# Governmental Operations Committee

## Second Revised

**Wednesday, March 22, 2006**
**2:15 – 4:00 PM**
**Morris Hall**

**Allan Bense**
**Speaker**

**David Rivera**
**Chairman**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

## Governmental Operations Committee

| | |
|---|---|
| **Start Date and Time:** | Wednesday, March 22, 2006 02:15 pm |
| **End Date and Time:** | Wednesday, March 22, 2006 04:00 pm |
| **Location:** | Morris Hall (17 HOB) |
| **Duration:** | 1.75 hrs |

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

HB 381 Firefighter Pensions by Gibson, H.
HB 453 Designation of an Official State Pie of the State of Florida by Needelman
HB 493 CS Ethics for Public Officers and Employees by Ryan
HB 605 Public Records by Planas
HB 639 Building Designations by Kyle
HB 1059 Deduction and Collection of a Bargaining Agent's Dues and Uniform Assessments by Rivera
HB 1067 CS State Long-Term Care Ombudsman Progam by Grimsley
HB 1123 Government Accountability by Sansom, Rubio, Cannon
HB 1125 Public Records by Sansom, Rubio, Cannon
HB 1145 Official State Designations by Evers

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

PCB GO 06-04a -- OGSR Medical and Health Records
PCB GO 06-07a -- OGSR Communications Services Tax Simplification Law
PCB GO 06-14 -- OGSR Total Maximum Daily Loads
PCB GO 06-27 -- Strategic Asset Lands Management
PCB GO 06-31 -- Institute of Food & Agricultural Sciences Supplemental Retirement Program
PCB GO 06-35 -- Custodial Requirements for Public Records

**NOTICE FINALIZED on 03/20/2006 16:03 by TUCK.SHIRLEY**

HB 381

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 381 Firefighter Pensions
**SPONSOR(S):** Gibson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1380

| 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 requires certain community development districts that provide fire suppression and related services to establish a firefighters' pension trust fund.

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

This bill does not appear to have a fiscal impact on the local government revenues or expenditures of counties, municipalities, or special districts. The bill may have a fiscal impact on the revenues and expenditures of community development districts offering fire prevention and control.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill creates a firefighters' pension trust fund and board of trustees for each community development district providing fire suppression services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation – Community Development Districts

Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980, sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.[1] There are currently 381 active CDDs in Florida.[2]

Among the general powers granted to a CDD: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.[3]

CDDs also have special powers related to the following systems, facilities, and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.[4]

In addition, CDDs also can be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.[5]

HB 381 relates only to those CDDs that are providing "fire prevention and control" with the consent of the local government[6] ("Fire CDDs"). Information on how many Fire CDDs exist is not available from the Department of Management Services, the Special District Information Program of the Department of Community Affairs, or the State Fire Marshal. Thus, the number of Fire CDDs is unknown. It is estimated that only a small percentage of Fire CDDs exist.[7] The pay and benefits, including the type of pension plan, of any firefighter working for a Fire CDDs currently are determined by the Fire CDD.

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[1] Fla. Stat. § 190.002 (2005).
[2] Fla. Dep't of Comm'y Aff., Div. of Hous. and Comm'y Dev., Special Dist. Info. Program, *Create Your Own List of Special Districts* (search "community development" under "Functions to Include")(visited Mar. 14, 2005) <http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>.
[3] Fla. Stat. § 190.011 (2005).
[4] Fla. Stat. § 190.012(1) (2005).
[5] Fla. Stat. § 190.012(2) (2005).
[6] Fla. Stat. § 190.012(2)(b) (2005).
[7] Conversations and e-mails with attorneys representing CDDs (Jan. and Feb. 2005).

Present Situation – Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,[8] which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,[9] have pension plans pursuant to chapter 175, Florida Statutes.

Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act ("FPTFA").[10] The FPTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the FPTFA.[11] These plans had revenues of approximately $66,319,992 in 2004; $5,096,380 of those revenues were generated by special fire control districts.[12]

Section 175.032, Florida Statutes, provides the definitions for the FPTFA, including a definition for "special fire control district." This bill adds Fire CDDs to the definition of special fire control district. As a result, Fire CDDs which have a constituted fire department or an authorized volunteer fire department and the required equipment[13] will be bound by the FPTFA and must establish a special firefighters' pension trust fund for the firefighters.[14]

The following sources provide funding for the firefighters' pension trust fund:

- Payment from the "premium tax" - the net proceeds of the 1.85-percent excise upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies covering real or personal property within the legal boundaries of the Fire CDD;
- Payment of a designated percentage deducted from the salary of each uniformed firefighter;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;
- By mandatory payment from the Fire CDD of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, Florida Statutes;
- By all gifts, bequests, and devises when donated;
- By all increases in the fund by way of interest or dividends on bank deposits, or otherwise; and
- By all other sources or income now or hereafter authorized by law for the augmentation of such firefighters' pension trust fund.[15]

The Fire CDD also must create a board of trustees for the firefighters pension trust fund consisting of five members: two members must be legal residents of the Fire CDD and be appointed by the Fire CDD; two must be full-time firefighters elected by a majority of the active firefighters who are members

[8] Fla. Stat. § 175.041(1) (2005).
[9] Fla. Stat. § 175.041(2) (2005).
[10] Fla. Stat. § 175.025 (2005).
[11] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).
[12] *Id.*
[13] Fla. Stat. § 175.041(1) and (2) (2005).
[14] Fla. Stat. § 175.041(1) (2005).
[15] Fla. Stat. § 175.091 (2005).

of such plan; the fifth member must be chosen by a majority of the other four members.[16] This board of trustees must meet quarterly[17]

Among the powers of the board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.

The FPTFA provides requirements for the retirement,[18] disability,[19] death,[20] and presumed injuries[21] of Fire CDD firefighters under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter pension plan of a Fire CDD.[22] Actuarial deficits are not, however, obligations of the State of Florida.[23]

C. SECTION DIRECTORY:

Section 1 amends subsection (16) of section 175.032, Florida Statutes, to amend the definition of "special fire control district."

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 any state government revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on the local government revenues of counties, municipalities, or special districts. The bill may have a fiscal impact on the revenues of Fire CDDs.

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[16] Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.).
[17] Fla. Stat. § 175.061(3) (2005).
[18] Fla. Stat. § 175.162 (2005).
[19] Fla. Stat. § 175.191 (2005).
[20] Fla. Stat. § 175.201 (2005).
[21] Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal).
[22] Fla. Stat. § 175.341 (2005).
[23] Fla. Stat. § 175.051 (2005).

2. Expenditures:

This bill does not appear to have a fiscal impact on the local government expenditures of counties, municipalities, or special districts. The bill may have a fiscal impact on the expenditures of Fire CDDs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to section 175.101, Florida Statutes. These insurance companies may be impacted by the addition of a new entity authorized to receive these taxes.

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 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 municipalities have to raise revenue.

2. Other:

Benefit changes to the state retirement system are governed by section 14 of article X of the Florida Constitution. Changes to chapter 175, Florida Statutes, are not changes to the state retirement system as governed by this provision.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Authority to Collect the Tax on Property Insurance Premiums

One of the funding mechanisms provided for firefighters pension trust funds is the premium tax authorized under section 175.101(1), Florida Statutes. The Department of Management Services has suggested that chapter 190, Florida Statutes, which governs CDDs, may need to be amended to give CDDs the authority to levy the premium tax.[24] Although the language which provides that a Fire CDD "may assess and impose" the premium tax seems sufficient, the sponsor may wish to consider an amendment to section 190.011, Florida Statutes:

> (17) To assess and impose the state excise tax authorized under s. 175.101, if exercising the powers permitted under s. 190.12(2)(b).

Drafting Issue: Different Types of Districts

CDDs and special fire control districts are different types of independent special districts which are governed by two different chapters of the Florida Statutes: chapter 190 and chapter 191, respectively. This bill, however, includes certain CDDs in the definition of special fire control district for purposes of chapter 175. Given the different legal and statutory status of these two types of districts, it would be

[24] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).

better to define and provide for CDDs throughout the chapter. Yet, given the unknown and expected low number of Fire CDDs, such considerable amendment to chapter 175, Florida Statutes, may not be warranted.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to firefighter pensions; amending s.
3 175.032, F.S.; revising the definition of the term
4 "special fire control district" to include certain
5 community development districts performing fire
6 suppression and related services; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (16) of section 175.032, Florida
12 Statutes, is amended to read:
13 175.032 Definitions.--For any municipality, special fire
14 control district, chapter plan, local law municipality, local
15 law special fire control district, or local law plan under this
16 chapter, the following words and phrases have the following
17 meanings:
18 (16) "Special fire control district" means a special
19 district, as defined in s. 189.403(1), established for the
20 purposes of extinguishing fires, protecting life, and protecting
21 property within the incorporated or unincorporated portions of
22 any county or combination of counties, or within any combination
23 of incorporated and unincorporated portions of any county or
24 combination of counties. <u>The term includes community development</u>
25 <u>districts providing fire suppression and related services</u>
26 <u>pursuant to s. 190.012(2)(b).</u> The term does not include any
27 dependent or independent special district, as defined in s.
28 189.403(2) and (3), respectively, the employees of which are

29 members of the Florida Retirement System pursuant to s.
30 121.051(1) or (2).
31 Section 2. This act shall take effect July 1, 2006.

HB 453

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 453 Designation of an Official State Pie of the State of Florida
**SPONSOR(S):** Needelman and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 676

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

## SUMMARY ANALYSIS


Current law provides 32 state designations such as the state beverage, the state shell, and the state butterfly. Florida does not, however, have a designation for a state pie. HB 453 designates the Key Lime Pie as the official state pie.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 15, F.S., designates official state emblems. It contains 32 state designations. Examples include the state beverage, state shell, state stone, and state butterfly.[1] Current law does not contain a designation for the state pie. In 1994, House Resolution 2485 was adopted. It recognized the Key Lime Pie as an important symbol of Florida.

Proposed Changes

The bill designates the Key Lime Pie as the official state pie of Florida.

C. SECTION DIRECTORY:

Section 1 creates s. 15.0321, F.S., to designate the Key Lime Pie as the official state pie of Florida.

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 create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

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

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 local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] These include the state: flag, seal, tree, fruit, beverage, citrus archive, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museums, soil, fiddle contest, band, and Sports Hall of Fame.

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 to take 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 municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Past Legislation
In 1988, HB 245, which designated the Key Lime Pie as the official state pie, passed the House by a vote of 107 to three; however, the bill died in the Senate.

Other Comments – Other States
Vermont is the only state with a designation for a state pie. Georgia adopted a resolution in 1996 that designated "Mattie's Bistro and Bakery's pecan pie" as the official pie;[2] however, to date, Georgia has not designated the pecan pie as the official state pie.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[2] House Resolution 1137, Georgia House of Representatives. 1996.

1 A bill to be entitled
2 An act relating to the designation of an official state
3 pie of the State of Florida; creating s. 15.0321, F.S.;
4 designating the Key Lime Pie as the official state pie;
5 providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 15.0321, Florida Statutes, is created
10 to read:
11 15.0321 Official state pie.--The Key Lime Pie is
12 designated as the official state pie of Florida.
13 Section 2. This act shall take effect July 1, 2006.

HB 493 CS

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 493 CS Ethics for Public Officers and Employees
**SPONSOR(S):** Ryan
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Ethics & Elections Committee | 10 Y, 0 N, w/CS | Shaffer | Mitchell |
| 2) Governmental Operations Committee | | Williamson | Williamson |
| 3) Fiscal Council | | | |
| 4) State Administration Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill clarifies and revises portions of the Code of Ethics of the State of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials. The bill:

- Prohibits government employees from working in political campaigns.
- Allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. However, no former employee may immediately lobby on a matter in which the employee participated while employed by a government agency.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment by July 1.
- Allows the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allows unemployed state employees to work for the private entity who assumes the employees' former duties.
- Increases the rulemaking authority of the Commission on Ethics (commission).
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine until the fine is paid or waived.
- Prohibits agency employees who participated personally and substantially on a matter from representing or advising any entity other than the state for compensation.

The bill also entitles a witness required to travel outside the county of his or her residence in order to testify before the commission to per diem and travel expenses at the same rate as state employees. Thus, the bill will have a fiscal impact on state government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill increases the rulemaking authority of the commission.

**Promote Personal Responsibility** – The bill requires principled behavior by those serving in the public sector.

B. EFFECT OF PROPOSED CHANGES:

**Background**

The Code of Ethics for Public Officers and Employees (code)[1] sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives of the code:

- Requires that the law protect against any conflict of interest and that it establish standards for the conduct of elected officials and government employees.
- Recognizes that government must attract those citizens best qualified to serve.[2]
- Provides that it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions be disclosed to the public in order to preserve and maintain the integrity of the government process.

It is the policy of the state that no officer or employee of the state, a local government, or the Legislature have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature that is in substantial conflict with the proper discharge of his or her duties.[3] Public officers and employees of the state or of a local government are agents of the people and hold their positions for the benefit of the public. Such persons are bound to observe, in their official acts, the highest standards of ethics consistent with the code regardless of personal considerations.[4]

A person elected to any county, municipality, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of two years after vacating that office.[5] This only applies to former office holders lobbying current office holders. Public officers, agency employees, and local government attorneys also are barred from disclosing or using information not available to the public and gained because of that person's official position, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.[6]

Office holders must file yearly statements of their personal financial interests. The failure to file a timely report results in a fine of $25 per day, with a maximum aggregate penalty of $1,500. Any reporting person may appeal or dispute a fine, and may base that appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a

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[1] Chapter 112, Part III, F.S.
[2] Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.
[3] Section 112.311(5), F.S.
[4] Section 112.311(6), F.S.
[5] Section 112.313, F.S.
[6] *Id.*

hearing before the Commission on Ethics (commission), which is permitted to waive the fine in whole or in part for good cause shown.[7]

The commission has the duty of receiving and investigating sworn complaints of violations of the code. The commission is authorized only to investigate alleged violations of the code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person.[8] The commission has the power to subpoena witnesses.[9] Violations of any provision of the code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.[10]

HB 1377 CS, which was similar to the current bill, passed the Legislature in 2005 and was vetoed by the Governor.[11] This bill attempts to address the Governor's concerns.

**Effects of Proposed Changes**

The bill prohibits all state and political subdivision employees from participating in a political campaign for an elective office while on duty.

The bill amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it does not apply to information relating exclusively to governmental practices.

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency. It allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. However, no former employee may immediately lobby on a matter in which the employee participated while employed by a government agency. The bill also clarifies that the revolving door prohibition against representing a client before one's former agency applies to other-personal-services (OPS) employees.

Conflict of interest disclosure statements (applicable for competitive bidding) must be filed with the commission instead of the Department of State. Local elected officials are prohibited from personally representing another person or entity for compensation before the agency for which they were an officer of for two years after leaving office.

The certified reminder mailing sent in July of each year by the supervisor of elections must have a return receipt. This allows the commission to determine whether the mailing was actually received and by whom. The bill also allows the commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

By October 1 of each year, all supervisors of election must certify to the commission a list of names and addresses of all persons failing to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides that a $1,500 limitation on automatic fines for

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[7] Section 112.3145, F.S.
[8] Section 112.324, F.S.
[9] Section 112.322, F.S.
[10] Section 112.317, F.S.
[11] The Governor's veto message stated "the bill contains ambiguous language that could unduly punish state employees who seek to transition to the private sector . . . Government employees come into contact daily with actions and issues with which they are not necessarily actively engaged on behalf of the agency; they should not be restricted from future employment in these tangential subject matters as a result. This legislation could have a draconian impact on the ability of State to recruit employees who eventually aspire to return to the private sector. I am also concerned by a provision in the bill that carves out an exemption to lobbying laws for a handful of state employees . . . Florida's lobbying laws should be applied uniformly. Creating exemptions sets a bad precedent." Veto letter by Governor Bush, HB 1377, June 15, 2005.

failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline.

The bill requires the filing of gift disclosure forms for the last portion of one's term of office or employment, and allows quarterly gift disclosure forms to be considered timely filed if postmarked on or before the due date. Honorarium-expense disclosure forms must be filed for the last portion of one's term of office or employment.

The bill authorizes an agency to receive restitution, paid by the violator, rather than to the state only. Further, when the Attorney General is required to collect a penalty through a civil action in court, the Attorney General's costs and fees of collecting such penalty are assessed against the violator. It authorizes the commission to recommend payment of any restitution penalty to the agency where the employee worked, where the officer was deemed an employee, or to the General Revenue Fund.

The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this section provided that breaching confidentiality of an ethics proceeding was a misdemeanor).

The bill eases existing post-employment restrictions for state employees whose jobs are privatized and who are employed by that private entity. It prohibits executive branch employees from leaving government and representing a client before their former agency in connection with the same matter in which they participated personally and substantially while an agency employee. The bill prohibits a former agency employee from representing or advising for compensation any entity, other than the state, in any matter in which the employee participated personally and substantially.

The bill prohibits an individual who qualifies as a lobbyist under ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance from serving on the commission except for those individuals who are members of the commission on October 1, 2006, until the expiration of their current term. A member of the commission may not lobby any state or local government entity as provided by ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance. The same exception applies.

The bill increases the commission's rule-making authority regarding the grounds for waiving a fine and the procedure for appealing that fine.

A witness required by the commission to testify outside the county of his or her residence is entitled to per diem and travel expenses reimbursed at the state rate.

Finally, the bill provides that an official investigation includes an investigation instituted by the commission and that an official proceeding includes a proceeding before the commission.

C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting employees of the state and its political subdivisions from participating in a political campaign, for which there are penalties.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., specifying how a reporting individual reports assets valued in excess of a specified amount.

Section 4 amends s. 112.3145, F.S., requiring that a delinquency notice be sent to certain officeholders by certified mail, return receipt requested.

Section 5 amends s. 112.3147, F.S., deleting provisions relating to the reporting of assets valued in excess of a specified amount, to conform.

Section 6 amends s. 112.3148, F.S., regarding filing a report relating to gifts.

Section 7 amends s. 112.3149, F.S., requiring the filing of a report of honoraria by a specified date.

Section 8 amends s. 112.317, F.S., regarding penalties.

Section 9 amends s. 112.3185, F.S., providing additional standards for state agency employees relating to procurement of goods and services by a state agency.

Section 10 amends s. 112.321, F.S., prohibiting an individual who qualifies as a lobbyist from serving on the commission; prohibiting a member of the commission from lobbying any state or local governmental entity; providing exceptions.

Section 11 amends s. 112.3215, F.S., increasing the rulemaking authority of the commission.

Section 12 amends s. 112.322, F.S., authorizing travel and per diem expenses for certain witnesses.

Section 13 amends s. 914.21, F.S., amending definitions.

Section 14 provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   An officer or employee violating ch. 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay the penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

2. Expenditures:

   A witness, required to travel outside the county of his or her residence in order to testify before the commission, is entitled to per diem and travel expenses at the same rate as state employees.

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 revenue source.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate, though probably not significant.

## 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:

None.

B. RULE-MAKING AUTHORITY:

The bill increases the rulemaking authority of the commission. The commission must adopt rules to provide grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law already authorizes the commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Ethics & Elections Committee adopted an amendment to the bill on January 25, 2006. The amendment changes section 112.3215, F.S., so that it tracks similar language in section 11.045, F.S., which was added by SB 6-B during Special Session 2005 B. HB 493 had been filed before SB 6-B was enacted.

The amendment further amends subsection (5) of section 112.3215, F.S., to clarify that lobbyist registrations for all "partners, owners, officers, or employees" are automatically suspended until a fine is paid or waived.

