteroffers relating to land acquisition by the South
68 Florida Regional Transportation Authority; providing that
69 the exemption expires upon execution of a certain contract
70 or at a certain time before a purchase contract or
71 agreement is considered for approval; providing exceptions
72 to the exemption; providing for future legislative review
73 and repeal; providing a finding of public necessity;
74 providing a contingent effective date.
75

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1285**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line(s) 93 - 96 and insert:
6 information. Without this exemption, private
7

000000

Bill No. **1369**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Evers offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Paragraph (b) of subsection (1) of section
8 119.071, Florida Statutes, is amended to read:
9 119.071 General exemptions from inspection or copying of
10 public records.--
11 (1) AGENCY ADMINISTRATION.--
12 (b)1.a. Sealed bids or proposals received by an agency
13 pursuant to invitations to bid or requests for proposals are
14 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
15 Constitution until such time as the agency provides notice of a
16 decision or intended decision pursuant to s. 120.57(3)(a) or
17 within 10 days after bid or proposal opening, whichever is
18 earlier.
19 b. If an agency rejects all bids or proposals submitted in
20 response to an invitation to bid or request for proposals and
21 the agency concurrently provides notice of its intent to reissue
22 the invitation to bid or request for proposals, the rejected

23 bids or proposals remain exempt from s. 119.07(1) and s. 24(a),
24 Art. I of the State Constitution until such time as the agency
25 provides notice of a decision or intended decision pursuant to
26 s. 120.57(3)(a) concerning the reissued invitation to bid or
27 request for proposals or until the agency withdraws the reissued
28 invitation to bid or request for proposals. This sub-
29 subparagraph is subject to the Open Government Sunset Review Act
30 in accordance with s. 119.15, and shall stand repealed on
31 October 2, 2011, unless reviewed and saved from repeal through
32 reenactment by the Legislature.
33 2.a. A competitive sealed reply in response to an
34 invitation to negotiate, as defined in s. 287.012, is exempt
35 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
36 until such time as the agency provides notice of a decision or
37 intended decision pursuant to s. 120.57(3)(a) or until 20 days
38 after the final competitive sealed replies are all opened,
39 whichever occurs earlier.
40 b. If an agency rejects all competitive sealed replies in
41 response to an invitation to negotiate and the agency
42 concurrently provides notice of its intent to reissue the
43 invitation to negotiate and if the agency reissues the
44 invitation to negotiate within 90 days after such notice to
45 reissue, the rejected replies remain exempt from s. 119.07(1)
46 and s. 24(a), Art. I of the State Constitution until such time
47 as the agency provides notice of a decision or intended decision
48 pursuant to s. 120.57(3)(a) concerning the reissued invitation
49 to negotiate or until the agency withdraws the reissued
50 invitation to negotiate. A competitive sealed reply is not
51 exempt for longer than 12 months after the initial agency notice
52 rejecting all replies.

53 3. This subparagraph is subject to the Open Government
54 Sunset Review Act in accordance with s. 119.15, and shall stand
55 repealed on October 2, 2011, unless reviewed and saved from
56 repeal through reenactment by the Legislature.
57 Section 2. Section 286.0113, Florida Statutes, is amended
58 to read:
59 286.0113 General exemptions from public meetings.--
60 (1) Those portions of any meeting which would reveal a
61 security system plan or portion thereof made confidential and
62 exempt by s. 119.071(3)(a) are exempt from the provisions of s.
63 286.011 and s. 24(b), Art. I of the State Constitution. This
64 section is subject to the Open Government Sunset Review Act, in
65 accordance with s. 119.15, and shall stand repealed on October
66 2, 2006, unless reviewed and saved from repeal through
67 reenactment by the Legislature.
68 (2)(a) A meeting at which a negotiation with a vendor is
69 conducted pursuant to s. 287.057(3) is exempt from s. 286.011
70 and s. 24(b), Art. I of the State Constitution.
71 (b)1. A complete recording shall be made of any meeting
72 made exempt in paragraph (a). No portion of the meeting may be
73 held off the record.
74 2. The recording is exempt from s. 119.07(1) and s. 24(a),
75 Art. I of the State Constitution until such time as the agency
76 provides notice of a decision or intended decision pursuant to
77 s. 120.57(3)(a) or until 20 days after the final competitive
78 sealed replies are all opened, whichever occurs earlier.
79 3. If the agency rejects all sealed replies, the recording
80 remains exempt from s. 119.07(1) and s. 24(a), Art. I of the
81 State Constitution until such time as the agency provides notice
82 of a decision or intended decision pursuant to s. 120.57(3)(a)
83 concerning the reissued invitation to negotiate or until the