CHAMBER ACTION

1 The Ethics & Elections 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 ethics for public officers and
7 employees; amending s. 104.31, F.S.; prohibiting employees
8 of the state and its political subdivisions from
9 participating in a political campaign, for which there are
10 penalties; amending s. 112.313, F.S.; prohibiting certain
11 disclosures by a former public officer, agency employee,
12 or local government attorney, for which there are
13 penalties; redefining the term "employee" to include
14 certain other-personal-services employees for certain
15 postemployment activities; exempting certain agency
16 employees from applicability of postemployment
17 restrictions; providing an exemption from provisions
18 prohibiting conflicts in employment to a person who, after
19 serving on an advisory board, files a statement with the
20 Commission on Ethics relating to a bid or submission;
21 amending s. 112.3144, F.S.; specifying how assets valued
22 in excess of a specified amount are to be reported by a
23 reporting individual; amending s. 112.3145, F.S.;

24 requiring that a delinquency notice be sent to certain
25 officeholders by certified mail, return receipt requested;
26 amending s. 112.3147, F.S.; deleting provisions relating
27 to the reporting of assets valued in excess of a specified
28 amount, to conform; amending s. 112.3148, F.S.; providing
29 requirements for persons who have left office or
30 employment as to filing a report relating to gifts;
31 providing requirements relating to the deadline for and
32 timeliness of gift reports; amending s. 112.3149, F.S.;
33 requiring that a report of honoraria by a person who left
34 office or employment be filed by a specified date;
35 amending s. 112.317, F.S.; authorizing the commission to
36 recommend a restitution penalty be paid to the agency of
37 which the public officer was a member or by which the
38 public employee was employed or to the General Revenue
39 Fund; authorizing the Attorney General to recover costs
40 for filing suit to collect penalties and fines; deleting
41 provisions imposing a penalty for the disclosure of
42 information concerning a complaint or an investigation;
43 amending s. 112.3185, F.S.; providing additional standards
44 for state agency employees relating to procurement of
45 goods and services by a state agency; authorizing an
46 employee whose position was eliminated to engage in
47 certain contractual activities; prohibiting former
48 employees from certain specified activities; amending s.
49 112.321, F.S.; prohibiting an individual who qualifies as
50 a lobbyist from serving on the commission; prohibiting a
51 member of the commission from lobbying any state or local

52 governmental entity; providing exceptions for individuals
53 who are members of the commission on the effective date of
54 the act until the expiration of their current terms;
55 amending s. 112.3215, F.S.; requiring the commission to
56 adopt a rule detailing the grounds for waiving a fine and
57 the procedures to be followed when a lobbyist fails to
58 timely file his or her report; requiring automatic
59 suspension of certain lobbyist registrations if the fine
60 is not timely paid; requiring the commission to provide
61 written notice to any lobbyist whose registration is
62 automatically suspended; amending s. 112.322, F.S.;
63 authorizing travel and per diem expenses for certain
64 witnesses; amending s. 914.21, F.S.; redefining the terms
65 "official investigation" and "official proceeding," for
66 purposes of provisions relating to tampering with
67 witnesses, to include an investigation by the commission;
68 providing an effective date.
69
70 Be It Enacted by the Legislature of the State of Florida:
71
72 Section 1. Present subsections (2) and (3) of section
73 104.31, Florida Statutes, are renumbered as subsections (3) and
74 (4), respectively, and a new subsection (2) is added to that
75 section to read:
76 104.31 Political activities of state, county, and
77 municipal officers and employees.--

78 (2) An employee of the state or any political subdivision
79 may not participate in any political campaign for an elective
80 office while on duty.
81 Section 2. Subsection (8), paragraph (a) of subsection
82 (9), paragraph (b) of subsection (12), and subsection (14) of
83 section 112.313, Florida Statutes, are amended to read:
84 112.313 Standards of conduct for public officers,
85 employees of agencies, and local government attorneys.--
86 (8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--No current
87 or former public officer, employee of an agency, or local
88 government attorney shall disclose or use information not
89 available to members of the general public and gained by reason
90 of his or her official position, except for information relating
91 exclusively to governmental practices, for his or her personal
92 gain or benefit or for the personal gain or benefit of any other
93 person or business entity.
94 (9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR
95 LEGISLATORS AND LEGISLATIVE EMPLOYEES.--
96 (a)1. It is the intent of the Legislature to implement by
97 statute the provisions of s. 8(e), Art. II of the State
98 Constitution relating to legislators, statewide elected
99 officers, appointed state officers, and designated public
100 employees.
101 2. As used in this paragraph:
102 a. "Employee" means:
103 (I) Any person employed in the executive or legislative
104 branch of government holding a position in the Senior Management
105 Service as defined in s. 110.402 or any person holding a

106 position in the Selected Exempt Service as defined in s. 110.602
107 or any person having authority over policy or procurement
108 employed by the Department of the Lottery.
109 (II) The Auditor General, the director of the Office of
110 Program Policy Analysis and Government Accountability, the
111 Sergeant at Arms and Secretary of the Senate, and the Sergeant
112 at Arms and Clerk of the House of Representatives.
113 (III) The executive director of the Legislative Committee
114 on Intergovernmental Relations and the executive director and
115 deputy executive director of the Commission on Ethics.
116 (IV) An executive director, staff director, or deputy
117 staff director of each joint committee, standing committee, or
118 select committee of the Legislature; an executive director,
119 staff director, executive assistant, analyst, or attorney of the
120 Office of the President of the Senate, the Office of the Speaker
121 of the House of Representatives, the Senate Majority Party
122 Office, Senate Minority Party Office, House Majority Party
123 Office, or House Minority Party Office; or any person, hired on
124 a contractual basis, having the power normally conferred upon
125 such persons, by whatever title.
126 (V) The Chancellor and Vice Chancellors of the State
127 University System; the general counsel to the Board of Regents;
128 and the president, vice presidents, and deans of each state
129 university.
130 (VI) Any person, including an other-personal-services
131 employee, having the power normally conferred upon the positions
132 referenced in this sub-subparagraph.

133 b. "Appointed state officer" means any member of an
134 appointive board, commission, committee, council, or authority
135 of the executive or legislative branch of state government whose
136 powers, jurisdiction, and authority are not solely advisory and
137 include the final determination or adjudication of any personal
138 or property rights, duties, or obligations, other than those
139 relative to its internal operations.
140 c. "State agency" means an entity of the legislative,
141 executive, or judicial branch of state government over which the
142 Legislature exercises plenary budgetary and statutory control.
143 3. No member of the Legislature, appointed state officer,
144 or statewide elected officer shall personally represent another
145 person or entity for compensation before the government body or
146 agency of which the individual was an officer or member for a
147 period of 2 years following vacation of office. No member of the
148 Legislature shall personally represent another person or entity
149 for compensation during his or her term of office before any
150 state agency other than judicial tribunals or in settlement
151 negotiations after the filing of a lawsuit.
152 4. No agency employee shall personally represent another
153 person or entity for compensation before the agency with which
154 he or she was employed for a period of 2 years following
155 vacation of position, unless employed by another agency of state
156 government.
157 5. Any person violating this paragraph shall be subject to
158 the penalties provided in s. 112.317 and a civil penalty of an
159 amount equal to the compensation which the person receives for
160 the prohibited conduct.

161 6. This paragraph is not applicable to:
162 a. A person employed by the Legislature or other agency
163 prior to July 1, 1989;
164 b. A person who was employed by the Legislature or other
165 agency on July 1, 1989, whether or not the person was a defined
166 employee on July 1, 1989;
167 c. A person who was a defined employee of the State
168 University System or the Public Service Commission who held such
169 employment on December 31, 1994;
170 d. A person who has reached normal retirement age as
171 defined in s. 121.021(29), and who has retired under the
172 provisions of chapter 121 by July 1, 1991; ~~or~~
173 e. Any appointed state officer whose term of office began
174 before January 1, 1995, unless reappointed to that office on or
175 after January 1, 1995; or~~.~~
176 f. An agency employee who continuously has held a position
177 that was transferred from the Career Service System to the
178 Selected Exempt Service System under chapter 2001-43, Laws of
179 Florida, until leaving state employment.
180 (12) EXEMPTION.--The requirements of subsections (3) and
181 (7) as they pertain to persons serving on advisory boards may be
182 waived in a particular instance by the body which appointed the
183 person to the advisory board, upon a full disclosure of the
184 transaction or relationship to the appointing body prior to the
185 waiver and an affirmative vote in favor of waiver by two-thirds
186 vote of that body. In instances in which appointment to the
187 advisory board is made by an individual, waiver may be effected,
188 after public hearing, by a determination by the appointing

189 person and full disclosure of the transaction or relationship by
190 the appointee to the appointing person. In addition, no person
191 shall be held in violation of subsection (3) or subsection (7)
192 if:
193 (b) The business is awarded under a system of sealed,
194 competitive bidding to the lowest or best bidder and:
195 1. The official or the official's spouse or child has in
196 no way participated in the determination of the bid
197 specifications or the determination of the lowest or best
198 bidder;
199 2. The official or the official's spouse or child has in
200 no way used or attempted to use the official's influence to
201 persuade the agency or any personnel thereof to enter such a
202 contract other than by the mere submission of the bid; and
203 3. The official, prior to or at the time of the submission
204 of the bid, has filed a statement with the Commission on Ethics
205 ~~Department of State~~, if the official is a state officer or
206 employee, or with the supervisor of elections of the county in
207 which the agency has its principal office, if the official is an
208 officer or employee of a political subdivision, disclosing the
209 official's interest, or the interest of the official's spouse or
210 child, and the nature of the intended business.
211 (14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.--A
212 person who has been elected to any county, municipal, special
213 district, or school district office may not personally represent
214 another person or entity for compensation before the government
215 ~~governing~~ body or agency of which the person was an officer for
216 a period of 2 years after vacating that office.

217 Section 3. Present subsections (4), (5), and (6) of
218 section 112.3144, Florida Statutes, are renumbered as
219 subsections (5), (6), and (7), respectively, paragraph (g) of
220 present subsection (4) is amended, and a new subsection (4) is
221 added to that section, to read:
222 112.3144 Full and public disclosure of financial
223 interests.--
224 (4)(a) With respect to reporting, on forms prescribed
225 under this section, assets valued in excess of $1,000 that the
226 reporting individual holds jointly with another person, the
227 amount reported shall be based on the reporting individual's
228 legal percentage of ownership in the property. However, assets
229 that are held jointly with right of survivorship must be
230 reported at 100 percent of the value of the asset. For purposes
231 of this subsection, a reporting individual is deemed to own a
232 percentage of a partnership that is equal to the reporting
233 individual's interest in the capital or equity of the
234 partnership.
235 (b)1. With respect to reporting, on forms prescribed under
236 this section, liabilities valued in excess of $1,000 for which
237 the reporting individual is jointly and severally liable, the
238 amount reported shall be based on the reporting individual's
239 percentage of liability rather than the total amount of the
240 liability. However, liability for a debt that is secured by
241 property owned by the reporting individual but that is held
242 jointly with right of survivorship must be reported at 100
243 percent of the total amount owed.

244 2. A separate section of the form shall be created to
245 provide for the reporting of the amounts of joint and several
246 liability of the reporting individual not otherwise reported in
247 subparagraph 1.
248 (5) ~~(4)~~ Forms for compliance with the full and public
249 disclosure requirements of s. 8, Art. II of the State
250 Constitution shall be created by the Commission on Ethics. The
251 commission shall give notice of disclosure deadlines and
252 delinquencies and distribute forms in the following manner:
253 (g) The notification requirements and fines of this
254 subsection do not apply to candidates or to the first filing
255 required of any person appointed to elective constitutional
256 office or other position required to file full and public
257 disclosure, unless the person's name is on the commission's
258 notification list and the person received notification from the
259 commission. The appointing official shall notify such newly
260 appointed person of the obligation to file full and public
261 disclosure by July 1. The notification requirements and fines of
262 this subsection do not apply to the final filing provided for in
263 subsection (6) ~~(5)~~.
264 Section 4. Paragraph (c) of subsection (6) of section
265 112.3145, Florida Statutes, is amended to read:
266 112.3145 Disclosure of financial interests and clients
267 represented before agencies.--
268 (6) Forms for compliance with the disclosure requirements
269 of this section and a current list of persons subject to
270 disclosure shall be created by the commission and provided to
271 each supervisor of elections. The commission and each supervisor

272 of elections shall give notice of disclosure deadlines and
273 delinquencies and distribute forms in the following manner:
274 (c) Not later than 30 days after July 1 of each year, the
275 commission and each supervisor of elections shall determine
276 which persons required to file a statement of financial
277 interests in their respective offices have failed to do so and
278 shall send delinquency notices by certified mail, return receipt
279 requested, to these ~~such~~ persons. Each notice shall state that a
280 grace period is in effect until September 1 of the current year;
281 that no investigative or disciplinary action based upon the
282 delinquency will be taken by the agency head or commission if
283 the statement is filed by September 1 of the current year; that,
284 if the statement is not filed by September 1 of the current
285 year, a fine of $25 for each day late will be imposed, up to a
286 maximum penalty of $1,500; for notices sent by a supervisor of
287 elections, that he or she is required by law to notify the
288 commission of the delinquency; and that, if upon the filing of a
289 sworn complaint the commission finds that the person has failed
290 to timely file the statement within 60 days after September 1 of
291 the current year, such person will also be subject to the
292 penalties provided in s. 112.317.
293 Section 5. Section 112.3147, Florida Statutes, is amended
294 to read:
295 112.3147 Forms.--
296 ~~(1)~~ All information required to be furnished by ss.
297 112.313, 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149
298 and by s. 8, Art. II of the State Constitution shall be on forms
299 prescribed by the Commission on Ethics.

300 ~~(2)(a) With respect to reporting assets valued in excess~~
301 ~~of $1,000 on forms prescribed pursuant to s. 112.3144 which the~~
302 ~~reporting individual holds jointly with another person, the~~
303 ~~amount reported shall be based on the reporting individual's~~
304 ~~legal percentage of ownership in the property, except that~~
305 ~~assets held jointly with the reporting individual's spouse shall~~
306 ~~be reported at 100 percent of the value of the asset. For~~
307 ~~purposes of this subsection, a reporting individual is deemed to~~
308 ~~own an interest in a partnership which corresponds to the~~
309 ~~reporting individual's interest in the capital or equity of the~~
310 ~~partnership.~~
311 ~~(b)1. With respect to reporting liabilities valued in~~
312 ~~excess of $1,000 on forms prescribed pursuant to s. 112.3144 for~~
313 ~~which the reporting individual is jointly and severally liable,~~
314 ~~the amount reported shall be based upon the reporting~~
315 ~~individual's percentage of liability rather than the total~~
316 ~~amount of the liability, except, a joint and several liability~~
317 ~~with the reporting individual's spouse for a debt which relates~~
318 ~~to property owned by both as tenants by the entirety shall be~~
319 ~~reported at 100 percent of the total amount owed.~~
320 ~~2. A separate section of the form shall be created to~~
321 ~~provide for the reporting of the amounts of joint and several~~
322 ~~liability of the reporting individual not otherwise reported in~~
323 ~~paragraph (a).~~
324 Section 6. Paragraph (d) of subsection (6) and subsection
325 (8) of section 112.3148, Florida Statutes, are amended to read:

326 112.3148 Reporting and prohibited receipt of gifts by
327 individuals filing full or limited public disclosure of
328 financial interests and by procurement employees.--
329 (6)
330 (d) No later than July 1 of each year, each reporting
331 individual or procurement employee shall file a statement
332 listing each gift having a value in excess of $100 received by
333 the reporting individual or procurement employee, either
334 directly or indirectly, from a governmental entity or a direct-
335 support organization specifically authorized by law to support a
336 governmental entity. The statement shall list the name of the
337 person providing the gift, a description of the gift, the date
338 or dates on which the gift was given, and the value of the total
339 gifts given during the calendar year for which the report is
340 made. The reporting individual or procurement employee shall
341 attach to the ~~such~~ statement any report received by him or her
342 in accordance with paragraph (c), which report shall become a
343 public record when filed with the statement of the reporting
344 individual or procurement employee. The reporting individual or
345 procurement employee may explain any differences between the
346 report of the reporting individual or procurement employee and
347 the attached reports. The annual report filed by a reporting
348 individual shall be filed with the financial disclosure
349 statement required by either s. 8, Art. II of the State
350 Constitution or s. 112.3145, as applicable to the reporting
351 individual. The annual report filed by a procurement employee
352 shall be filed with the Commission on Ethics. The report filed
353 by a reporting individual or procurement employee who left

354 office or employment during the calendar year covered by the
355 report shall be filed by July 1 of the year after leaving office
356 or employment at the same location as his or her final financial
357 disclosure statement or, in the case of a former procurement
358 employee, with the Commission on Ethics.
359 (8)(a) Each reporting individual or procurement employee
360 shall file a statement with the Commission on Ethics not later
361 than ~~on~~ the last day of each calendar quarter, for the previous
362 calendar quarter, containing a list of gifts which he or she
363 believes to be in excess of $100 in value, if any, accepted by
364 him or her, for which compensation was not provided by the donee
365 to the donor within 90 days of receipt of the gift to reduce the
366 value to $100 or less, except the following:
367 1. Gifts from relatives.
368 2. Gifts prohibited by subsection (4) or s. 112.313(4).
369 3. Gifts otherwise required to be disclosed by this
370 section.
371 (b) The statement shall include:
372 1. A description of the gift, the monetary value of the
373 gift, the name and address of the person making the gift, and
374 the dates thereof. If any of these facts, other than the gift
375 description, are unknown or not applicable, the report shall so
376 state.
377 2. A copy of any receipt for such gift provided to the
378 reporting individual or procurement employee by the donor.
379 (c) The statement may include an explanation of any
380 differences between the reporting individual's or procurement
381 employee's statement and the receipt provided by the donor.

382 (d) The reporting individual's or procurement employee's
383 statement shall be sworn to by such person as being a true,
384 accurate, and total listing of all such gifts.
385 (e) Statements must be filed not later than 5 p.m. on the
386 due date. However, any statement that is postmarked by the
387 United States Postal Service by midnight on the due date is
388 deemed to have been filed in a timely manner, and a certificate
389 of mailing obtained from and dated by the United States Postal
390 Service at the time of the mailing, or a receipt from an
391 established courier company that bears a date on or before the
392 due date, constitutes proof of mailing in a timely manner.
393 (f) ~~(e)~~ If a reporting individual or procurement employee
394 has not received any gifts described in paragraph (a) during a
395 calendar quarter, he or she is not required to file a statement
396 under this subsection for that calendar quarter.
397 Section 7. Subsection (6) of section 112.3149, Florida
398 Statutes, is amended to read:
399 112.3149 Solicitation and disclosure of honoraria.--
400 (6) A reporting individual or procurement employee who
401 receives payment or provision of expenses related to any
402 honorarium event from a person who is prohibited by subsection
403 (4) from paying an honorarium to a reporting individual or
404 procurement employee shall publicly disclose on an annual
405 statement the name, address, and affiliation of the person
406 paying or providing the expenses; the amount of the honorarium
407 expenses; the date of the honorarium event; a description of the
408 expenses paid or provided on each day of the honorarium event;
409 and the total value of the expenses provided to the reporting

410 individual or procurement employee in connection with the
411 honorarium event. The annual statement of honorarium expenses
412 shall be filed by July 1 of each year for those ~~such~~ expenses
413 received during the previous calendar year. The reporting
414 individual or procurement employee shall attach to the annual
415 statement a copy of each statement received by him or her in
416 accordance with subsection (5) regarding honorarium expenses
417 paid or provided during the calendar year for which the annual
418 statement is filed. The ~~Such~~ attached statement shall become a
419 public record upon the filing of the annual report. The annual
420 statement of a reporting individual shall be filed with the
421 financial disclosure statement required by either s. 8, Art. II
422 of the State Constitution or s. 112.3145, as applicable to the
423 reporting individual. The annual statement of a procurement
424 employee shall be filed with the Commission on Ethics. The
425 statement filed by a reporting individual or procurement
426 employee who left office or employment during the calendar year
427 covered by the statement shall be filed by July 1 of the year
428 after leaving office or employment at the same location as his
429 or her final financial disclosure statement or, in the case of a
430 former procurement employee, with the Commission on Ethics.
431 Section 8. Subsections (1), (2), (6), (7), and (8) of
432 section 112.317, Florida Statutes, are amended to read:
433 112.317 Penalties.--
434 (1) Violation of any provision of this part, including,
435 but not limited to, any failure to file any disclosures required
436 by this part or violation of any standard of conduct imposed by
437 this part, or violation of any provision of s. 8, Art. II of the

438 State Constitution, in addition to any criminal penalty or other
439 civil penalty involved, shall, under ~~pursuant to~~ applicable
440 constitutional and statutory procedures, constitute grounds for,
441 and may be punished by, one or more of the following:
442 (a) In the case of a public officer:
443 1. Impeachment.
444 2. Removal from office.
445 3. Suspension from office.
446 4. Public censure and reprimand.
447 5. Forfeiture of no more than one-third salary per month
448 for no more than 12 months.
449 6. A civil penalty not to exceed $10,000.
450 7. Restitution of any pecuniary benefits received because
451 of the violation committed. The commission may recommend that
452 the restitution penalty be paid to the agency of which the
453 public officer was a member or to the General Revenue Fund.
454 (b) In the case of an employee or a person designated as a
455 public officer by this part who otherwise would be deemed to be
456 an employee:
457 1. Dismissal from employment.
458 2. Suspension from employment for not more than 90 days
459 without pay.
460 3. Demotion.
461 4. Reduction in salary level.
462 5. Forfeiture of no more than one-third salary per month
463 for no more than 12 months.
464 6. A civil penalty not to exceed $10,000.