84 agency withdraws the reissued invitation to negotiate. A
85 recording is not exempt for longer than 12 months after the
86 initial agency notice rejecting all replies.
87 (c) This subsection is subject to the Open Government
88 Sunset Review Act in accordance with s. 119.15, and shall stand
89 repealed on October 2, 2011, unless reviewed and saved from
90 repeal through reenactment by the Legislature.
91 Section 3. (1) The Legislature finds that it is a public
92 necessity that sealed bids or proposals submitted in response to
93 an invitation to bid or requests for proposals that are rejected
94 by an agency be made exempt temporarily from public-records
95 requirements if the agency concurrently provides notice of its
96 intent to reissue the invitation to bid or request for
97 proposals. Such records will be made available when the agency
98 provides notice of a decision or intended decision, as required
99 under the Administrative Procedure Act, or if the agency
100 withdraws the reissued invitation to bid or request for
101 proposals. Temporarily protecting such information ensures that
102 the process of invitations to bid and requests for proposals
103 remains economical and equitable, while still preserving
104 oversight after an agency decision is made.
105 (2) The Legislature further finds that it is a public
106 necessity that a competitive sealed reply in response to an
107 invitation to negotiate be made exempt temporarily from public-
108 records requirements. In addition, a competitive sealed reply in
109 response to an invitation to negotiate which is rejected by an
110 agency should be made exempt temporarily from public-records
111 requirements if the agency concurrently provides notice of its
112 intent to reissue the invitation to negotiate. Such reply will
113 be made available when the agency provides notice of a decision
114 or intended decision, as required under the Administrative

115 Procedure Act, or if the agency withdraws the reissued
116 invitation to negotiate. Temporarily protecting such reply
117 ensures that the process of invitations to negotiate remains
118 economical and equitable, while still preserving oversight after
119 an agency decision is made.
120 (3) Additionally, the Legislature finds that it is a
121 public necessity that a meeting at which a negotiation with a
122 vendor is conducted pursuant to s. 287.057(3), Florida Statutes,
123 be made exempt from public-meetings requirements. Protecting
124 such meetings ensures that the process of invitations to
125 negotiate remains economical and equitable, while still
126 preserving oversight after an agency decision is made through
127 the requirement that a complete recording be made of those
128 meetings. Furthermore, the recording of that closed portion of
129 the meeting must be made exempt temporarily from public-records
130 requirements in order to preserve the purpose for the public-
131 meetings exemption. In addition, it is unfair and inequitable to
132 compel vendors to disclose during the negotiation process the
133 nature and details of their offers to competitors and to others
134 beyond the agency. Further, the Legislature finds that such
135 disclosure impedes full and frank discussion of the strength,
136 weakness, and value of an offer, thereby limiting the agency's
137 ability to obtain the best value for the state. The Legislature
138 also finds that it is unfair and inequitable to publicly discuss
139 and otherwise disclose negotiation strategies, assessment of
140 vendors' offers or positions, or the nature or details of
141 offers. The public and private harm stemming from these
142 practices outweighs the temporary delay in making meetings and
143 records related to the negotiation process open to the public.
144 Section 4. This act shall take effect upon becoming a law.
145

146 ========== T I T L E A M E N D M E N T ==========
147 Remove the entire title and insert:
148 A bill to be entitled
149 An act relating to public records and public meetings; amending
150 s. 119.071, F.S.; creating a temporary exemption from public-
151 records requirements for rejected bids and proposals received by
152 a state agency if the agency reissues the invitation to bid or
153 request for proposals; creating a temporary exemption for a
154 competitive sealed reply in response to an invitation to
155 negotiate; providing an extension of the temporary exemption if
156 the agency reissues the invitation to negotiate; amending s.
157 286.0113, F.S.; creating an exemption from public-meetings
158 requirements for a negotiation with a vendor; requiring a
159 recording of the meeting; temporarily exempting the recording
160 from disclosure; providing for future legislative review and
161 repeal of such exemption under the Open Government Sunset Review
162 Act; providing a statement of public necessity; providing an
163 effective date.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Needelman offered the following:
3
4 **Amendment**
5 Remove line(s) 771 - 847 and insert:
6
7 327.902 Powers and duties of department.--
8 (1) The department shall adopt rules by which the officers
9 of the patrol shall be examined, employed, trained, located,
10 suspended, reduced in rank, discharged, recruited, paid, and
11 pensioned, subject to civil service provisions hereinafter set
12 out.
13 (2) The department shall have the same powers and duties
14 regarding supplies and equipment for the patrol as are provided
15 for the Florida Highway Patrol in s. 321.02(3).
16 (3) The department shall prescribe a distinctive uniform
17 and distinctive emblem to be worn by all patrol officers. It
18 shall be unlawful for any other person or persons to wear a
19 similar uniform or emblem or any part or parts thereof. The
20 department shall also prescribe distinctive colors for use on
21 motor vehicles and vessels operated by the patrol. The