465 7. Restitution of any pecuniary benefits received because
466 of the violation committed. The commission may recommend that
467 the restitution penalty be paid to the agency by which the
468 public employee was employed, or of which the officer was deemed
469 to be an employee, or to the General Revenue Fund.
470 8. Public censure and reprimand.
471 (c) In the case of a candidate who violates the provisions
472 of this part or s. 8(a) and (i), Art. II of the State
473 Constitution:
474 1. Disqualification from being on the ballot.
475 2. Public censure.
476 3. Reprimand.
477 4. A civil penalty not to exceed $10,000.
478 (d) In the case of a former public officer or employee who
479 has violated a provision applicable to former officers or
480 employees or whose violation occurred before the ~~prior to such~~
481 officer's or employee's leaving public office or employment:
482 1. Public censure and reprimand.
483 2. A civil penalty not to exceed $10,000.
484 3. Restitution of any pecuniary benefits received because
485 of the violation committed. The commission may recommend that
486 the restitution penalty be paid to the agency by which the
487 public employee was employed, or of which the officer was deemed
488 to be an employee, or to the General Revenue Fund.
489 (2) In any case in which the commission finds a violation
490 of this part or of s. 8, Art. II of the State Constitution and
491 the proper disciplinary official or body under s. 112.324
492 imposes ~~recommends~~ a civil penalty or restitution penalty, the

493 Attorney General shall bring a civil action to recover such
494 penalty. No defense may be raised in the civil action to enforce
495 the civil penalty or order of restitution that could have been
496 raised by judicial review of the administrative findings and
497 recommendations of the commission by certiorari to the district
498 court of appeal. The Attorney General shall collect any costs,
499 attorney's fees, expert witness fees, or other costs of
500 collection incurred in bringing the action.
501 ~~(6) Any person who willfully discloses, or permits to be~~
502 ~~disclosed, his or her intention to file a complaint, the~~
503 ~~existence or contents of a complaint which has been filed with~~
504 ~~the commission, or any document, action, or proceeding in~~
505 ~~connection with a confidential preliminary investigation of the~~
506 ~~commission, before such complaint, document, action, or~~
507 ~~proceeding becomes a public record as provided herein commits a~~
508 ~~misdemeanor of the first degree, punishable as provided in s.~~
509 ~~775.082 or s. 775.083.~~
510 (6) ~~(7)~~ In any case in which the commission finds probable
511 cause to believe that a complainant has committed perjury in
512 regard to any document filed with, or any testimony given
513 before, the commission, it shall refer such evidence to the
514 appropriate law enforcement agency for prosecution and taxation
515 of costs.
516 (7) ~~(8)~~ In any case in which the commission determines that
517 a person has filed a complaint against a public officer or
518 employee with a malicious intent to injure the reputation of
519 such officer or employee by filing the complaint with knowledge
520 that the complaint contains one or more false allegations or

521 with reckless disregard for whether the complaint contains false
522 allegations of fact material to a violation of this part, the
523 complainant shall be liable for costs plus reasonable attorney's
524 fees incurred in the defense of the person complained against,
525 including the costs and reasonable attorney's fees incurred in
526 proving entitlement to and the amount of costs and fees. If the
527 complainant fails to pay such costs and fees voluntarily within
528 30 days following such finding by the commission, the commission
529 shall forward such information to the Department of Legal
530 Affairs, which shall bring a civil action in a court of
531 competent jurisdiction to recover the amount of such costs and
532 fees awarded by the commission.
533 Section 9. Section 112.3185, Florida Statutes, is amended
534 to read:
535 112.3185 Additional standards for state agency employees
536 ~~Contractual services~~.--
537 (1) For the purposes of this section:
538 (a) "Contractual services" shall be defined as set forth
539 in chapter 287.
540 (b) "Agency" means any state officer, department, board,
541 commission, or council of the executive or judicial branch of
542 state government and includes the Public Service Commission.
543 (2) No agency employee who participates through decision,
544 approval, disapproval, recommendation, preparation of any part
545 of a purchase request, influencing the content of any
546 specification or procurement standard, rendering of advice,
547 investigation, or auditing or in any other advisory capacity in
548 the procurement of contractual services shall become or be,

549 while an agency employee, the employee of a person contracting
550 with the agency by whom the employee is employed.
551 (3) No agency employee shall, after retirement or
552 termination, have or hold any employment or contractual
553 relationship with any business entity other than an agency in
554 connection with any contract in which the agency employee
555 participated personally and substantially through decision,
556 approval, disapproval, recommendation, rendering of advice, or
557 investigation while an officer or employee. When the agency
558 employee's position is eliminated and his or her duties are
559 performed by the business entity, this subsection does not
560 prohibit his or her employment or contractual relationship with
561 the business entity if the employee's participation in the
562 contract was limited to recommendation, rendering of advice, or
563 investigation and if the agency head determines that the best
564 interests of the state will be served thereby and provides prior
565 written approval for the particular employee.
566 (4) No agency employee shall, within 2 years after
567 retirement or termination, have or hold any employment or
568 contractual relationship with any business entity other than an
569 agency in connection with any contract for contractual services
570 which was within his or her responsibility while an employee. If
571 the agency employee's position is eliminated and his or her
572 duties are performed by the business entity, the provisions of
573 this subsection may be waived by the agency head through prior
574 written approval for a particular employee if the agency head
575 determines that the best interests of the state will be served
576 thereby.

577 (5) The sum of money paid to a former agency employee
578 during the first year after the cessation of his or her
579 responsibilities, by the agency with whom he or she was
580 employed, for contractual services provided to the agency, shall
581 not exceed the annual salary received on the date of cessation
582 of his or her responsibilities. ~~The provisions of~~ This
583 subsection may be waived by the agency head for a particular
584 contract if the agency head determines that such waiver will
585 result in significant time or cost savings for the state.
586 (6) No agency employee shall, after retirement or
587 termination, represent or advise for compensation another person
588 or entity, except the state, in any matter in which the employee
589 participated personally and substantially in his or her official
590 capacity through decision, approval, disapproval,
591 recommendation, rendering of advice, investigation, or otherwise
592 while an employee. The term "matter" includes any judicial or
593 other proceeding, application, request for a ruling, or other
594 determination, contract, claim, controversy, investigation,
595 charge, accusation, arrest, or other particular action involving
596 a specific party or parties.
597 (7) ~~(6)~~ No agency employee acting in an official capacity
598 shall directly or indirectly procure contractual services for
599 his or her own agency from any business entity of which a
600 relative is an officer, partner, director, or proprietor or in
601 which the ~~such~~ officer or employee or his or her spouse or
602 child, or any combination of them, has a material interest.
603 (8) ~~(7)~~ A violation of any provision of this section is
604 punishable in accordance with s. 112.317.

605 (9) ~~(8)~~ This section is not applicable to any employee of
606 the Public Service Commission who was so employed on or before
607 December 31, 1994.
608 Section 10. Subsection (1) of section 112.321, Florida
609 Statutes, is amended to read:
610 112.321 Membership, terms; travel expenses; staff.--
611 (1) The commission shall be composed of nine members. Five
612 of these members shall be appointed by the Governor, no more
613 than three of whom shall be from the same political party,
614 subject to confirmation by the Senate. One member appointed by
615 the Governor shall be a former city or county official and may
616 be a former member of a local planning or zoning board which has
617 only advisory duties. Two members shall be appointed by the
618 Speaker of the House of Representatives, and two members shall
619 be appointed by the President of the Senate. Neither the Speaker
620 of the House of Representatives nor the President of the Senate
621 shall appoint more than one member from the same political
622 party. Of the nine members of the commission, no more than five
623 members shall be from the same political party at any one time.
624 No member may hold any public employment. An individual who
625 qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215 or
626 pursuant to any local government charter or ordinance may not
627 serve as a member of the commission, except that this
628 prohibition does not apply to an individual who is a member of
629 the commission on October 1, 2006, until the expiration of his
630 or her current term. A member of the commission may not lobby
631 any state or local governmental entity as provided in s. 11.045
632 or s. 112.3215 or as provided by any local government charter or

633 ordinance, except that this prohibition does not apply to an
634 individual who is a member of the commission on October 1, 2006,
635 until the expiration of his or her current term. All members
636 shall serve 2-year terms. No member shall serve more than two
637 full terms in succession. Any member of the commission may be
638 removed for cause by majority vote of the Governor, the
639 President of the Senate, the Speaker of the House of
640 Representatives, and the Chief Justice of the Supreme Court.
641 Section 11. Paragraph (e) of subsection (5) of section
642 112.3215, Florida Statutes, as amended by chapter 2005-359, Laws
643 of Florida, is amended to read:
644 112.3215 Lobbying before the executive branch or the
645 Constitution Revision Commission; registration and reporting;
646 investigation by commission.--
647 (5)
648 (e) The commission shall provide by rule the grounds for
649 waiving a fine, the procedures ~~a procedure~~ by which a lobbying
650 firm that fails to timely file a report shall be notified and
651 assessed fines, and the procedure for appealing the fines. The
652 rule shall provide for the following:
653 1. Upon determining that the report is late, the person
654 designated to review the timeliness of reports shall immediately
655 notify the lobbying firm as to the failure to timely file the
656 report and that a fine is being assessed for each late day. The
657 fine shall be $50 per day per report for each late day up to a
658 maximum of $5,000 per late report.

659 2. Upon receipt of the report, the person designated to
660 review the timeliness of reports shall determine the amount of
661 the fine due based upon the earliest of the following:
662 a. When a report is actually received by the lobbyist
663 registration and reporting office.
664 b. When the report is postmarked.
665 c. When the certificate of mailing is dated.
666 d. When the receipt from an established courier company is
667 dated.
668 3. Such fine shall be paid within 30 days after the notice
669 of payment due is transmitted by the Lobbyist Registration
670 Office, unless appeal is made to the commission. The moneys
671 shall be deposited into the Executive Branch Lobby Registration
672 Trust Fund.
673 4. A fine shall not be assessed against a lobbying firm
674 the first time any reports for which the lobbying firm is
675 responsible are not timely filed. However, to receive the one-
676 time fine waiver, all reports for which the lobbying firm is
677 responsible must be filed within 30 days after the notice that
678 any reports have not been timely filed is transmitted by the
679 Lobbyist Registration Office. A fine shall be assessed for any
680 subsequent late-filed reports.
681 5. Any lobbying firm may appeal or dispute a fine, based
682 upon unusual circumstances surrounding the failure to file on
683 the designated due date, and may request and shall be entitled
684 to a hearing before the commission, which shall have the
685 authority to waive the fine in whole or in part for good cause
686 shown. Any such request shall be made within 30 days after the

687 notice of payment due is transmitted by the Lobbyist
688 Registration Office. In such case, the lobbying firm shall,
689 within the 30-day period, notify the person designated to review
690 the timeliness of reports in writing of his or her intention to
691 bring the matter before the commission.
692 6. The person designated to review the timeliness of
693 reports shall notify the commission of the failure of a lobbying
694 firm to file a report after notice or of the failure of a
695 lobbying firm to pay the fine imposed. All lobbyist
696 registrations for lobbyists who are partners, owners, officers,
697 or employees of a lobbying firm that fails to timely pay a fine
698 are automatically suspended until the fine is paid or waived,
699 and the commission shall promptly notify all affected principals
700 of any suspension or reinstatement.
701 7. Notwithstanding any provision of chapter 120, any fine
702 imposed under this subsection that is not waived by final order
703 of the commission and that remains unpaid more than 60 days
704 after the notice of payment due or more than 60 days after the
705 commission renders a final order on the lobbying firm's appeal
706 shall be collected by the Department of Financial Services as a
707 claim, debt, or other obligation owed to the state, and the
708 department may assign the collection of such fine to a
709 collection agent as provided in s. 17.20.
710 Section 12. Subsection (4) of section 112.322, Florida
711 Statutes, is amended to read:
712 112.322 Duties and powers of commission.--
713 (4) The commission has the power to subpoena, audit, and
714 investigate. The commission may subpoena witnesses and compel

715 their attendance and testimony, administer oaths and
716 affirmations, take evidence, and require by subpoena the
717 production of any books, papers, records, or other items
718 relevant to the performance of the duties of the commission or
719 to the exercise of its powers. The commission may delegate to
720 its investigators the authority to administer oaths and
721 affirmations. The commission may delegate the authority to issue
722 subpoenas to its chair, and may authorize its employees to serve
723 any subpoena issued under this section. In the case of a refusal
724 to obey a subpoena issued to any person, the commission may make
725 application to any circuit court of this state which shall have
726 jurisdiction to order the witness to appear before the
727 commission and to produce evidence, if so ordered, or to give
728 testimony touching on the matter in question. Failure to obey
729 the order may be punished by the court as contempt. Witnesses
730 shall be paid mileage and witnesses fees as authorized for
731 witnesses in civil cases, except that a witness who is required
732 to travel outside the county of his or her residence to testify
733 is entitled to per diem and travel expenses at the same rate
734 provided for state employees under s. 112.061, to be paid after
735 the witness appears.
736 Section 13. Subsections (3) and (4) of section 914.21,
737 Florida Statutes, are amended to read:
738 914.21 Definitions.--As used in ss. 914.22-914.24, the
739 term:
740 (3) "Official investigation" means any investigation
741 instituted by a law enforcement agency or prosecuting officer of

742 the state or a political subdivision of the state or the
743 Commission on Ethics.
744 (4) "Official proceeding" means:
745 (a) A proceeding before a judge or court or a grand jury;
746 (b) A proceeding before the Legislature; ~~or~~
747 (c) A proceeding before a federal agency which is
748 authorized by law; or~~.~~
749 (d) A proceeding before the Commission on Ethics.
750 Section 14. This act shall take effect October 1, 2006.

HB 605

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 605 Public Records
**SPONSOR(S):** Planas
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1320

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

## SUMMARY ANALYSIS


The bill creates a public records exemption for certain identification and location information for current or former Department of Juvenile Justice (DJJ) personnel. It also creates a public records exemption for certain identification and location information regarding the spouse and children of DJJ personnel. The exemption only applies if the DJJ personnel provides a written statement that he or she has made reasonable efforts to protect such information from public access via other means.

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

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:

**Background**

Current law provides a number of public records exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys.[1] The exemptions also protect identifying and location information regarding the spouses and children of such employees.[2] There is, however, no such exemption for employees of juvenile detention facilities.

**Effect of Bill**

The bill creates a public records exemption for current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, and rehabilitation therapists of the Department of Juvenile Justice (DJJ personnel). The following information is made exempt[3] from public records requirements:

- Home addresses, telephone numbers, social security numbers, and photographs of DJJ personnel;
- Names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouse and children of DJJ personnel; and
- Names and locations of schools and day care facilities attended by the children of DJJ personnel.

The exemption only applies if the DJJ personnel provides a written statement that he or she has made reasonable efforts to protect such information from access via other means available to the public.

An agency, other than the employing agency, who is the custodian of such information must maintain the exempt status of that information only if such personnel or his or her employer submits a written request to the custodial agency.

This bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.[4] It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for DJJ personnel.

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[1] Section 119.071(4)(d), F.S.
[2] *Id.*
[3] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[4] Section 119.15, F.S.

Section 2 reenacts s. 409.2577, F.S., to incorporate the amendment made to s. 119.071, F.S.

Section 3 provides a public necessity statement.

Section 4 provides an October 1, 2006, 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:

   *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 related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt DJJ personnel 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.

Overly Broad
The bill could raise constitutional concerns, because the exemption could be considered overly broad in that it is unclear if the employing agency collects the photographs of the spouse and children of DJJ personnel.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Social Security Numbers
Current law provides a public records exemption for social security numbers that is applicable to all state and local government agencies.[5] The bill exempts social security numbers for DJJ personnel and the spouse and children of such personnel. Thus, it appears redundant of current law.

Drafting Issues – Open Government Sunset Review Act
On line 165, the bill references the "Open Government Sunset Review Act of 1995". In 2005, the Act was amended and is now entitled the "Open Government Sunset Review Act". An amendment is recommended to correct the title error.

Drafting Issues – Public Necessity Statement
The bill makes the identification and location information "exempt" from public records requirements; however, the bill later refers to the information as confidential and exempt. There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute.[6] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[7] As such, an amendment is needed to address the language inconsistencies.

Other Comments – Written Statement
The bill requires the DJJ personnel to submit a written statement that he or she has made reasonable efforts to protect the exempt information from public access via other means. For example, such personnel would need to confirm that he or she has protected release of the information through the Internet and the telephone book. Of the categories of employees who are provided this same public records exemption, only one group is required to provide a similar statement.[8] This exemption would put DJJ personnel in the minority and would create an additional burden on such personnel in order to protect access to his or her identification and location information.

Other Comments – 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

[5] Section 119.071(5)(a), F.S.
[6] *See* Attorney General Opinion 85-62.
[7] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[8] Section 119.071(4)(d)6., F.S., public records exemption for current and former guardian ad litems.

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 is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[9] 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[9] Section 119.15, F.S.

1 A bill to be entitled
2 An act relating to public records; amending s. 119.071,
3 F.S.; providing an exemption from public records
4 requirements for the home addresses, telephone numbers,
5 social security numbers, and photographs of current or
6 former juvenile probation officers, juvenile probation
7 supervisors, detention superintendents, assistant
8 detention superintendents, senior juvenile detention
9 officers, juvenile detention officer supervisors,
10 juvenile detention officers, house parents I and II, house
11 parent supervisors, group treatment leaders, group
12 treatment leader supervisors, and rehabilitation
13 therapists of the Department of Juvenile Justice, the
14 names, home addresses, telephone numbers, social security
15 numbers, photographs, and places of employment of spouses
16 and children of such personnel, and the names and
17 locations of schools and day care facilities attended by
18 the children of such personnel; providing a condition
19 precedent to the granting of such exemption; providing for
20 review and repeal; reenacting s. 409.2577, F.S., relating
21 to disclosure of information to the parent locator service
22 of the Department of Children and Family Services, for the
23 purpose of incorporating the amendment to s. 119.071,
24 F.S., in a reference thereto; providing a statement of
25 public necessity; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (d) of subsection (4) 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 (4) AGENCY PERSONNEL INFORMATION.--
34 (d)1. The home addresses, telephone numbers, social
35 security numbers, and photographs of active or former law
36 enforcement personnel, including correctional and correctional
37 probation officers, personnel of the Department of Children and
38 Family Services whose duties include the investigation of abuse,
39 neglect, exploitation, fraud, theft, or other criminal
40 activities, personnel of the Department of Health whose duties
41 are to support the investigation of child abuse or neglect, and
42 personnel of the Department of Revenue or local governments
43 whose responsibilities include revenue collection and
44 enforcement or child support enforcement; the home addresses,
45 telephone numbers, social security numbers, photographs, and
46 places of employment of the spouses and children of such
47 personnel; and the names and locations of schools and day care
48 facilities attended by the children of such personnel are exempt
49 from s. 119.07(1). The home addresses, telephone numbers, and
50 photographs of firefighters certified in compliance with s.
51 633.35; the home addresses, telephone numbers, photographs, and
52 places of employment of the spouses and children of such
53 firefighters; and the names and locations of schools and day
54 care facilities attended by the children of such firefighters
55 are exempt from s. 119.07(1). The home addresses and telephone
56 numbers of justices of the Supreme Court, district court of

57 appeal judges, circuit court judges, and county court judges;
58 the home addresses, telephone numbers, and places of employment
59 of the spouses and children of justices and judges; and the
60 names and locations of schools and day care facilities attended
61 by the children of justices and judges are exempt from s.
62 119.07(1). The home addresses, telephone numbers, social
63 security numbers, and photographs of current or former state
64 attorneys, assistant state attorneys, statewide prosecutors, or
65 assistant statewide prosecutors; the home addresses, telephone
66 numbers, social security numbers, photographs, and places of
67 employment of the spouses and children of current or former
68 state attorneys, assistant state attorneys, statewide
69 prosecutors, or assistant statewide prosecutors; and the names
70 and locations of schools and day care facilities attended by the
71 children of current or former state attorneys, assistant state
72 attorneys, statewide prosecutors, or assistant statewide
73 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
74 the State Constitution.
75 2. The home addresses, telephone numbers, social security
76 numbers, and photographs of current or former human resource,
77 labor relations, or employee relations directors, assistant
78 directors, managers, or assistant managers of any local
79 government agency or water management district whose duties
80 include hiring and firing employees, labor contract negotiation,
81 administration, or other personnel-related duties; the names,
82 home addresses, telephone numbers, social security numbers,
83 photographs, and places of employment of the spouses and
84 children of such personnel; and the names and locations of

85 schools and day care facilities attended by the children of such
86 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
87 the State Constitution. This subparagraph is subject to the Open
88 Government Sunset Review Act in accordance with s. 119.15 and
89 shall stand repealed on October 2, 2006, unless reviewed and
90 saved from repeal through reenactment by the Legislature.
91 3. The home addresses, telephone numbers, social security
92 numbers, and photographs of current or former United States
93 attorneys and assistant United States attorneys; the home
94 addresses, telephone numbers, social security numbers,
95 photographs, and places of employment of the spouses and
96 children of current or former United States attorneys and
97 assistant United States attorneys; and the names and locations
98 of schools and day care facilities attended by the children of
99 current or former United States attorneys and assistant United
100 States attorneys are exempt from s. 119.07(1) and s. 24(a), Art.
101 I of the State Constitution. This subparagraph is subject to the
102 Open Government Sunset Review Act in accordance with s. 119.15
103 and shall stand repealed on October 2, 2009, unless reviewed and
104 saved from repeal through reenactment by the Legislature.
105 4. The home addresses, telephone numbers, social security
106 numbers, and photographs of current or former judges of United
107 States Courts of Appeal, United States district judges, and
108 United States magistrate judges; the home addresses, telephone
109 numbers, social security numbers, photographs, and places of
110 employment of the spouses and children of current or former
111 judges of United States Courts of Appeal, United States district
112 judges, and United States magistrate judges; and the names and

113 locations of schools and day care facilities attended by the
114 children of current or former judges of United States Courts of
115 Appeal, United States district judges, and United States
116 magistrate judges are exempt from s. 119.07(1) and s. 24(a),
117 Art. I of the State Constitution. This subparagraph is subject
118 to the Open Government Sunset Review Act in accordance with s.
119 119.15 and shall stand repealed on October 2, 2009, unless
120 reviewed and saved from repeal through reenactment by the
121 Legislature.
122 5. The home addresses, telephone numbers, social security
123 numbers, and photographs of current or former code enforcement
124 officers; the names, home addresses, telephone numbers, social
125 security numbers, photographs, and places of employment of the
126 spouses and children of such persons; and the names and
127 locations of schools and day care facilities attended by the
128 children of such persons are exempt from s. 119.07(1) and s.
129 24(a), Art. I of the State Constitution. This subparagraph is
130 subject to the Open Government Sunset Review Act in accordance
131 with s. 119.15 and shall stand repealed on October 2, 2006,
132 unless reviewed and saved from repeal through reenactment by the
133 Legislature.
134 6. The home addresses, telephone numbers, places of
135 employment, and photographs of current or former guardians ad
136 litem, as defined in s. 39.820, and the names, home addresses,
137 telephone numbers, and places of employment of the spouses and
138 children of such persons, are exempt from s. 119.07(1) and s.
139 24(a), Art. I of the State Constitution, if the guardian ad
140 litem provides a written statement that the guardian ad litem

141 has made reasonable efforts to protect such information from
142 being accessible through other means available to the public.
143 This subparagraph is subject to the Open Government Sunset
144 Review Act in accordance with s. 119.15 and shall stand repealed
145 on October 2, 2010, unless reviewed and saved from repeal
146 through reenactment by the Legislature.
147 7. The home addresses, telephone numbers, social security
148 numbers, and photographs of current or former juvenile probation
149 officers, juvenile probation supervisors, detention
150 superintendents, assistant detention superintendents, senior
151 juvenile detention officers, juvenile detention officer
152 supervisors, juvenile detention officers, house parents I and
153 II, house parent supervisors, group treatment leaders, group
154 treatment leader supervisors, and rehabilitation therapists of
155 the Department of Juvenile Justice, the names, home addresses,
156 telephone numbers, social security numbers, photographs, and
157 places of employment of spouses and children of such personnel,
158 and the names and locations of schools and day care facilities
159 attended by the children of such personnel are exempt from s.
160 119.07(1) and s. 24(a), Art. I of the State Constitution, if the
161 Department of Juvenile Justice personnel member provides a
162 written statement that he or she has made reasonable efforts to
163 protect such information from being accessible through other
164 means available to the public. This subparagraph is subject to
165 the Open Government Sunset Review Act of 1995 in accordance with
166 s. 119.15 and shall stand repealed on October 2, 2011, unless
167 reviewed and saved from repeal through reenactment by the
168 Legislature.

169 8.~~7.~~ An agency that is the custodian of the personal
170 information specified in subparagraph 1., subparagraph 2.,
171 subparagraph 3., subparagraph 4., subparagraph 5., ~~or~~
172 subparagraph 6., or subparagraph 7. and that is not the employer
173 of the officer, employee, justice, judge, or other person
174 specified in subparagraph 1., subparagraph 2., subparagraph 3.,
175 subparagraph 4., subparagraph 5., ~~or~~ subparagraph 6., or
176 subparagraph 7. shall maintain the exempt status of the personal
177 information only if the officer, employee, justice, judge, other
178 person, or employing agency of the designated employee submits a
179 written request for maintenance of the exemption to the
180 custodial agency.
181 Section 2. For the purpose of incorporating the amendment
182 made by this act to section 119.071, Florida Statutes, in a
183 reference thereto, section 409.2577, Florida Statutes, is
184 reenacted to read:
185 409.2577 Parent locator service.--The department shall
186 establish a parent locator service to assist in locating parents
187 who have deserted their children and other persons liable for
188 support of dependent children. The department shall use all
189 sources of information available, including the Federal Parent
190 Locator Service, and may request and shall receive information
191 from the records of any person or the state or any of its
192 political subdivisions or any officer thereof. Any agency as
193 defined in s. 120.52, any political subdivision, and any other
194 person shall, upon request, provide the department any
195 information relating to location, salary, insurance, social
196 security, income tax, and employment history necessary to locate

197 parents who owe or potentially owe a duty of support pursuant to
198 Title IV-D of the Social Security Act. This provision shall
199 expressly take precedence over any other statutory nondisclosure
200 provision which limits the ability of an agency to disclose such
201 information, except that law enforcement information as provided
202 in s. 119.071(4)(d) is not required to be disclosed, and except
203 that confidential taxpayer information possessed by the
204 Department of Revenue shall be disclosed only to the extent
205 authorized in s. 213.053(15). Nothing in this section requires
206 the disclosure of information if such disclosure is prohibited
207 by federal law. Information gathered or used by the parent
208 locator service is confidential and exempt from the provisions
209 of s. 119.07(1). Additionally, the department is authorized to
210 collect any additional information directly bearing on the
211 identity and whereabouts of a person owing or asserted to be
212 owing an obligation of support for a dependent child. The
213 department shall, upon request, make information available only
214 to public officials and agencies of this state; political
215 subdivisions of this state, including any agency thereof
216 providing child support enforcement services to non-Title IV-D
217 clients; the custodial parent, legal guardian, attorney, or
218 agent of the child; and other states seeking to locate parents
219 who have deserted their children and other persons liable for
220 support of dependents, for the sole purpose of establishing,
221 modifying, or enforcing their liability for support, and shall
222 make such information available to the Department of Children
223 and Family Services for the purpose of diligent search
224 activities pursuant to chapter 39. If the department has

225 reasonable evidence of domestic violence or child abuse and the
226 disclosure of information could be harmful to the custodial
227 parent or the child of such parent, the child support program
228 director or designee shall notify the Department of Children and
229 Family Services and the Secretary of the United States
230 Department of Health and Human Services of this evidence. Such
231 evidence is sufficient grounds for the department to disapprove
232 an application for location services.
233 Section 3. The Legislature finds that it is a public
234 necessity that the home addresses, telephone numbers, social
235 security numbers, and photographs of current or former juvenile
236 probation officers, juvenile probation supervisors, detention
237 superintendents, assistant detention superintendents, senior
238 juvenile detention officers, juvenile detention officer
239 supervisors, juvenile detention officers, house parents I and
240 II, house parent supervisors, group treatment leaders, group
241 treatment leader supervisors, and rehabilitation therapists of
242 the Department of Juvenile Justice, the names, home addresses,
243 telephone numbers, social security numbers, photographs, and
244 places of employment of spouses and children of such personnel,
245 and the names and locations of schools and day care facilities
246 attended by the children of such personnel be held confidential
247 and exempt from public records requirements if the Department of
248 Juvenile Justice personnel member seeking the exemption provides
249 a written statement that he or she has made reasonable efforts
250 to protect such information from being accessible through other
251 means available to the public. This exemption is justified
252 because, if such information were not confidential, a juvenile

253 probation officer, juvenile probation supervisor, detention
254 superintendent, assistant detention superintendent, senior
255 juvenile detention officer, juvenile detention officer
256 supervisor, juvenile detention officer, house parent, house
257 parent supervisor, group treatment leader, group treatment
258 leader supervisor, or rehabilitation therapist of the Department
259 of Juvenile Justice or his or her family could be harmed or
260 threatened with harm by a juvenile defendant or by a friend or
261 family member of a juvenile defendant.
262 Section 4. This act shall take effect October 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 639 Building Designations
**SPONSOR(S):** Kyle
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1348

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

## SUMMARY ANALYSIS


The bill designates an office complex in Lee County as the "Joseph P. D'Allesandro Office Complex" and directs the Department of Management Services to erect suitable markers.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

There is an office complex located at 2295 Victoria Avenue in Ft. Myers, currently referred to as the "Ft. Myers Regional Service Center." The bill directs the Department of Management Services, which manages state employee facilities pursuant to Chapter 255, F.S., to erect markers naming the complex the "Joseph P. D'Allesandro Office Complex."

Mr. D'Allesandro is a native of Lee County and served for 33 years as the State Attorney for the 20th Judicial Circuit,[1] beginning with its inception in 1969-70. He also is a member of several law enforcement, legal, and community-service associations. He is a graduate of the University of Florida and the Stetson University College of Law.

C. SECTION DIRECTORY:

Section 1 designates the "Joseph P. D'Allesandro Office Complex."

Section 2 provides a July 1, 2006, effective date.

## 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 Department of Management Services identifies Fixed Capital Outlay costs of between $5,000 to $30,000 to place "suitable markers."[2]

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:

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[1] The circuit consists of five counties: Charlotte, Collier, Glades, Hendry, and Lee. It is the largest circuit, geographically, in the state.
[2] *2006 Substantive Bill Analysis – HB 639*, Department of Management Services, March 16 ,2006.

None.

## 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:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to building designations; designating a
3 building in Lee County as the Joseph P. D'Alessandro
4 Office Complex; directing the Department of Management
5 Services to erect suitable markers; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Joseph P. D'Alessandro Office Complex
11 designated; Department of Management Services to erect suitable
12 markers.--
13 (1) The State of Florida Office Complex at 2295 Victoria
14 Avenue in Fort Myers, Lee County, is designated as the "Joseph
15 P. D'Alessandro Office Complex."
16 (2) The Department of Management Services is directed to
17 erect suitable markers designating the Joseph P. D'Alessandro
18 Office Complex as described in subsection (1).
19 Section 2. This act shall take effect July 1, 2006.

HB 1059

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1059 Deduction and Collection of a Bargaining Agent's Dues and Uniform Assessments
**SPONSOR(S):** Rivera
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2706

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

## SUMMARY ANALYSIS


The bill declares that state and local government employers are not required to provide payroll deduction services for a union representing instructional personnel. If an employer agrees, during the collective bargaining process, to provide payroll deduction service for a union representing instructional personnel, the bill limits how such collected dues may be utilized. This bill also creates a cause of action to enforce these limits.

This bill does not appear to have a fiscal impact on state government, and may have a minimal positive fiscal impact to local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill potentially reduces the government's ability to withdraw certain funds from a public employee's salary.

**Safeguard individual liberty** – The bill potentially increases a public employee's control over certain wages that would otherwise be controlled by the collective bargaining unit representing the employee.

B. EFFECT OF PROPOSED CHANGES:

Background

Article I, Section 6, of the Constitution of the State of Florida declares that "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization." Florida implements this constitutional provision in chapter 447,F.S. Part II of ch. 447, F.S., applies the provision to state and local governments. If a union has been certified as representing a particular group of employees, s. 447.303, F.S., requires a state or local government employer to withhold "dues and uniform assessments" from the paychecks of consenting employees.

Statement of Legislative Intent

The bill provides that state or local government employers are not required to provide payroll deduction services for a union representing instructional personnel.[1] The bill includes a statement of legislative intent that recognizes certain facts about the government's neutrality in the decision of an employee to join or not join a union.[2]

This first section of the legislative statement of intent declares that a government employer's provision of a payroll-withholding mechanism to a collective bargaining unit is inconsistent with the state's larger goal of maintaining neutrality in the employee's decision to join or not join a union. The first section also notes that, while other payroll deductions specifically identify how the funds will eventually be applied,[3] union dues are not required to identify "how the money deducted will be used." The section concludes with a suggestion that, to the extent that employees are currently "unaware of their rights to be refunded any portion of such dues... used for political or social purposes with which they do not agree," the payroll-deduction process may impinge against such employees' rights under the First Amendment.

The second section of the legislative statement begins by emphasizing the size of the collective bargaining unit representing instructional personnel. The section then states that attracting new teachers and retaining existing teachers is a matter of critical importance. The section concludes that due to consolidation, the collective bargaining unit representing teachers has reached the status of a monopoly, thereby unduly restricting its members and impinging on their First Amendment rights.

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[1] The bill references the definition of "instructional personnel" at s. 1012.01, F.S., which defines instructional personnel to include classroom teachers, student personnel services (primarily guidance counselors), librarians and media specialists, other instructional staff, and education paraprofessionals.

[2] Section 447.201, F.S., contains a legislative statement of policy regarding Part II of Chapter 447, F.S. It reads in part, "Nothing herein shall be construed either to *encourage or discourage* organization of public employees." (Emphasis added.)

[3] This is presumably a reference to federal withholding such as federal income tax and Social Security withholding, as well as withholdings related to employee benefits, health plans, retirement plans, or other programs.

The third section of the legislative statement declares that, due to the facts and trends already set forth, the withholding of dues and uniform deductions of instructional personnel should be a matter discussed between the parties as part of the collective bargaining process, rather than an automatic action granted to the collective bargaining unit.

Effect of Bill

The bill removes the authority of the "certified bargaining agent for instructional personnel" to receive automatic deductions under s. 447.303, F.S., and provides that such deductions are instead "proper subject[s] of collective bargaining."

The bill further states that in the event deductions are implemented as a result of the bargaining process, the deductions shall not exceed an amount actually used for bargaining activities of the certified bargaining unit.[4] This amount is distinguished from other potential uses of such fees that may not be deducted from an employee's salary.[5]

The bill requires that, if agreed upon, deductions require the written approval of the employee. The employer may not collect fines, penalties, special assessments, or funds for any purpose other than labor-management issues. The agreement between the employer and the collective bargaining unit also must provide for segregation of labor-management funds or an independent audit of such funds.

Finally, the bill creates a cause of action whereby any taxpayer or aggrieved party may seek injunctive relief for violation of the restrictions on the use of payroll-deducted dues, and may compel the union to make a pro-rata refund to all of its members of monies used for an improper purpose. An individual union member also may seek a refund in his or her own name.

C. SECTION DIRECTORY:

Section 1 amends s. 447.303, F.S., removing the payroll-deduction service for certain unions; limiting the use of such union dues when deduction is agreed upon, and providing a private right of action to enforce the provisions.

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:

   Providing a payroll deduction service for the benefit of a union represents a minimal expense that would be saved should an employer decide to eliminate the service.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

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[4] These permitted uses are referred to later in the bill as "labor-management issues."

[5] Express examples of impermissible activities include electoral activities, contributions to candidates, political parties, political committees, or committees of continual existence.

2. Expenditures:

Providing a payroll deduction service for the benefit of a union represents a minimal expense that would be saved should an employer decide to eliminate the service.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## 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:

The bill arguably raises potential federal constitutional concerns, however, the case of *City of Charlotte v. Local 660, International Association of Firefighters*, 426 U.S. 283 (1976) suggests that a government may refuse to offer payroll deduction for union dues, even though it provides for other voluntary payroll deductions, so long as the government provides some reasonable reason for doing so.[6] North Carolina, the location of the *Local 660* case, is a "closed shop" state in which employers can compel union membership of all employees. The reasoning utilized in the court's analysis and opinion appears to be more compelling in a right-to-work state such as Florida.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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[6] As opposed to the stronger constitutional standard of a "compelling governmental interest." In making this determination the court stated at page 2038 of the *Local 660* case:

> Since it is not here asserted and this Court would reject such a contention if it were made that respondents' status as union members or their interest in obtaining a dues checkoff is such as to entitle them to special treatment under the Equal Protection Clause, the city's practice must meet only a relatively relaxed standard of reasonableness in order to survive constitutional scrutiny. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

1 A bill to be entitled
2 An act relating to the deduction and collection of a
3 bargaining agent's dues and uniform assessments; amending
4 s. 447.303, F.S.; eliminating a right of certain
5 bargaining agents to have certain dues and assessments
6 deducted and collected by an employer from certain
7 employees; providing legislative findings and intent;
8 providing that the deduction and collection of certain
9 dues and assessments is a proper subject of collective
10 bargaining; providing requirements and limitations;
11 providing for accounting of funds; providing for
12 enforcement; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 447.303, Florida Statutes, is amended
17 to read:
18 447.303 Dues; deduction and collection.--
19 (1) Any employee organization which has been certified as
20 a bargaining agent, other than a certified bargaining agent for
21 instructional personnel as defined in s. 1012.01, shall have the
22 right to have its dues and uniform assessments deducted and
23 collected by the employer from the salaries of those employees
24 who authorize the deduction of said dues and uniform
25 assessments. However, such authorization is revocable at the
26 employee's request upon 30 days' written notice to the employer
27 and employee organization. Said deductions shall commence upon
28 the bargaining agent's written request to the employer.