22 prescribed colors for the patrol shall be referred to as
23 "Florida Marine Patrol black and gray."
24 (4) The department may adopt rules under ss. 120.536(1)
25 and 120.54 to implement the provisions of this part conferring
26 powers and duties upon it.
27 Section 30. Section 327.903, Florida Statutes, is created
28 to read:
29 327.903 Imitations prohibited; penalty.--It shall be
30 unlawful for any person or persons in the state to color or
31 cause to be colored any motor vehicle, vessel, or motorcycle the
32 same or similar color as the color or colors so prescribed for
33 the patrol. Any person violating any of the provisions of this
34 section or s. 327.902 with respect to uniforms, emblems, motor
35 vehicles, vessels, and motorcycles commits a misdemeanor of the
36 first degree, punishable as provided in s. 775.082 or s.
37 775.083.
38 Section 31. Section 327.904, Florida Statutes, is created
39 to read:
40 327.904 Personnel.--
41 (1) The department shall employ patrol officers as
42 authorized by legislative appropriation, exclusive of those who
43 are assigned to and paid by special departments, and shall
44 establish the necessary supervisory ranks within the patrol to
45 efficiently supervise and carry out its functions and those of
46 the department in accordance with the personnel regulations of
47 the Department of Management Services. Management positions
48 shall not exceed 6 percent of the total workforce.
49 (2) Each person who is employed as a patrol officer shall
50 be carried on a probationary status for the period of 1 year
51 from date of employment, during which period he or she may be

52 dismissed without recourse. Patrol officers when sent on special
53 detail or missions out of their regular assigned territories or
54 headquarters shall be reimbursed for travel expenses as provided
55 in s. 112.061.
56 Section 32. Section 327.905, Florida Statutes, is created
57 to read:
58 327.905 Duties and powers of officers.--
59 (1) The patrol officers are declared to be conservators of
60 the peace and law enforcement officers of the state, with the
61 common-law right to arrest a person who, in the presence of the
62 arresting officer, commits a felony or commits an affray or
63 breach of the peace constituting a misdemeanor, with full power
64 to bear arms; and they shall apprehend, without warrant, any
65 person in the unlawful commission of any of the acts over which
66 the officers of the patrol are given jurisdiction as hereinafter
67 set out and deliver him or her to the sheriff of the county
68 wherein such unlawful act occurred in order that further
69 proceedings may be had against him or her according to law. In
70 the performance of any of the powers, duties, and functions
71 authorized by law, patrol officers shall have the same
72 protections and immunities afforded other peace officers, which
73 shall be recognized by all courts having jurisdiction over
74 offenses against the laws of this state, and shall have
75 authority to apply for, serve, and execute search warrants,
76 arrest warrants, capias, and other process of the court in those
77 matters in which patrol officers have primary responsibility as
78 set forth in paragraph (2)(a).
79 (2)(a) Patrol officers shall perform and exercise
80 throughout the state the duties, functions, and powers provided
81 in s. 20.60(3)(b) as required by the director.

82 (b) In addition, patrol officers shall have all duties and
83 powers as provided for the officers of the Florida Highway
84 Patrol in s. 321.05(2) and (3).
85

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1451**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Gannon offered the following:
3
4 **Title amendment**
5 Remove line(s) 4 and 5 and insert:
6 requirements for an individual's medical record or information
7 received from an individual from another state or nation or the
8 Federal Government that is otherwise confidential or exempt,
9 held by the Florida Center for Brain Tumor

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Grant offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Section 288.9623, Florida Statutes, is created
8 to read:
9 288.9623 Florida Opportunity Fund; public records
10 exemption.--
11 (1) As used in this paragraph, the term:
12 (a) "Alternative investment" means an investment by the
13 Florida Opportunity Fund in a private equity fund, venture fund,
14 or angel fund or a direct investment in a portfolio company
15 through a distribution of securities to its partners or
16 shareholders by an alternative investment vehicle.
17 (b) "Alternative investment vehicle" means the limited
18 partnership, limited liability company, or similar legal
19 structure through which the Florida Opportunity Fund invests in
20 a portfolio company.
21 (c) "Florida Opportunity Fund" means the Florida
22 Opportunity Fund authorized in s. 288.9621.