29 Reasonable costs to the employer of said deductions shall be a
30 proper subject of collective bargaining. Such right to
31 deduction, unless revoked pursuant to s. 447.507, shall be in
32 force for so long as the employee organization remains the
33 certified bargaining agent for the employees in the unit. The
34 public employer is expressly prohibited from any involvement in
35 the collection of fines, penalties, or special assessments.
36 (2)(a) The Legislature acknowledges that Florida is a
37 right to work state as guaranteed by s. 6, Art. I of the State
38 Constitution, which provides employees the right to bargain
39 collectively. However, the State Constitution does not require
40 an employer to deduct and collect a bargaining agent's dues and
41 uniform assessments from an employee's salary. Furthermore, the
42 Legislature, in implementing s. 6, Art. I of the State
43 Constitution, has declared that it is the public policy of this
44 state to neither encourage nor discourage participation in a
45 certified employee organization. The current statutory right of
46 a collective bargaining agent to have its dues and uniform
47 assessments deducted from an employee's salary is inconsistent
48 with this policy because it assumes a non-neutral position
49 regarding membership in a certified employee organization. By
50 statutorily requiring an employer to deduct a collective
51 bargaining agent's dues and assessments, the state facilitates
52 the financial support of that organization not only for its
53 collective bargaining functions but for whatever political or
54 social causes that organization chooses to support. The payroll
55 deduction process does not require the identification of how the
56 money deducted will be used. Other voluntary payroll deductions

57 are clear on their face as to the amount and purpose of the
58 deductions. In addition, other payroll deductions are not
59 encumbered with the legal complexities surrounding collective
60 bargaining rights and this state's policy of neutrality
61 regarding membership in a certified employee organization.
62 Moreover, the First Amendment to the United States Constitution
63 guarantees a person freedom of association, which includes the
64 right of a person to not be compelled to financially support a
65 social cause or a political candidate or cause. To the extent
66 members of a certified employee organization are uninformed
67 regarding the use of their payroll deducted dues and
68 assessments, are unaware of their rights to be refunded any
69 portion of such dues or assessments used for political or social
70 purposes to which they do not agree, or are prevented or
71 inhibited from exercising their associational rights, directly
72 or indirectly, for whatever reason and from whatever source,
73 then the state's participation in their payroll deduction
74 impinges on those employees' First Amendment rights.
75 1. The Legislature finds that instructional personnel
76 represent the largest collective bargaining unit in this state.
77 Furthermore, the Legislature recognizes and finds that teacher
78 shortages in this state have reached critical proportions and
79 anticipates that Florida will need an additional 162,000
80 teachers over the next 10 years to meet the challenges of this
81 state's growing student population. Attracting new teachers as
82 well as retaining existing teachers is a priority for this
83 Legislature. Furthermore, the Legislature finds that this state
84 has a substantial and compelling interest in protecting the

85 First Amendment rights of instructional personnel and that the
86 state's ability to recruit and retain instructional personnel
87 should be enhanced by empowering instructional personnel to
88 pursue their First Amendment rights and to make informed
89 decisions regarding their political and social participation
90 within the context of exercising their collective bargaining
91 rights. The Legislature also finds that, as a result of the
92 recent merger and industry consolidation of the collective
93 bargaining agents that represented instructional personnel as
94 defined in s. 1012.01, a virtual monopoly in such services has
95 been created in this state, depriving instructional personnel of
96 the benefits of competition. Accordingly, this state must
97 redouble its efforts to remain neutral and thereby not empower
98 or detract from that collective bargaining agent's
99 representational role, or from the employees' ability to be
100 represented in the collective bargaining process by whomever
101 they so choose.
102 2. Because of these facts and trends, the Legislature
103 finds that the current status of instructional personnel
104 constitutes a set of circumstances distinct and unique from any
105 other area of public employment within this state. Therefore,
106 the Legislature finds that with regard to instructional
107 personnel, the deduction and collection of the certified
108 bargaining agent's dues and uniform assessments should not be
109 mandated by the Legislature but should be a permissive subject
110 of collective bargaining, as otherwise restricted by this
111 section. The Legislature further finds that the restrictions
112 imposed by this section do not interfere with the ability of

113 instructional personnel to be a member of a certified labor
114 organization or to contribute directly to that organization in
115 support of its noncollective bargaining activities.
116 (b) With regard to a certified bargaining agent that
117 represents instructional personnel as defined in s. 1012.01, any
118 deduction and collection by an employer of that certified
119 bargaining agent's dues and uniform assessments from an
120 employee's salary may be a proper subject of collective
121 bargaining. If the deduction and collection of an agent's dues
122 and uniform assessments are collectively bargained, the
123 collectively bargained agreement shall provide that payroll
124 deduction for dues or uniform assessments shall not exceed an
125 amount actually used for activities of the certified bargaining
126 agent necessary to perform the agent's duties regarding the
127 resolution of labor-management issues which consist of
128 collective bargaining, contract administration, and grievance
129 adjustment. Such amount shall not include any amounts used for
130 any other purpose, including, but not limited to, electoral
131 activities; independent expenditures or contributions to any
132 candidate, political party, political committee, or committee of
133 continuous existence; voter registration campaigns; or any other
134 political or legislative cause, including, but not limited to,
135 ballot initiatives. Additionally, the collectively bargained
136 agreement must require the written authorization of the
137 employee; commencement of the deductions upon the bargaining
138 agent's written request to the employer; collection of
139 reasonable costs, which must include all of the costs incurred
140 by the employer for making such deduction; revocation

141 provisions, including revocation pursuant to s. 447.507; and a
142 prohibition against the public employer's collecting fines,
143 penalties, or special assessments or for any purpose other than
144 labor-management issues, as provided for in this subsection.
145 (c) The collectively bargained agreement shall also
146 provide for a reasonable accounting of payroll deductions
147 through either:
148 1. The perpetual segregation of all funds received through
149 payroll deductions from any funds used for purposes not
150 authorized in paragraph (b); or
151 2. An independent audit of the use of funds received
152 through payroll deductions.
153 (d) Any taxpayer or other aggrieved party may seek
154 enforcement of this subsection in a court of competent
155 jurisdiction. In addition to injunctive relief prohibiting
156 violations of a bargaining agreement and this subsection, relief
157 shall include an order for a pro rata refund to bargaining unit
158 members in an amount equal to the amount of any funds received
159 through payroll deduction which were used in violation of this
160 subsection. Such refund shall be enforced by an order reducing
161 payroll deductions up to 50 percent below the agreed amount each
162 pay period until the amount has been fully refunded. A refund
163 under this paragraph shall supplement and not preclude a money
164 judgment against the bargaining unit in favor of one or more
165 individuals who had funds deducted from their pay that were used
166 in violation of this subsection.
167 Section 2. This act shall take effect July 1, 2006.

HB 1067 CS

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1067 CS State Long-Term Care Ombudsman Program
**SPONSOR(S):** Grimsley and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1922

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Elder & Long-Term Care Committee | 7 Y, 0 N, w/CS | DePalma | Walsh |
| 2) Governmental Operations Committee | | Brown | Williamson |
| 3) Health Care Appropriations Committee | | | |
| 4) Health & Families Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill clarifies duties and responsibilities of the Office of State Long-Term Care Ombudsman and the program's state and local ombudsman councils in an attempt to fully implement the Legislature's intent in moving the program under the administration of the Department of Elderly Affairs.

The Department of Elderly Affairs reports no fiscal impact associated with this bill.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** --- The bill increases rulemaking authority regarding council membership. The bill requires submission of an annual report regarding the performance of the state and local councils.

**Empower Families** --- The bill streamlines and clarifies state and local ombudsman council duties and responsibilities. These modifications seek to more effectively serve the interests of long-term care residents, and potentially improve their quality of life.

B. EFFECT OF PROPOSED CHANGES:

**BACKGROUND**

**The History and Emergence of Ombudsman Programs**

The Long-Term Care Ombudsman Program began in 1972 through implementation of five state demonstration projects funded by the Departments of Health, Education and Welfare.[1] The projects formed as a response to growing concerns over the conditions present in our nation's nursing facilities, the care provided therein, and the effectiveness of governmental attempts to actively police and force compliance with state and federal regulations. A year later, the Administration on Aging assumed administrative responsibility for the program, and in 1978 the Long-Term Care Ombudsman Program was amended into the Older Americans Act of 1965.[2]

Today, variations of long-term care ombudsman programs are maintained in all 50 states, the District of Columbia and Puerto Rico. The central responsibilities for all ombudsmen are outlined in Subchapter XI of the Older Americans Act[3] and include:

- identifying, investigating and resolving complaints made by or on behalf of residents;
- providing information to residents about long-term care services;
- representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect residents;
- analyzing, commenting on and recommending changes in laws and regulations pertaining to the health, safety, welfare and rights of residents;
- educating and informing consumers and the general public regarding issues and concerns related to long-term care, and facilitating public comment on laws, regulations, policies and actions;
- promoting the development of citizen organizations to participate in the program;
- providing technical support for the development of resident and family councils to protect the well-being and rights of residents, and
- advocating for changes to improve residents' quality of life and care.

**Florida's Long-Term Care Ombudsman Program**

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[1] *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, 1995, Institute of Medicine, available at: http://www.nap.edu/catalog/9059.html.
[2] 42 U.S.C.A. s. 3001 *et seq.*
[3] 42 U.S.C.A. s. 3058g.

The state's Long-Term Care Ombudsman Program ("the Program") was established as a volunteer program in 1975 and is presently administered by the Department of Elderly Affairs (DOEA).[4] The Program is comprised of 17 local councils, one supervisory statewide council and more than 350 volunteer ombudsmen (each contributing an average of 20 hours per month). It provides advocacy and outreach services to residents of the state's long-term care facilities and their families in a variety of ways.

Program ombudsmen serve as advocates on behalf of residents in the following settings:[5]

| Facility Type | Number of Facilities | Number of Beds |
|---|---|---|
| Nursing homes | 812 | 80,889 |
| Assisted living facilities | 2,249 | 74,219 |
| Adult family-care homes | 469 | 2,023 |

Ombudsmen investigate and resolve complaints submitted by, or on behalf of, residents of these facilities who are 60 years of age or older.[6] In 2004, a total of 7,555 complaints were investigated by state ombudsmen.[7] The most frequent complaints made by residents of long-term care facilities were as follows:[8]

| Type of Complaint | Number of Complaints |
|---|---|
| Accidents, injuries and falls | 220 |
| Improper transfer or discharge | 214 |
| Administration of medication | 212 |
| Personal hygiene | 203 |
| Call lights or requests for assistance unanswered | 171 |

*Most Frequent Complaints in Nursing Homes, 2004-2005*

| Type of Complaint | Number of Complaints |
|---|---|
| Administration of medication | 162 |
| Quality, quantity or variation of facility menus | 139 |
| Shortage of staff | 107 |
| Billing disputes | 85 |
| Cleanliness or housekeeping concerns | 78 |

*Most Frequent Complaints in Assisted Living Facilities and Adult Family-Care Homes, 2004-2005*

In addition to its investigative capacities, the Program also is responsible for monitoring the development and implementation of federal, state and local regulations affecting long-term care facilities, recommending appropriate policy changes, and maintaining a statewide reporting system capable of collecting and analyzing data and providing information on the state long-term care facilities.[9]

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[4] *Florida's Long-Term Care Ombudsman Program: Real People Helping Real People*, presentation given by the Long-Term Care Ombudsman Program before the House Committee on Elder and Long-Term Care, February 22, 2006.
[5] Statistics reported in *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005: Protecting Florida's Long-Term Care Residents*, provided by the Long-Term Care Ombudsman Program.
[6] Section 400.0060, F.S.
[7] 2004 National Ombudsman Reporting System Data Tables, accessed February 28, 2006, Department of Health and Human Services Administration on Aging, available at: http://www.aoa.gov/prof/aoaprog/elder_rights/LTCombudsman/National_and_State_Data/2004nors/2004nors.asp.
[8] *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005.*
[9] *Ombudsman Services*, accessed February 28, 2006, Long-Term Care Ombudsman Program, available at: http://ombudsman.myflorida.com/ombudsman_services.jsp.

Facility inspections[10] are conducted annually by Program ombudsmen, and focus on the rights, health, safety and welfare of residents to ensure that facilities satisfy the numerous needs of their residents in compliance with state and federal regulations. In 2004-05, the Program completed a total of 2,908 inspections statewide, reflecting approximately 82 percent of Florida's licensed long-term care facilities.[11]

The Program provides technical support for the development of resident and family councils to protect the rights of residents. Each of the state's 17 local councils also participates in community education sessions for service organizations, health and nursing home associations, and other community groups in an effort to recruit additional ombudsmen and to educate the public with information about the Program.

## EFFECT OF PROPOSED CHANGES

In addition to providing a multitude of technical and conforming changes, the legislation makes several substantive modifications to Part I of Chapter 400, F.S.

Definitions

The bill provides definitions for both "local councils" and "state councils", and specifies that the "ombudsman" is appointed by the Secretary of DOEA to head the Office of State Long-Term Care Ombudsman.

Duties and Responsibilities of the Office of State Long-Term Care Ombudsman

The bill requires that residents, their representatives, and other interested citizens be informed about obtaining program services. The bill also clarifies that the Office of State Long-Term Care Ombudsman administers the state and local ombudsman councils – as opposed to merely providing "administrative and technical support." Moreover, the office is given explicit authority to establish and coordinate local councils, and an annual reporting requirement also is established (previously, the state council was responsible for submitting this report; the bill requires the state council to "assist" in preparation of the report). The report is intended to describe the activities of the office and councils, and it is required to combine and analyze complaint and facility condition data; evaluate resident problems; assess overall program success and compliance with provisions of the federal Older Americans Act; and provide recommendations for policy and regulatory changes, while also detailing any relevant recommendations supplied by local councils regarding program functions and activities. The report must be submitted to the secretary at least 30 days before the convening of a regular session, whereupon the secretary is required to submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of Children and Family Services, and the Secretary of the Agency for Health Care Administration. The bill clarifies that staff members coordinating local councils are designated as representatives of the Office of State Long-Term Care Ombudsman.

Duties and Membership of the State Long-Term Ombudsman Council

The bill specifies that the State Long-Term Ombudsman Council serves as an advisory board to assist the ombudsman in reaching consensus among local councils on issues affecting either the program generally or residents individually. The bill clarifies that individual members of the state council may enter a long-term care facility involved in an appeal pursuant to newly created s. 400.0074(2), F.S. The bill deletes the requirement of DOEA to develop investigatory procedures and procedures regarding receipt and resolution of complaints.

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[10] As defined in s. 400.0073, F.S.

[11] *Florida's Long-Term Care Ombudsman Program Annual Snapshot 2004-2005.*

The legislation requires council membership by election, provides for removal of council members upon majority vote, and specifies that three at-large council members be appointed by the Governor after recommendation by the DOEA Secretary in consultation with the ombudsman. Each local council is provided with the authority to elect, by majority vote, a representative from among local council members to represent council interests on the state council. Whereas previously the council position of any member missing three consecutive regular meetings was declared vacant, the bill specifies that members missing three council meetings within a one-year period "may" have their seat declared vacant by the ombudsman. The bill limits the state council chair to two consecutive one-year terms, deletes the requirement that chairs must have served as state council members for at least one year, enables the council chair to create additional executive positions as needed, and provides for removal of the council chair upon a two-thirds vote of state council members at any meeting at which a quorum is present. The bill provides that a council quorum is present if more than 50 percent of all active state council members are in attendance at the same meeting. The bill prohibits votes or binding decisions outside of a publicly-noticed meeting at which a quorum is present.

Duties and Membership of Local Long-Term Care Ombudsman Councils

In an effort to conform state law to provisions of the Older Americans Act, the bill clarifies that the local ombudsman councils function under the direction of the ombudsman. The bill also provides that the state ombudsman shall designate local councils and their jurisdictional boundaries, and may create additional local councils as necessary to ensure that state residents have adequate access to program services. Also, whereas local councils presently have a duty to represent residents' rights before government agencies, the bill alters this dynamic by requiring a local council to "recommend" that the ombudsman and legal advocate seek administrative, legal and other remedies on behalf of residents.

The bill specifies that local council members must maintain their primary residence within boundaries of the council's jurisdiction, establishes minimum local council membership composition, and removes a cap on the number of volunteers that each local council can recruit. The bill eliminates language in s. 400.0069(4)(b), F.S., encouraging local councils to recruit council members who are 60 years of age or older. Guidelines for application and approval of prospective council members and removal procedures for council members are provided by the legislation. The bill eliminates the limitation on the number of 1-year terms that may be served by a local council chair, authorizes the chair to create additional executive positions as needed, and provides for removal of the council chair upon a two-thirds vote of local council members.

Consolidation of Conflict-of-Interest Provisions

The bill consolidates the various conflict of interest provisions[12] scattered throughout Part I of Chapter 400, F.S., into newly-created s. 400.0070, F.S., and requires each office employee and council member to certify that he or she has no conflict of interest. This section will prohibit the ombudsman from having a direct involvement in the licensing or certification of a long-term care facility or provider, and prevents the ombudsman's employment with, ownership of, or investment in, a long-term care facility. DOEA is required to define by rule what situations constitute conflicts of interest and the procedure by which certification of an individual indicating no conflicts of interest occur.

Program Complaint and Investigation Procedures

The bill directs the ombudsman, in consultation with the state council and following approval by the DOEA Secretary, to develop procedures for conducting facility investigations subsequent to receiving a complaint and for conducting onsite administrative assessments of state facilities. The bill deletes the requirement of long-term care facilities to post such procedures in plain view, and specifies that an administrator refusing to allow entrance to the ombudsman or any state or local council member is considered to have interfered with such individual in the performance of his or her official duties.

[12] The provisions include ss. 400.0063(2)(b), 400.0065(3), 400.0067(4), 400.0069(4)(b) and 400.0069(10), F.S.

State Council Administrative Assessments

The bill requires local councils to conduct, at least annually and in addition to investigations pursuant to a complaint, an onsite administrative "assessment"[13] of each nursing home, assisted living facility, and adult family-care home within its jurisdiction. Local councils also are encouraged to conduct similar onsite administrative assessments of the additional long-term care facilities within its jurisdiction. The assessments are required to be non-duplicative of other state survey and inspection efforts, and shall be conducted at a time and for duration necessary to produce the information required to carry out council duties.

Advance notice is not to be provided (except for follow-up assessments), and council members physically present are required to identify themselves and cite the relevant statutory authority for the assessment. Such assessments are not to unreasonably interfere with programs and activities of facility residents, and council members may not enter single-family residential units of a facility during an assessment without the permission of the resident or that resident's representative. The bill indicates that the ombudsman may authorize a state or local council member to assist another local council member in performing an assessment. The bill specifies that assessments may not be accomplished by forcible entry, but notes that an administrator refusing entry to representatives of the office or a council for the purpose of an assessment shall be considered to have interfered with such individual in the performance of his or her official duties.