23

24 (d) "Portfolio company" means a corporation or other
25 issuer, any of whose securities are owned by an alternative
26 investment vehicle or the Florida Opportunity Fund and any
27 subsidiary of such corporation or other issuer.
28 (e) "Portfolio positions" means individual investments in
29 portfolio companies which are made by the alternative investment
30 vehicles, including information or specific investment terms
31 associated with any portfolio company investment.
32 (f) "Proprietor" means an alternative investment vehicle,
33 a portfolio company in which the alternative investment vehicle
34 is invested, or an outside consultant, including the respective
35 authorized officers, employees, agents, or successors in
36 interest, which controls or owns information provided to the
37 Florida Opportunity Fund.
38 (g)1. "Proprietary confidential business information"
39 means information that has been designated by the proprietor
40 when provided to the Florida Opportunity Fund as information
41 that is owned or controlled by a proprietor; that is intended to
42 be and is treated by the proprietor as private, the disclosure
43 of which would harm the business operations of the proprietor
44 and has not been intentionally disclosed by the proprietor
45 unless pursuant to a private agreement that provides that the
46 information will not be released to the public except as
47 required by law or legal process, or pursuant to law or an order
48 of a court or administrative body; and that concerns:
49 a. Trade secrets as defined in s. 688.002.
50 b. Information provided to the Florida Opportunity Fund
51 regarding a prospective investment in a private equity fund,
52 venture fund, angel fund, or portfolio company which is
53 proprietary to the provider of the information.

54 c. Financial statements and auditor reports of an
55 alternative investment vehicle.
56 d. Meeting materials of an alternative investment vehicle
57 relating to financial, operating, or marketing information of
58 the alternative investment vehicle.
59 e. Information regarding the portfolio positions in which
60 the alternative investment vehicles invest.
61 f. Capital call and distribution notices to investors of
62 an alternative investment vehicle.
63 g. Alternative investment agreements and related records.
64 h. Information concerning investors, other than the
65 Florida Opportunity Fund, in an alternative investment vehicle.
66 2. "Proprietary confidential business information" does
67 not include:
68 a. The name, address, and vintage year of an alternative
69 investment vehicle and the identity of the principals involved
70 in the management of the alternative investment vehicle.
71 b. The dollar amount of the commitment made by the Florida
72 Opportunity Fund to each alternative investment vehicle since
73 inception.
74 c. The dollar amount and date of cash contributions made
75 by the Florida Opportunity Fund to each alternative investment
76 vehicle since inception.
77 d. The dollar amount, on a fiscal-year-end basis, of cash
78 or other fungible distributions received by the Florida
79 Opportunity Fund from each alternative investment vehicle.
80 e. The dollar amount, on a fiscal-year-end basis, of cash
81 or other fungible distributions received by the Florida
82 Opportunity Fund plus the remaining value of alternative-vehicle
83 assets that are attributable to the Florida Opportunity Fund's
84 investment in each alternative investment vehicle.

85 f. The net internal rate of return of each alternative
86 investment vehicle since inception.
87 g. The investment multiple of each alternative investment
88 vehicle since inception.
89 h. The dollar amount of the total management fees and
90 costs paid on an annual fiscal-year-end basis by the Florida
91 Opportunity Fund to each alternative investment vehicle.
92 i. The dollar amount of cash profit received by the
93 Florida Opportunity Fund from each alternative investment
94 vehicle on a fiscal-year-end basis.
95 (2) Proprietary confidential business information held by
96 the Florida Opportunity Fund regarding alternative investments
97 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
98 I of the State Constitution for 10 years after the termination
99 of the alternative investment.
100 (3) Notwithstanding the provisions of subsection (2), a
101 request to inspect or copy a public record which contains
102 proprietary confidential business information shall be granted
103 if the proprietor of the information fails, within a reasonable
104 period of time after the request is received by the Florida
105 Opportunity Fund, to verify the following to the Florida
106 Opportunity Fund through a written declaration in the manner
107 provided by s. 92.525:
108 (a) That the requested record contains proprietary
109 confidential business information and the specific location of
110 such information within the record;
111 (b) If the proprietary confidential business information
112 is a trade secret, a verification that it is a trade secret as
113 defined in s. 688.002;
114 (c) That the proprietary confidential business information
115 is intended to be and is treated by the proprietor as private,

116 is the subject of efforts of the proprietor to maintain its
117 privacy, and is not readily ascertainable or publicly available
118 from any other source; and
119 (d) That the disclosure of the proprietary confidential
120 business information to the public would harm the business
121 operations of the proprietor.
122 (4)(a) Any person may petition a court of competent
123 jurisdiction for an order for the public release of those
124 portions of any record made confidential and exempt by
125 subparagraph 2.
126 (b) Any action under this subparagraph must be brought in
127 Orange County, Florida, and the petition or other initial
128 pleading shall be served on the Florida Opportunity Fund and, if
129 determinable upon diligent inquiry, on the proprietor of the
130 information sought to be released.
131 (c) In any order for the public release of a record under
132 this subsection, the court shall make a finding that:
133 1. The record or portion thereof is not a trade secret as
134 defined in s. 688.002;
135 2. A compelling public interest is served by the release
136 of the record or portions thereof which exceed the public
137 necessity for maintaining the confidentiality of such record;
138 and
139 3. The release of the record will not cause damage to or
140 adversely affect the interests of the proprietor of the released
141 information, other private persons or business entities, the
142 Florida Opportunity Fund, or any trust fund, the assets of which
143 are invested by the Florida Opportunity Fund.
144 (5) This section is subject to the Open Government Sunset
145 Review Act in accordance with s. 119.15 and shall stand repealed

146 on October 2, 2011, unless reviewed and saved from repeal
147 through reenactment by the Legislature.
148 Section 2. The Legislature finds that it is a public
149 necessity that proprietary confidential business information
150 held by the Florida Opportunity Fund regarding alternative
151 investments be held confidential and exempt from s. 119.07(1),
152 Florida Statutes, and s. 24(a), Art. I of the State Constitution
153 for 10 years after the termination of the alternative
154 investment. Disclosing proprietary confidential business
155 information, including trade secrets as defined in s. 688.002,
156 Florida Statutes, used in determining how private equity
157 investments are made or managed by private partnerships
158 investing assets on behalf of the Florida Opportunity Fund would
159 negatively affect the business interests of private partnerships
160 that rely heavily on their information advantage to generate
161 investment returns, and competitor partnerships could gain an
162 unfair competitive advantage if provided access to such
163 information. The release of proprietary confidential business
164 information, including trade secrets, revealing how alternative
165 investments are made could result in inadequate returns and
166 ultimately frustrate attainment of the investment objective of
167 the Florida Opportunity Fund. It is the Legislature's intent to
168 allow the public access to sufficient information in order to be
169 informed regarding the alternative investments of the Florida
170 Opportunity Fund and to balance the public's right to
171 information against the right of private business entities to be
172 protected from harmful disclosure of confidential and exempt
173 proprietary confidential business information, the disclosure of
174 which would injure them in the marketplace. It is also the
175 Legislature's intent to establish consistency with regard to the
176 classification of information relating to alternative

177 investments by the Florida Opportunity Fund as either
178 confidential or suitable for public disclosure. In finding that
179 the public records exemption created by this act is a public
180 necessity, the Legislature finds that the public and private
181 harm in disclosing proprietary confidential business information
182 relating to alternative investments by the Florida Opportunity
183 Fund significantly outweighs any public benefit derived from
184 disclosure; that the exemption created by this act will enhance
185 the ability of the Florida Opportunity Fund to fulfill its
186 duties as an investment fiduciary by making it more effective
187 and competitive in the marketplace as an investor that is able
188 to gain access to the best alternative investment vehicles; and
189 that the public's ability to be informed regarding the
190 alternative investments made by the Florida Opportunity Fund is
191 preserved by the disclosure of information excepted from the
192 created exemption.
193 Section 3. This act shall take effect July 1, 2006, if
194 House Bill 1467 or similar legislation is adopted in the same
195 legislative session or an extension thereof and becomes law.
196
197 ========== T I T L E A M E N D M E N T ==========
198 Remove the entire title and insert:
199 A bill to be entitled
200 An act relating to a public records; creating s. 288.9623, F.S.;
201 providing definitions; defining "proprietary confidential
202 business information" and specifying information which does not
203 constitute proprietary confidential business information;
204 creating an exemption from public records requirements for
205 proprietary confidential business information held by the
206 Florida Opportunity Fund regarding alternative investments;
207 providing for limited duration of the exemption; authorizing the

208 inspection and copying of confidential and exempt records if the
209 proprietor of the information fails to verify that a record
210 contains certain information within a specified period of time;
211 authorizing a court to order the release of confidential and
212 exempt records upon making certain findings; providing for
213 future review and repeal; providing a statement of public
214 necessity; providing a contingent effective date.