Complaint Notification and Resolution Procedures

The bill requires that complaints verified as a result of an investigation or assessment and determined to require some measure of remedial action be identified in writing to the long-term care facility administrator, whereupon target dates for taking appropriate remedial action shall be established. The bill specifies that a local council chair who believes a resident's rights or welfare is being jeopardized notify the ombudsman or legal advocate. Similarly, an ombudsman who believes a facility or its employee has committed a criminal act is required to inform local law enforcement officials.

The bill deletes certain recourses available to the state council in the event a facility fails to take action upon a complaint referred to the state council by a local council, including a provision allowing for recommended agency rule and licensure changes, and a provision permitting referral of the complaint to the state attorney for prosecution. The bill specifies that a state council chair who believes residents' rights or welfare are being jeopardized shall notify the ombudsman or legal advocate.

Access to Facilities, Residents and Records

The legislation requires long-term care facilities to provide the office, councils and council members access to any portion of the facility, any resident, and his or her medical and social records for review as necessary to investigate or resolve a complaint. The bill clarifies that access to resident medical and social records necessary to investigate or resolve a complaint will be granted only if a legal representative of the resident refuses to give permission, the office has reasonable cause to suspect that such representative is not acting in the best interests of the resident, and the state or local council member obtains the approval of the ombudsman.

Also, the bill provides access to administrative records, policies and documents and, upon request, copies of all licensing and certification records pertaining to a facility. The bill deletes a provision allowing access to resident records where the office has reasonable cause to believe a legal representative who has refused such access is not acting in the best interests of the resident.

[13] Presently, annual "inspections" of long-term care facilities are required by s. 400.0073, F.S., and are structurally similar to the requirements for administrative assessments in the bill.

Department Funding[14]

The bill directs the department to meet costs of the program through funds appropriated to it and to include the costs associated with the program when developing its budget requests for consideration by the Governor. The bill allows the department to divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio, and directs the remaining allotment from the Older Americans Act to fund direct ombudsman activities.

Statewide Uniform Reporting System

The bill shifts responsibility from DOEA to the office for maintenance of a statewide uniform reporting system, intended to collect and analyze complaint and facility condition data. Similarly, the responsibility for quarterly publishing and making available information pertaining to the number and type of complaints received is shifted from the state council to the office.

Training Requirements

The bill specifies that all council members receive a minimum of 20 hours of training upon employment with the office or approval as a council member, and 10 hours of continuing education per year thereafter. The bill requires the ombudsman to approve training curriculum and indicates that such training should address, at a minimum and in addition to other training requirements, resident confidentiality and any other topic recommended by the secretary. The bill prohibits individuals from holding themselves out as representatives of the State Long-Term Care Ombudsman Program, or conducting any program duties, unless first satisfying the training detailed in s. 400.0091, F.S., and becoming certified by the ombudsman.

C. SECTION DIRECTORY:

Section 1 amends s. 400.0060, F.S.; providing definitions.

Section 2 amends s. 400.0061, F.S.; revising Legislative findings and intent.

Section 3 amends s. 400.0063, F.S.; relating to the designation and duties of the ombudsman and legal advocate.

Section 4 amends s. 400.0065, F.S., providing duties and responsibilities of the State Long-Term Care Ombudsman Program.

Section 5 repeals s. 400.0066, F.S., relating to the Department of Elderly Affairs' funding of the Office of State Long-Term Care Ombudsman; transfers portions of section to newly-created s. 400.0087, F.S.

Section 6 amends s. 400.0067, F.S., providing duties and membership criteria for the State Long-Term Care Ombudsman Council.

Section 7 amends s. 400.0069, F.S., providing duties and membership criteria for local long-term care ombudsman councils.

Section 8 creates s. 400.0070, F.S., relating to ombudsman conflicts of interest.

Section 9 amends s. 400.0071, F.S., relating to State Long-Term Care Ombudsman Program complaint procedures.

Section 10 amends s. 400.0073, F.S., relating to council investigations.

[14] Portions of these funding requirements are contained in s. 400.0066, F.S., which the bill proposes to repeal and re-create in s. 400.0087, F.S.

Section 11 creates s. 400.0074, F.S., relating to onsite administrative assessments.

Section 12 amends s. 400.0075, F.S., relating to complaint notification and resolution procedures.

Section 13 amends s. 400.0078, F.S., relating to citizen access to State Long-Term Care Ombudsman Program services.

Section 14 amends s. 400.0079, F.S., relating to reporter and ombudsman immunity.

Section 15 amends s. 400.0081, F.S., relating to facility and records access.

Section 16 amends s. 400.0083, F.S., relating to interference, retaliation and penalties.

Section 17 repeals s. 400.0085, F.S., relating to penalties; incorporates provision into s. 400.0083, F.S.

Section 18 amends s. 400.0087, F.S., relating to department funding and oversight.

Section 19 amends s. 400.0089, F.S., relating to complaint data reports.

Section 20 amends s. 400.0091, F.S., relating to training curriculum and requirements.

Section 21 provides that the act is effective upon becoming a law.

## 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.

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:

Additional rulemaking

Section 8 of the bill requires the department to promulgate a rule to define situations that constitute a "conflict of interest", and the procedure by which an individual certifies that he or she has no conflict of interest.

Potential rulemaking issues

Section 400.0087, F.S., currently grants the department rulemaking authority to monitor the local councils. Section 400.0071, F.S., requires the council to "recommend to the ombudsman and the secretary" any procedures applicable to the state or local councils.

Under the current bill, the department's rulemaking authority is removed. The bill requires the state ombudsman, in consultation with the council, to "develop state and local procedures" for investigations and administrative assessments. The bill continues, "[t]he ombudsman shall implement all procedures developed under this section after receiving approval from the secretary."

It is unclear whether the policies created by the ombudsman require promulgation by rule. If yes, the bill should grant the department the appropriate rulemaking authority to implement the requirements under this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other comments – State Council

Units within the executive branch are defined in chapter 20, F.S., in order to provide a uniform nomenclature. Section 20.03(7), F.S., defines the term "council" or "advisory council" to mean "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives."

The bill provides that the state council is to "serve as an advisory body." The bill, however, further provides that the state council may not vote on or make any binding decisions "outside of a publicly noticed meeting." It is unclear why an "advisory body" would make binding decisions, which appears to conflict with the bill's designation of the council as an advisory body and the statutory definition of "council."

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 8, 2006 meeting, the Committee on Elder and Long-Term Care adopted four amendments to HB 1067, which:

- restored language in the current definition of "resident"[15] providing that, for purposes of long-term care ombudsman services, a resident must be 60 years of age or older. Deleting this language conflicted with the jurisdiction of the Statewide Advocacy Council.[16]
- deleted bill language to s. 400.0063, F.S., indicating that the office's legal advocate was to serve as legal counsel to the state and local ombudsman councils and members in conjunction with DOEA's legal counsel. This would have raised a possible conflict of interest relating to representation.[17]
- deleted bill language specifying that state council members serve at the pleasure of the Governor.
- clarified a provision in s. 400.0081(1)(c) to indicate that, prior to obtaining access to resident medical and social records pursuant to a facility investigation or resolution of a complaint, a legal representative of the resident must refuse to grant access, the office must have reasonable cause to believe that the representative is not acting in the best interests of the resident and the state or local council member must obtain the approval of the ombudsman. In addition to conforming this section to requirements found in 42 U.S.C.A. 3058g(b)(1)(B)(ii) of the Older Americans Act, this also served to clarify that all of the above requirements --- and not merely one requirement – must be satisfied by the office, council or council member prior to obtaining access to such records.

The Committee favorably reported a Committee Substitute.

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[15] S. 400.0060(7), F.S.
[16] See generally s. 402.164(2)(b), F.S.
[17] See rules 4-1.13 and 4-5.1, Rules Regulating the Florida Bar.

CHAMBER ACTION

1 The Elder & Long-Term Care 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 the State Long-Term Care Ombudsman
7 Program; amending s. 400.0060, F.S.; providing and
8 revising definitions; amending s. 400.0061, F.S.; revising
9 legislative findings and intent; amending s. 400.0063,
10 F.S.; revising provisions relating to qualifications of
11 the State Long-Term Care Ombudsman; revising duties of the
12 legal advocate; amending s. 400.0065, F.S.; revising
13 duties and responsibilities of the State Long-Term Care
14 Ombudsman; requiring an annual report; deleting provisions
15 relating to conflict of interest; repealing s. 400.0066,
16 F.S., relating to the Office of State Long-Term Care
17 Ombudsman and departments of state government; amending s.
18 400.0067, F.S.; revising duties and membership of the
19 State Long-Term Care Ombudsman Council; providing for
20 election of a local council member from each local council
21 to provide representation on the state council;
22 authorizing the Secretary of Elderly Affairs to recommend
23 to the Governor appointments for at-large positions on the

24 state council; providing conditions for removal of members
25 of and for filling vacancies on the state council;
26 providing for election of officers and meetings; providing
27 for per diem and travel expenses if approved by the
28 ombudsman; deleting provisions relating to conflicts of
29 interest and requests for appropriations; amending s.
30 400.0069, F.S.; authorizing the State Long-Term Care
31 Ombudsman to designate and direct local long-term care
32 ombudsman councils; requiring approval by the Secretary of
33 Elderly Affairs of jurisdictional boundaries designated by
34 the ombudsman; revising duties of local long-term care
35 ombudsman councils; providing requirements and application
36 for membership, election of officers, and meetings of
37 local long-term care ombudsman councils; providing
38 conditions for removal of members; providing for travel
39 expenses for members of the council; deleting provisions
40 relating to conflicts of interest; creating s. 400.0070,
41 F.S.; consolidating provisions relating to conflicts of
42 interest of the ombudsman; providing rulemaking authority
43 to the Department of Elderly Affairs regarding conflicts
44 of interest; amending s. 400.0071, F.S.; establishing
45 procedures for receiving, investigating, and assessing
46 complaints against long-term care facilities; deleting
47 provisions requiring the posting and distribution of
48 copies of such procedures; amending s. 400.0073, F.S.;
49 providing conditions for investigations of complaints by
50 state and local ombudsman councils; providing that
51 refusing to allow the ombudsman or a member of a state or

52 local council to enter a long-term care facility is a
53 violation of ch. 400, F.S., under certain circumstances;
54 deleting conditions for onsite administrative inspections;
55 creating s. 400.0074, F.S.; providing conditions and
56 requirements for onsite administrative assessments of
57 nursing homes, assisted living facilities, and adult
58 family-care homes; prohibiting forcible entry of long-term
59 care facilities; providing that refusing to allow the
60 ombudsman or a member of a state or local council to enter
61 a long-term care facility is a violation of ch. 400, F.S.,
62 under certain circumstances; amending s. 400.0075, F.S.;
63 providing complaint notification procedures for state and
64 local councils; providing circumstances in which
65 information relating to violations by a long-term care
66 facility is provided to a local law enforcement agency;
67 amending s. 400.0078, F.S.; requiring information relating
68 to the State Long-Term Care Ombudsman Program to be
69 provided to residents of long-term care facilities or
70 their representatives; amending s. 400.0079, F.S.;
71 providing for immunity from liability for certain persons;
72 amending s. 400.0081, F.S.; requiring long-term care
73 facilities to provide the Office of State Long-Term Care
74 Ombudsman and state and local councils and their members
75 with access to the facility and the records and residents
76 of the facility; authorizing rather than requiring the
77 department to adopt rules regarding access to facilities,
78 records, and residents; amending s. 400.0083, F.S.;
79 prohibiting certain actions against persons who file

80 complaints; providing penalties; repealing s. 400.0085,
81 F.S., relating to a penalty; amending s. 400.0087, F.S.;
82 providing for oversight by and responsibilities of the
83 department; requiring the department to provide certain
84 funding for the State Long-Term Care Ombudsman Program;
85 amending s. 400.0089, F.S.; requiring the office to
86 maintain a data reporting system relating to complaints
87 about and conditions in long-term care facilities and to
88 residents therein; requiring the office to publish and
89 include certain information in its annual report; amending
90 s. 400.0091, F.S.; providing for training of employees of
91 the office and members of the state and local councils;
92 requiring the ombudsman to approve the curriculum and
93 providing contents thereof; requiring certification of
94 employees by the ombudsman; providing an effective date.
95
96 Be It Enacted by the Legislature of the State of Florida:
97
98 Section 1. Section 400.0060, Florida Statutes, is amended
99 to read:
100 400.0060 Definitions.--When used in this part, unless the
101 context clearly dictates otherwise ~~requires~~, the term:
102 (1) "Agency" means the Agency for Health Care
103 Administration.
104 (2) "Department" means the Department of Elderly Affairs.
105 (3) "Local council" means a local long-term care ombudsman
106 council designated by the ombudsman pursuant to s. 400.0069.

107 Local councils are also known as district long-term care
108 ombudsman councils or district councils.
109 (4) ~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing
110 home facility, ~~nursing facility,~~ assisted living facility, adult
111 family-care home, board and care facility, or any other similar
112 residential adult care facility ~~center~~.
113 (5) ~~(3)~~ "Office" means the Office of State Long-Term Care
114 Ombudsman created by s. 400.0063.
115 (6) ~~(4)~~ "Ombudsman" means the individual appointed by the
116 Secretary of Elderly Affairs ~~designated~~ to head the Office of
117 State Long-Term Care Ombudsman.
118 (7) ~~(5)~~ "Resident" means an individual 60 years of age or
119 older who resides in a long-term care facility.
120 (8) ~~(6)~~ "Secretary" means the Secretary of Elderly Affairs.
121 (9) "State council" means the State Long-Term Care
122 Ombudsman Council created by s. 400.0067.
123 Section 2. Section 400.0061, Florida Statutes, is amended
124 to read:
125 400.0061 Legislative findings and intent; long-term care
126 facilities.--
127 (1) The Legislature finds that conditions in long-term
128 care facilities in this state are such that the rights, health,
129 safety, and welfare of residents are not fully ensured by rules
130 of the Department of Elderly Affairs or the Agency for Health
131 Care Administration~~,~~ or by the good faith of owners or operators
132 of long-term care facilities. Furthermore, there is a need for a
133 formal mechanism whereby a long-term care facility resident, a
134 representative of a long-term care facility resident, or any

135 other concerned citizen ~~or his or her representative~~ may make a
136 complaint against the facility or an employee of the facility
137 ~~its employees,~~ or against other persons who are in a position to
138 restrict, interfere with, or threaten the rights, health,
139 safety, or welfare of a long-term care facility ~~the~~ resident.
140 The Legislature finds that concerned citizens are often more
141 effective advocates for ~~of~~ the rights of others than
142 governmental agencies. The Legislature further finds that in
143 order to be eligible to receive an allotment of funds authorized
144 and appropriated under the federal Older Americans Act, the
145 state must establish and operate an Office of State Long-Term
146 Care Ombudsman, to be headed by the State Long-Term Care
147 Ombudsman, and carry out a long-term care ombudsman program.
148 (2) It is the intent of the Legislature, therefore, to
149 utilize voluntary citizen ombudsman councils under the
150 leadership of the ombudsman, and through them to operate an
151 ombudsman program which shall, without interference by any
152 executive agency, undertake to discover, investigate, and
153 determine the presence of conditions or individuals which
154 constitute a threat to the rights, health, safety, or welfare of
155 the residents of long-term care facilities. To ensure that the
156 effectiveness and efficiency of such investigations are not
157 impeded by advance notice or delay, the Legislature intends that
158 the ombudsman and ombudsman councils and their designated
159 representatives not be required to obtain warrants in order to
160 enter into or conduct investigations or onsite administrative
161 assessments ~~inspections~~ of long-term care facilities. It is the
162 further intent of the Legislature that the environment in long-

163 term care facilities ~~shall~~ be conducive to the dignity and
164 independence of residents and that investigations by ombudsman
165 councils shall further the enforcement of laws, rules, and
166 regulations that safeguard the health, safety, and welfare of
167 residents.
168 Section 3. Section 400.0063, Florida Statutes, is amended
169 to read:
170 400.0063 Establishment of Office of State Long-Term Care
171 Ombudsman; designation of ombudsman and legal advocate.--
172 (1) There is created an Office of State Long-Term Care
173 Ombudsman in the Department of Elderly Affairs.
174 (2)(a) The Office of State Long-Term Care Ombudsman shall
175 be headed by the State Long-Term Care Ombudsman, who shall ~~have~~
176 ~~expertise and experience in the fields of long-term care and~~
177 ~~advocacy, who shall~~ serve on a full-time basis and shall
178 personally, or through representatives of the office, carry out
179 the purposes and functions of the office ~~of State Long-Term Care~~
180 ~~Ombudsman~~ in accordance with state and federal law.
181 (b) The ~~State Long-Term Care~~ ombudsman shall be appointed
182 by and shall serve at the pleasure of the Secretary of Elderly
183 Affairs. The secretary shall appoint a person who has expertise
184 and experience in the fields of long-term care and advocacy to
185 serve as ombudsman. ~~No person who has a conflict of interest, or~~
186 ~~has an immediate family member who has a conflict of interest,~~
187 ~~may be involved in the designation of the ombudsman.~~
188 (3)(a) There is created in the office ~~of State Long-Term~~
189 ~~Care Ombudsman~~ the position of legal advocate, who shall be

190 selected by and serve at the pleasure of the ombudsman~~,~~ and ~~who~~
191 shall be a member in good standing of The Florida Bar.
192 (b) The duties of the legal advocate shall include, but
193 not be limited to:
194 1. Assisting the ombudsman in carrying out the duties of
195 the office with respect to the abuse, neglect, or violation of
196 rights of residents of long-term care facilities.
197 2. Assisting the state and local ~~ombudsman~~ councils in
198 carrying out their responsibilities under this part.
199 3. Pursuing administrative, ~~Initiating and prosecuting~~
200 legal, and other appropriate remedies on behalf of ~~equitable~~
201 ~~actions to enforce the rights of long term care facility~~
202 residents ~~as defined in this chapter~~.
203 4. Serving as legal counsel to the state and local
204 ~~ombudsman~~ councils, or individual members thereof, against whom
205 any suit or other legal action is initiated in connection with
206 the performance of the official duties of the councils or an
207 individual member.
208 Section 4. Section 400.0065, Florida Statutes, is amended
209 to read:
210 400.0065 State Long-Term Care Ombudsman; duties and
211 responsibilities~~; conflict of interest~~.--
212 (1) The purpose of the Office of State Long-Term Care
213 Ombudsman shall be to:
214 (a) Identify, investigate, and resolve complaints made by
215 or on behalf of residents of long-term care facilities~~,~~ relating
216 to actions or omissions by providers or representatives of
217 providers of long-term care services, other public or private

218 agencies, guardians, or representative payees that may adversely
219 affect the health, safety, welfare, or rights of the residents.
220 (b) Provide services that ~~to~~ assist ~~residents~~ in
221 protecting the health, safety, welfare, and rights of ~~the~~
222 residents.
223 (c) Inform residents, their representatives, and other
224 citizens about obtaining the services of the ~~Office of~~ State
225 Long-Term Care Ombudsman Program and its representatives.
226 (d) Ensure that residents have regular and timely access
227 to the services provided through the office and that residents
228 and complainants receive timely responses from representatives
229 of the office to their complaints.
230 (e) Represent the interests of residents before
231 governmental agencies and seek administrative, legal, and other
232 remedies to protect the health, safety, welfare, and rights of
233 the residents.
234 (f) Administer the ~~Provide administrative and technical~~
235 ~~assistance to~~ state and local ~~ombudsman~~ councils.
236 (g) Analyze, comment on, and monitor the development and
237 implementation of federal, state, and local laws, rules, and
238 regulations, and other governmental policies and actions, that
239 pertain to the health, safety, welfare, and rights of the
240 residents, with respect to the adequacy of long-term care
241 facilities and services in the state, and recommend any changes
242 in such laws, rules, regulations, policies, and actions as the
243 office determines to be appropriate and necessary.

244 (h) Provide technical support for the development of
245 resident and family councils to protect the well-being and
246 rights of residents.
247 (2) The State Long-Term Care Ombudsman shall have the duty
248 and authority to:
249 (a) Establish and coordinate ~~Assist and support the~~
250 ~~efforts of the State Long-Term Care Ombudsman Council in the~~
251 ~~establishment and coordination of~~ local ~~ombudsman~~ councils
252 throughout the state.
253 (b) Perform the duties specified in state and federal law,
254 rules, and regulations.
255 (c) Within the limits of appropriated federal and state
256 funding ~~authorized and appropriated~~, employ such personnel~~,~~
257 ~~including staff for local ombudsman councils,~~ as are necessary
258 to perform adequately the functions of the office and provide or
259 contract for legal services to assist the state and local
260 ~~ombudsman~~ councils in the performance of their duties. Staff
261 positions established for the purpose of coordinating the
262 activities of ~~for~~ each local ~~ombudsman~~ council and assisting its
263 members may be ~~established as career service positions, and~~
264 ~~shall be~~ filled by the ombudsman after approval by the
265 secretary. Notwithstanding any other provision of this part,
266 upon certification by the ombudsman that the staff member hired
267 to fill any such position has completed the initial training
268 required under s. 400.0091, such person shall be considered a
269 representative of the State Long-Term Care Ombudsman Program for
270 purposes of this part.

271 (d) Contract for services necessary to carry out the
272 activities of the office.
273 (e) Apply for, receive, and accept grants, gifts, or other
274 payments, including, but not limited to, real property, personal
275 property, and services from a governmental entity or other
276 public or private entity or person, and make arrangements for
277 the use of such grants, gifts, or payments.
278 (f) Coordinate, to the greatest extent possible, state and
279 local ombudsman services with the protection and advocacy
280 systems for individuals with developmental disabilities and
281 mental illnesses and with legal assistance programs for the poor
282 through adoption of memoranda of understanding and other means.
283 (g) Enter into a cooperative agreement with the Statewide
284 Advocacy Council ~~and district human rights advocacy committees~~
285 for the purpose of coordinating and avoiding duplication of
286 advocacy services provided to residents ~~of long term care~~
287 ~~facilities~~.
288 (h) Enter into a cooperative agreement with the Medicaid
289 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older
290 Americans Act.
291 (i) Prepare an annual report describing the activities
292 carried out by the office, the state council, and the local
293 councils in the year for which the report is prepared. The
294 ombudsman shall submit the report to the secretary at least 30
295 days before the convening of the regular session of the
296 Legislature. The secretary shall in turn submit the report to
297 the United States Assistant Secretary for Aging, the Governor,
298 the President of the Senate, the Speaker of the House of

299 Representatives, the Secretary of Children and Family Services,
300 and the Secretary of Health Care Administration. The report
301 shall, at a minimum:
302 1. Contain and analyze data collected concerning
303 complaints about and conditions in long-term care facilities and
304 the disposition of such complaints.
305 2. Evaluate the problems experienced by residents.
306 3. Analyze the successes of the ombudsman program during
307 the preceding year, including an assessment of how successfully
308 the program has carried out its responsibilities under the Older
309 Americans Act.
310 4. Provide recommendations for policy, regulatory, and
311 statutory changes designed to solve identified problems; resolve
312 residents' complaints; improve residents' lives and quality of
313 care; protect residents' rights, health, safety, and welfare;
314 and remove any barriers to the optimal operation of the State
315 Long-Term Care Ombudsman Program.
316 5. Contain recommendations from the State Long-Term Care
317 Ombudsman Council regarding program functions and activities and
318 recommendations for policy, regulatory, and statutory changes
319 designed to protect residents' rights, health, safety, and
320 welfare.
321 6. Contain any relevant recommendations from the local
322 councils regarding program functions and activities.
323 ~~(3) The State Long Term Care Ombudsman shall not:~~
324 ~~(a) Have a direct involvement in the licensing or~~
325 ~~certification of, or an ownership or investment interest in, a~~

326 ~~long term care facility or a provider of a long term care~~
327 ~~service.~~
328 ~~(b) Be employed by, or participate in the management of, a~~
329 ~~long-term care facility.~~
330 ~~(c) Receive, or have a right to receive, directly or~~
331 ~~indirectly, remuneration, in cash or in kind, under a~~
332 ~~compensation agreement with the owner or operator of a long-term~~
333 ~~care facility.~~
334
335 ~~The Department of Elderly Affairs shall adopt rules to establish~~
336 ~~procedures to identify and eliminate conflicts of interest as~~
337 ~~described in this subsection.~~
338 Section 5. Section 400.0066, Florida Statutes, is
339 repealed.
340 Section 6. Section 400.0067, Florida Statutes, is amended
341 to read:
342 400.0067 State Long-Term Care Ombudsman Council; duties;
343 membership.--
344 (1) There is created within the Office of State Long-Term
345 Care Ombudsman, the State Long-Term Care Ombudsman Council.
346 (2) The State Long-Term Care Ombudsman Council shall:
347 (a) Serve as an advisory body to assist the ombudsman in
348 reaching a consensus among local ~~ombudsman~~ councils on issues
349 affecting residents and impacting the optimal operation of the
350 program ~~of statewide concern~~.
351 (b) Serve as an appellate body in receiving from the local
352 ~~ombudsman~~ councils complaints not resolved at the local level.
353 Any individual member or members of the state ~~ombudsman~~ council

354 may enter any long-term care facility involved in an appeal,
355 pursuant to the conditions specified in s. 400.0074(2)
356 ~~400.0069(3)~~.
357 (c) Assist the ombudsman to discover, investigate, and
358 determine the existence of abuse or neglect in any long-term
359 care facility. ~~The Department of Elderly Affairs shall develop~~
360 ~~procedures relating to such investigations. Investigations may~~
361 ~~consist, in part, of one or more onsite administrative~~
362 ~~inspections.~~
363 (d) Assist the ombudsman in eliciting, receiving,
364 responding to, and resolving complaints made by or on behalf of
365 ~~long-term care facility~~ residents ~~and in developing procedures~~
366 ~~relating to the receipt and resolution of such complaints. The~~
367 ~~secretary shall approve all such procedures~~.
368 (e) Elicit and coordinate state, local, and voluntary
369 organizational assistance for the purpose of improving the care
370 received by residents ~~of a long-term care facility~~.
371 (f) Assist the ombudsman in preparing the annual report
372 described in s. 400.0065. ~~Prepare an annual report describing~~
373 ~~the activities carried out by the ombudsman and the State Long-~~
374 ~~Term Care Ombudsman Council in the year for which the report is~~
375 ~~prepared. The State Long Term Care Ombudsman Council shall~~
376 ~~submit the report to the Secretary of Elderly Affairs. The~~
377 ~~secretary shall in turn submit the report to the Commissioner of~~
378 ~~the United States Administration on Aging, the Governor, the~~
379 ~~President of the Senate, the Speaker of the House of~~
380 ~~Representatives, the minority leaders of the House and Senate,~~
381 ~~the chairpersons of appropriate House and Senate committees, the~~

382 ~~Secretary of Children and Family Services, and the Secretary of~~
383 ~~Health Care Administration. The report shall be submitted by the~~
384 ~~Secretary of Elderly Affairs at least 30 days before the~~
385 ~~convening of the regular session of the Legislature and shall,~~
386 ~~at a minimum:~~
387 ~~1. Contain and analyze data collected concerning~~
388 ~~complaints about and conditions in long-term care facilities.~~
389 ~~2. Evaluate the problems experienced by residents of long-~~
390 ~~term care facilities.~~
391 ~~3. Contain recommendations for improving the quality of~~
392 ~~life of the residents and for protecting the health, safety,~~
393 ~~welfare, and rights of the residents.~~
394 ~~4. Analyze the success of the ombudsman program during the~~
395 ~~preceding year and identify the barriers that prevent the~~
396 ~~optimal operation of the program. The report of the program's~~
397 ~~successes shall also address the relationship between the state~~
398 ~~long-term care ombudsman program, the Department of Elderly~~
399 ~~Affairs, the Agency for Health Care Administration, and the~~
400 ~~Department of Children and Family Services, and an assessment of~~
401 ~~how successfully the state long-term care ombudsman program has~~
402 ~~carried out its responsibilities under the Older Americans Act.~~
403 ~~5. Provide policy and regulatory and legislative~~
404 ~~recommendations to solve identified problems; resolve residents'~~
405 ~~complaints; improve the quality of care and life of the~~
406 ~~residents; protect the health, safety, welfare, and rights of~~
407 ~~the residents; and remove the barriers to the optimal operation~~
408 ~~of the state long-term care ombudsman program.~~

409 ~~6. Contain recommendations from the local ombudsman~~
410 ~~councils regarding program functions and activities.~~
411 ~~7. Include a report on the activities of the legal~~
412 ~~advocate and other legal advocates acting on behalf of the local~~
413 ~~and state councils.~~
414 (3)~~(a)~~ The State Long-Term Care Ombudsman Council shall be
415 composed of one active local council member elected ~~designated~~
416 by each local council plus three at-large members ~~persons~~
417 appointed by the Governor.
418 (a) Each local council shall elect by majority vote a
419 representative from among the council members to represent the
420 interests of the local council on the state council. A local
421 council chair may not serve as the representative of the local
422 council on the state council.
423 (b)1. The secretary, after consulting ~~ombudsman, in~~
424 ~~consultation~~ with the ombudsman ~~secretary~~, shall submit to the
425 Governor a list of persons recommended for appointment to the
426 at-large positions on the state council. The list shall not
427 include the name of any person who is currently ~~at least eight~~
428 ~~names of persons who are not~~ serving on a local council.
429 2. The Governor shall appoint three at-large members
430 chosen from the list~~, at least one of whom must be over 60 years~~
431 ~~of age~~.
432 3. If the Governor does not appoint an at-large member to
433 fill a vacant position ~~Governor's appointments are not made~~
434 within 60 days after ~~the ombudsman submits~~ the list is
435 submitted, the secretary, after consulting with the ombudsman,
436 ~~in consultation with the secretary,~~ shall appoint an at-large

437 member to fill that vacant position ~~three members, one of whom~~
438 ~~must be over 60 years of age~~.
439 (c)1. All state council members shall ~~be appointed to~~
440 serve 3-year terms.
441 2. A member of the state ~~Long Term Care Ombudsman~~ council
442 may not serve more than two consecutive terms.
443 3. A local council may recommend removal of its elected
444 representative from the state council by a majority vote. If the
445 council votes to remove its representative, the local council
446 chair shall immediately notify the ombudsman. The secretary
447 shall advise the Governor of the local council's vote upon
448 receiving notice from the ombudsman. ~~Any vacancy shall be filled~~
449 ~~in the same manner as the original appointment.~~
450 4. The position of any member missing three state council
451 meetings within a 1-year period ~~consecutive regular meetings~~
452 without cause may ~~shall~~ be declared vacant by the ombudsman. The
453 findings of the ombudsman regarding cause shall be final and
454 binding.
455 5. Any vacancy on the state council shall be filled in the
456 same manner as the original appointment.
457 (d)1. The state ~~ombudsman~~ council shall elect a chair to
458 serve for a term of 1 year. A chair may not serve more than two
459 consecutive terms ~~chairperson for a term of 1 year from among~~
460 ~~the members who have served for at least 1 year~~.
461 2. The chair ~~chairperson~~ shall select a vice chair
462 ~~chairperson~~ from among the members. The vice chair ~~chairperson~~
463 shall preside over the state council in the absence of the chair
464 ~~chairperson~~.

465 3. The chair may create additional executive positions as
466 necessary to carry out the duties of the state council. Any
467 person appointed to an executive position shall serve at the
468 pleasure of the chair, and his or her term shall expire on the
469 same day as the term of the chair.
470 4. A chair may be immediately removed from office prior to
471 the expiration of his or her term by a vote of two-thirds of all
472 state council members present at any meeting at which a quorum
473 is present. If a chair is removed from office prior to the
474 expiration of his or her term, a replacement chair shall be
475 chosen during the same meeting in the same manner as described
476 in this paragraph, and the term of the replacement chair shall
477 begin immediately. The replacement chair shall serve for the
478 remainder of the term and is eligible to serve two subsequent
479 consecutive terms.
480 (e)1. The state ~~ombudsman~~ council shall meet upon the call
481 of the chair or upon the call of the ombudsman. The council
482 shall meet ~~chairperson,~~ at least quarterly but may meet ~~or~~ more
483 frequently as needed.
484 2. A quorum shall be considered present if more than 50
485 percent of all active state council members are in attendance at
486 the same meeting.
487 3. Neither the state council nor any of its individual
488 members may vote on or otherwise make any binding decisions that
489 will directly impact the state council or any local council
490 outside of a publicly noticed meeting at which a quorum is
491 present.

492 (f) Members shall receive no compensation but shall, with
493 approval from the ombudsman, be reimbursed for per diem and
494 travel expenses as provided in s. 112.061.
495 ~~(4) No officer, employee, or representative of the Office~~
496 ~~of State Long Term Care Ombudsman or of the State Long Term Care~~
497 ~~Ombudsman Council, nor any member of the immediate family of~~
498 ~~such officer, employee, or representative, may have a conflict~~
499 ~~of interest. The ombudsman shall adopt rules to identify and~~
500 ~~remove conflicts of interest.~~
501 ~~(5) The Department of Elderly Affairs shall make a~~
502 ~~separate and distinct request for an appropriation for all~~
503 ~~expenses for the state and local ombudsman councils.~~
504 Section 7. Section 400.0069, Florida Statutes, is amended
505 to read:
506 400.0069 Local long-term care ombudsman councils; duties;
507 membership.--
508 (1)(a) The ombudsman shall designate local long-term care
509 ombudsman councils to carry out the duties of the State Long-
510 Term Care Ombudsman Program within local communities. Each local
511 council shall function under the direction of the ombudsman.
512 (b) The ombudsman shall ensure that there is ~~There shall~~
513 ~~be~~ at least one local ~~long term care ombudsman~~ council operating
514 in each of the department's planning and service areas ~~of the~~
515 ~~Department of Elderly Affairs, which shall function under the~~
516 ~~direction of the ombudsman and the state ombudsman council~~. The
517 ombudsman may create additional local councils as necessary to
518 ensure that residents throughout the state have adequate access
519 to State Long-Term Care Ombudsman Program services. The

520 ombudsman, after approval from the secretary, shall designate
521 the jurisdictional boundaries of each local council.
522 (2) The duties of the local councils ~~ombudsman council~~ are
523 to:
524 (a) ~~To~~ Serve as a third-party mechanism for protecting the
525 health, safety, welfare, and civil and human rights of residents
526 ~~of a long-term care facility~~.
527 (b) ~~To~~ Discover, investigate, and determine the existence
528 of abuse or neglect in any long-term care facility and to use
529 the procedures provided for in ss. 415.101-415.113 when
530 applicable. ~~Investigations may consist, in part, of one or more~~
531 ~~onsite administrative inspections.~~
532 (c) ~~To~~ Elicit, receive, investigate, respond to, and
533 resolve complaints made by~~,~~ or on behalf of~~, long term care~~
534 ~~facility~~ residents.
535 (d) ~~To~~ Review and, if necessary, ~~to~~ comment on~~, for their~~
536 ~~effect on the rights of long term care facility residents,~~ all
537 existing or proposed rules, regulations, and other governmental
538 policies and actions relating to long-term care facilities that
539 may potentially have an effect on the rights, health, safety,
540 and welfare of residents.
541 (e) ~~To~~ Review personal property and money accounts of
542 ~~Medicaid~~ residents who are receiving assistance under the
543 Medicaid program pursuant to an investigation to obtain
544 information regarding a specific complaint or problem.
545 (f) Recommend that the ombudsman and the legal advocate ~~To~~
546 ~~represent the interests of residents before government agencies~~

547 ~~and to~~ seek administrative, legal, and other remedies to protect
548 the health, safety, welfare, and rights of the residents.
549 (g) ~~To~~ Carry out other activities that the ombudsman
550 determines to be appropriate.
551 (3) In order to carry out the duties specified in
552 subsection (2), a member of a ~~the~~ local ~~ombudsman~~ council is
553 authorized~~, pursuant to ss. 400.19(1) and 400.434,~~ to enter any
554 long-term care facility without notice or first obtaining a
555 warrant, subject to the provisions of s. 400.0074(2)
556 ~~400.0073(5)~~.
557 (4) Each local ~~ombudsman~~ council shall be composed of
558 members whose primary residence is located within the boundaries
559 of the local council's jurisdiction.
560 (a) The ombudsman shall strive to ensure that each local
561 council ~~no less than 15 members and no more than 40 members from~~
562 ~~the local planning and service area, to~~ include the following
563 persons as members:
564 1. At least one medical or osteopathic physician whose
565 practice includes or has included a substantial number of
566 geriatric patients and who may ~~have limited~~ practice in a long-
567 term care facility;
568 2. At least one registered nurse who has geriatric
569 experience~~, if possible~~;
570 3. At least one licensed pharmacist;
571 4. At least one registered dietitian;
572 5. At least six nursing home residents or representative
573 consumer advocates for nursing home residents;

574 6. At least three residents of assisted living facilities
575 or adult family-care homes or three representative consumer
576 advocates for alternative long-term care facility residents;
577 7. At least one attorney; and
578 8. At least one professional social worker.
579 (b) In no case shall the medical director of a long-term
580 care facility or an employee of the agency ~~for Health Care~~
581 ~~Administration~~, the department, the Department of Children and
582 Family Services, or the Agency for Persons with Disabilities
583 ~~Department of Elderly Affairs~~ serve as a member or as an ex
584 officio member of a council. ~~Each member of the council shall~~
585 ~~certify that neither the council member nor any member of the~~
586 ~~council member's immediate family has any conflict of interest~~
587 ~~pursuant to subsection (10). Local ombudsman councils are~~
588 ~~encouraged to recruit council members who are 60 years of age or~~
589 ~~older.~~
590 (5)(a) Individuals wishing to join a local council shall
591 submit an application to the ombudsman. The ombudsman shall
592 review the individual's application and advise the secretary of
593 his or her recommendation for approval or disapproval of the
594 candidate's membership on the local council. If the secretary
595 approves of the individual's membership, the individual shall be
596 appointed as a member of the local council.
597 (b) The secretary may rescind the ombudsman's approval of
598 a member on a local council at any time. If the secretary
599 rescinds the approval of a member on a local council, the
600 ombudsman shall ensure that the individual is immediately
601 removed from the local council on which he or she serves and the

602 individual may no longer represent the State Long-Term Care
603 Ombudsman Program until the secretary provides his or her
604 approval.
605 (c) A local council may recommend the removal of one or
606 more of its members by submitting to the ombudsman a resolution
607 adopted by a two-thirds vote of the members of the council
608 stating the name of the member or members recommended for
609 removal and the reasons for the recommendation. If such a
610 recommendation is adopted by a local council, the local council
611 chair or district coordinator shall immediately report the
612 council's recommendation to the ombudsman. The ombudsman shall
613 review the recommendation of the local council and advise the
614 secretary of his or her recommendation regarding removal of the
615 council member or members. ~~All members shall be appointed to~~
616 ~~serve 3 year terms. Upon expiration of a term and in case of any~~
617 ~~other vacancy, the council shall select a replacement by~~
618 ~~majority vote. The ombudsman shall review the selection of the~~
619 ~~council and recommend approval or disapproval to the Governor.~~
620 ~~If no action is taken by the Governor to approve or disapprove~~
621 ~~the replacement of a member within 30 days after the ombudsman~~
622 ~~has notified the Governor of his or her recommendation, the~~
623 ~~replacement shall be considered disapproved and the process for~~
624 ~~selection of a replacement shall be repeated.~~
625 (6)(a) Each ~~The~~ local ~~ombudsman~~ council shall elect a
626 chair for a term of 1 year. There shall be no limitation on the
627 number of terms that an approved member of a local council may
628 serve as chair ~~from members who have served at least 1 year~~.

629 (b) The chair shall select a vice chair from among the
630 members of the council. The vice chair shall preside over the
631 council in the absence of the chair.
632 (c) The chair may create additional executive positions as
633 necessary to carry out the duties of the local council. Any
634 person appointed to an executive position shall serve at the
635 pleasure of the chair, and his or her term shall expire on the
636 same day as the term of the chair.
637 (d) A chair may be immediately removed from office prior
638 to the expiration of his or her term by a vote of two-thirds of
639 the members of the local council. If any chair is removed from
640 office prior to the expiration of his or her term, a replacement
641 chair shall be elected during the same meeting, and the term of
642 the replacement chair shall begin immediately. The replacement
643 chair shall serve for the remainder of the term of the person he
644 or she replaced.
645 (7) Each ~~The~~ local ~~ombudsman~~ council shall meet upon the
646 call of its ~~the~~ chair or upon the call of the ombudsman. Each
647 local council shall meet~~,~~ at least once a month but may meet ~~or~~
648 more frequently if necessary ~~as needed to handle emergency~~
649 ~~situations~~.
650 (8) A member of a local ~~ombudsman~~ council shall receive no
651 compensation but shall, with approval from the ombudsman, be
652 reimbursed for travel expenses both within and outside the
653 jurisdiction of the local council ~~county of residence~~ in
654 accordance with the provisions of s. 112.061.
655 (9) The local ~~ombudsman~~ councils are authorized to call
656 upon appropriate agencies of state government for such

657 professional assistance as may be needed in the discharge of
658 their duties. All state agencies shall cooperate with the local
659 ~~ombudsman~~ councils in providing requested information and agency
660 representation ~~representatives~~ at council meetings.
661 ~~(10) No officer, employee, or representative of a local~~
662 ~~long-term care ombudsman council, nor any member of the~~
663 ~~immediate family of such officer, employee, or representative,~~
664 ~~may have a conflict of interest. The ombudsman shall adopt rules~~
665 ~~to identify and remove conflicts of interest.~~
666 Section 8. Section 400.0070, Florida Statutes, is created
667 to read:
668 400.0070 Conflicts of interest.--
669 (1) The ombudsman shall not:
670 (a) Have a direct involvement in the licensing or
671 certification of, or an ownership or investment interest in, a
672 long-term care facility or a provider of a long-term care
673 service.
674 (b) Be employed by, or participate in the management of, a
675 long-term care facility.
676 (c) Receive, or have a right to receive, directly or
677 indirectly, remuneration, in cash or in kind, under a
678 compensation agreement with the owner or operator of a long-term
679 care facility.
680 (2) Each employee of the office, each state council
681 member, and each local council member shall certify that he or
682 she has no conflict of interest.
683 (3) The department shall define by rule:

684 (a) Situations that constitute a person having a conflict
685 of interest that could materially affect the objectivity or
686 capacity of a person to serve on an ombudsman council, or as an
687 employee of the office, while carrying out the purposes of the
688 State Long-Term Care Ombudsman Program as specified in this
689 part.
690 (b) The procedure by which a person listed in subsection
691 (2) shall certify that he or she has no conflict of interest.
692 Section 9. Section 400.0071, Florida Statutes, is amended
693 to read:
694 400.0071 State Long-Term Care Ombudsman Program complaint
695 procedures.--
696 (1) The ~~state~~ ombudsman, in consultation with the state
697 council, shall develop ~~recommend to the ombudsman and the~~
698 ~~secretary~~ state and local procedures for:
699 (a) Receiving complaints against a ~~nursing home or~~ long-
700 term care facility or an ~~its~~ employee of a long-term care
701 facility.
702 (b) Conducting investigations of a long-term care facility
703 or an employee or employees of such a facility subsequent to
704 receiving a complaint.
705 (c) Conducting onsite administrative assessments of long-
706 term care facilities. ~~The procedures shall be implemented after~~
707 ~~the approval of the ombudsman and the secretary.~~
708 (2) The ombudsman shall implement all procedures developed
709 under this section after receiving approval from the secretary.
710 ~~These procedures shall be posted in full view in every nursing~~
711 ~~home or long-term care facility. Every resident or~~

712 ~~representative of a resident shall receive, upon admission to a~~
713 ~~nursing home or long term care facility, a printed copy of the~~
714 ~~procedures of the state and the local ombudsman councils.~~
715 Section 10. Section 400.0073, Florida Statutes, is amended
716 to read:
717 400.0073 State and local ombudsman council
718 investigations.--
719 (1) A local ~~ombudsman~~ council shall investigate, within a
720 reasonable time after a complaint is made, any complaint of a
721 resident, a ~~or~~ representative of a resident, or any other
722 credible source based on an action or omission by an
723 administrator, an ~~or~~ employee, or a representative of a ~~nursing~~
724 ~~home or~~ long-term care facility which might be:
725 (a) Contrary to law; ~~.~~
726 (b) Unreasonable, unfair, oppressive, or unnecessarily
727 discriminatory, even though in accordance with law; ~~.~~
728 (c) Based on a mistake of fact; ~~.~~
729 (d) Based on improper or irrelevant grounds; ~~.~~
730 (e) Unaccompanied by an adequate statement of reasons; ~~.~~
731 (f) Performed in an inefficient manner; or ~~.~~
732 (g) Otherwise adversely affecting the health, safety,
733 welfare, or rights of a resident ~~erroneous~~.
734 (2) In an investigation, both the state and local
735 ~~ombudsman~~ councils have the authority to hold public hearings.
736 (3) Subsequent to an appeal from a local ~~ombudsman~~
737 council, the state ~~ombudsman~~ council may investigate any
738 complaint received by the local council involving a ~~nursing home~~
739 ~~or~~ long-term care facility or a resident.

740 (4) If the ombudsman or any state or local council member
741 is not allowed to enter a long-term care facility, the
742 administrator of the facility shall be considered to have
743 interfered with a representative of the office, the state
744 council, or the local council in the performance of official
745 duties as described in s. 400.0083(1) and to have committed a
746 violation of this part. The ombudsman shall report a facility's
747 refusal to allow entry to the agency, and the agency shall
748 record the report and take it into consideration when
749 determining actions allowable under s. 400.102, s. 400.121, s.
750 400.414, s. 400.419, s. 400.6194, or s. 400.6196. ~~In addition to~~
751 ~~any specific investigation made pursuant to a complaint, the~~
752 ~~local ombudsman council shall conduct, at least annually, an~~
753 ~~investigation, which shall consist, in part, of an onsite~~
754 ~~administrative inspection, of each nursing home or long-term~~
755 ~~care facility within its jurisdiction. This inspection shall~~
756 ~~focus on the rights, health, safety, and welfare of the~~
757 ~~residents.~~
758 ~~(5) Any onsite administrative inspection conducted by an~~
759 ~~ombudsman council shall be subject to the following:~~
760 ~~(a) All inspections shall be at times and for durations~~
761 ~~necessary to produce the information required to carry out the~~
762 ~~duties of the council.~~
763 ~~(b) No advance notice of an inspection shall be provided~~
764 ~~to any nursing home or long-term care facility, except that~~
765 ~~notice of followup inspections on specific problems may be~~
766 ~~provided.~~

767 ~~(c) Inspections shall be conducted in a manner which will~~
768 ~~impose no unreasonable burden on nursing homes or long-term care~~
769 ~~facilities, consistent with the underlying purposes of this~~
770 ~~part. Unnecessary duplication of efforts among council members~~
771 ~~or the councils shall be reduced to the extent possible.~~
772 ~~(d) Any ombudsman council member physically present for~~
773 ~~the inspection shall identify himself or herself and the~~
774 ~~statutory authority for his or her inspection of the facility.~~
775 ~~(e) Inspections may not unreasonably interfere with the~~
776 ~~programs and activities of clients within the facility.~~
777 ~~Ombudsman council members shall respect the rights of residents.~~
778 ~~(f) All inspections shall be limited to compliance with~~
779 ~~parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a)~~
780 ~~et seq., and any rules or regulations promulgated pursuant to~~
781 ~~such laws.~~
782 ~~(g) No ombudsman council member shall enter a single-~~
783 ~~family residential unit within a long-term care facility without~~
784 ~~the permission of the resident or the representative of the~~
785 ~~resident.~~
786 ~~(h) Any inspection resulting from a specific complaint~~
787 ~~made to an ombudsman council concerning a facility shall be~~
788 ~~conducted within a reasonable time after the complaint is made.~~
789 ~~(6) An inspection may not be accomplished by forcible~~
790 ~~entry. Refusal of a long-term care facility to allow entry of~~
791 ~~any ombudsman council member constitutes a violation of part II,~~
792 ~~part III, or part VII of this chapter.~~
793 Section 11. Section 400.0074, Florida Statutes, is created
794 to read:

795 400.0074 Local ombudsman council onsite administrative
796 assessments.--
797 (1) In addition to any specific investigation conducted
798 pursuant to a complaint, the local council shall conduct, at
799 least annually, an onsite administrative assessment of each
800 nursing home, assisted living facility, and adult family-care
801 home within its jurisdiction. This administrative assessment
802 shall focus on factors affecting the rights, health, safety, and
803 welfare of the residents. Each local council is encouraged to
804 conduct a similar onsite administrative assessment of each
805 additional long-term care facility within its jurisdiction.
806 (2) An onsite administrative assessment conducted by a
807 local council shall be subject to the following conditions:
808 (a) To the extent possible and reasonable, the
809 administrative assessments shall not duplicate the efforts of
810 the agency surveys and inspections conducted under parts II,
811 III, and VII of this chapter.
812 (b) An administrative assessment shall be conducted at a
813 time and for a duration necessary to produce the information
814 required to carry out the duties of the local council.
815 (c) Advance notice of an administrative assessment may not
816 be provided to a long-term care facility, except that notice of
817 followup assessments on specific problems may be provided.
818 (d) A local council member physically present for the
819 administrative assessment shall identify himself or herself and
820 cite the specific statutory authority for his or her assessment
821 of the facility.

822 (e) An administrative assessment may not unreasonably
823 interfere with the programs and activities of residents.
824 (f) A local council member may not enter a single-family
825 residential unit within a long-term care facility during an
826 administrative assessment without the permission of the resident
827 or the representative of the resident.
828 (3) Regardless of jurisdiction, the ombudsman may
829 authorize a state or local council member to assist another
830 local council to perform the administrative assessments
831 described in this section.
832 (4) An onsite administrative assessment may not be
833 accomplished by forcible entry. However, if the ombudsman or a
834 state or local council member is not allowed to enter a long-
835 term care facility, the administrator of the facility shall be
836 considered to have interfered with a representative of the
837 office, the state council, or the local council in the
838 performance of official duties as described in s. 400.0083(1)
839 and to have committed a violation of this part. The ombudsman
840 shall report the refusal by a facility to allow entry to the
841 agency, and the agency shall record the report and take it into
842 consideration when determining actions allowable under s.
843 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s.
844 400.6196.
845 Section 12. Section 400.0075, Florida Statutes, is amended
846 to read:
847 400.0075 Complaint notification and resolution
848 procedures.--

849 (1)(a) Any complaint or~~, including any~~ problem verified
850 ~~identified~~ by an ombudsman council as a result of an
851 investigation or onsite administrative assessment, which
852 complaint or problem is determined to require~~, deemed valid and~~
853 ~~requiring~~ remedial action by the local ~~ombudsman~~ council, shall
854 be identified and brought to the attention of the long-term care
855 facility administrator in writing. Upon receipt of such
856 document, the administrator, ~~in concurrence~~ with the concurrence
857 of the local ~~ombudsman~~ council chair, shall establish target
858 dates for taking appropriate remedial action. If, by the target
859 date, the remedial action is not completed or forthcoming, the
860 local ~~ombudsman~~ council chair may, after obtaining approval from
861 the ombudsman and a majority of the members of the local
862 council:
863 1.~~(a)~~ Extend the target date if the chair ~~council~~ has
864 reason to believe such action would facilitate the resolution of
865 the complaint.
866 2.~~(b)~~ In accordance with s. 400.0077, publicize the
867 complaint, the recommendations of the council, and the response
868 of the long-term care facility.
869 3.~~(c)~~ Refer the complaint to the state ~~ombudsman~~ council.
870 (b) If the local council chair believes that the health,
871 safety, welfare, or rights of the resident are in imminent
872 danger, the chair shall notify the ombudsman or legal advocate,
873 who, after verifying that such imminent danger exists, shall
874 ~~local long-term care ombudsman council may~~ seek immediate legal
875 or administrative remedies to protect the resident.

876 (c) If the ombudsman has reason to believe that the long-
877 term care facility or an employee of the facility has committed
878 a criminal act, the ombudsman shall provide the local law
879 enforcement agency with the relevant information to initiate an
880 investigation of the case.
881 (2)(a) Upon referral from a ~~the~~ local ~~ombudsman~~ council,
882 the state ~~ombudsman~~ council shall assume the responsibility for
883 the disposition of the complaint. If a long-term care facility
884 fails to take action on a complaint ~~found valid~~ by the state
885 ~~ombudsman~~ council, the state council may, after obtaining
886 approval from the ombudsman and a majority of the state council
887 members:
888 1.~~(a)~~ In accordance with s. 400.0077, publicize the
889 complaint, the recommendations of the local or state council,
890 and the response of the long-term care facility.
891 2.~~(b)~~ Recommend to the department and the agency a series
892 of facility reviews pursuant to s. 400.19~~(4)~~, s. 400.434, or s.
893 400.619 to ensure ~~assure~~ correction and nonrecurrence of
894 conditions that give rise to complaints against a long-term care
895 facility.
896 ~~(c) Recommend to the agency changes in rules for~~
897 ~~inspecting and licensing or certifying long term care~~
898 ~~facilities, and recommend to the Agency for Health Care~~
899 ~~Administration changes in rules for licensing and regulating~~
900 ~~long term care facilities.~~
901 ~~(d) Refer the complaint to the state attorney for~~
902 ~~prosecution if there is reason to believe the long-term care~~
903 ~~facility or its employee is guilty of a criminal act.~~

904 3.~~(e)~~ Recommend to the department and the agency ~~for~~
905 ~~Health Care Administration~~ that the long-term care facility no
906 longer receive payments under any ~~the~~ state ~~Medical~~ assistance
907 program, including ~~(~~Medicaid~~)~~.
908 4.~~(f)~~ Recommend to ~~that~~ the department and the agency that
909 ~~initiate~~ procedures be initiated for revocation of the long-term
910 care facility's license in accordance with chapter 120.
911 ~~(g) Seek legal, administrative, or other remedies to~~
912 ~~protect the health, safety, welfare, or rights of the resident.~~
913 (b) If the state council chair believes that the health,
914 safety, welfare, or rights of the resident are in imminent
915 danger, the chair shall notify the ombudsman or legal advocate,
916 who, after verifying that such imminent danger exists, ~~State~~
917 ~~Long Term Care Ombudsman Council~~ shall seek immediate legal or
918 administrative remedies to protect the resident.
919 (c) If the ombudsman has reason to believe that the long-
920 term care facility or an employee of the facility has committed
921 a criminal act, the ombudsman shall provide local law
922 enforcement with the relevant information to initiate an
923 investigation of the case.
924 ~~(3) The state ombudsman council shall provide, as part of~~
925 ~~its annual report required pursuant to s. 400.0067(2)(f),~~
926 ~~information relating to the disposition of all complaints to the~~
927 ~~Department of Elderly Affairs.~~
928 Section 13. Section 400.0078, Florida Statutes, is amended
929 to read:
930 400.0078 Citizen access to State Long-Term Care Ombudsman
931 Program services ~~Statewide toll free telephone number~~.--

932 (1) The office ~~of State Long Term Care Ombudsman~~ shall
933 establish a statewide toll-free telephone number for receiving
934 complaints concerning matters adversely affecting the health,
935 safety, welfare, or rights of residents ~~nursing facilities~~.
936 (2) Every resident or representative of a resident shall
937 receive, upon admission to a long-term care facility,
938 information regarding the purpose of the State Long-Term Care
939 Ombudsman Program, the statewide toll-free telephone number for
940 receiving complaints, and other relevant information regarding
941 how to contact the program. Residents or their representatives
942 must be furnished additional copies of this information upon
943 request.
944 Section 14. Section 400.0079, Florida Statutes, is amended
945 to read:
946 400.0079 Immunity.--
947 (1) Any person making a complaint pursuant to this part
948 ~~act~~ who does so in good faith shall be immune from any
949 liability, civil or criminal, that otherwise might be incurred
950 or imposed as a direct or indirect result of making the
951 complaint.
952 (2) The ombudsman or any person authorized by the
953 ombudsman to act ~~acting~~ on behalf of the office, as well as all
954 members of ~~State Long Term Care Ombudsman or~~ the state and ~~or a~~
955 local councils, ~~long term care ombudsman council~~ shall be immune
956 from any liability, civil or criminal, that otherwise might be
957 incurred or imposed~~,~~ during the good faith performance of
958 official duties.

959 Section 15. Section 400.0081, Florida Statutes, is amended
960 to read:
961 400.0081 Access to facilities, residents, and records.--
962 (1) A long-term care facility shall provide the office ~~of~~
963 ~~State Long-Term Care Ombudsman~~, the state ~~Long-Term Care~~
964 ~~Ombudsman~~ council and its members, and the local councils and
965 their members ~~long-term care ombudsman councils, or their~~
966 ~~representatives, shall have~~ access to:
967 (a) Any portion of the long-term care facility and any
968 resident as necessary to investigate or resolve a complaint
969 ~~facilities and residents~~.
970 (b) Medical and social records of a resident for review as
971 necessary to investigate or resolve a complaint, if:
972 1. The office has the permission of the resident or the
973 legal representative of the resident; or
974 2. The resident is unable to consent to the review and has
975 no legal representative.
976 (c) Medical and social records of the resident as
977 necessary to investigate or resolve a complaint, if:
978 1. A legal representative ~~guardian~~ of the resident refuses
979 to give permission;~~.~~
980 2. The office has reasonable cause to believe that the
981 representative ~~guardian~~ is not acting in the best interests of
982 the resident; and~~.~~
983 3. The state or local council member ~~representative~~
984 obtains the approval of the ombudsman.
985 (d) The administrative records, policies, and documents to
986 which ~~the~~ residents~~,~~ or the general public~~,~~ have access.

987 (e) Upon request, copies of all licensing and
988 certification records maintained by the state with respect to a
989 long-term care facility.
990 ~~(2) Notwithstanding paragraph (1)(b), if, pursuant to a~~
991 ~~complaint investigation by the state ombudsman council or a~~
992 ~~local ombudsman council, the legal representative of the~~
993 ~~resident refuses to give permission for the release of the~~
994 ~~resident's records, and if the Office of State Long-Term Care~~
995 ~~Ombudsman has reasonable cause to find that the legal~~
996 ~~representative is not acting in the best interests of the~~
997 ~~resident, the medical and social records of the resident must be~~
998 ~~made available to the state or local council as is necessary for~~
999 ~~the members of the council to investigate the complaint.~~
1000 (2) ~~(3)~~ The department ~~of Elderly Affairs~~, in consultation
1001 with the ombudsman and the state ~~Long Term Care Ombudsman~~
1002 council, may ~~shall~~ adopt rules to establish procedures to ensure
1003 access to facilities, residents, and records as described in
1004 this section.
1005 Section 16. Section 400.0083, Florida Statutes, is amended
1006 to read:
1007 400.0083 Interference; retaliation; penalties.--
1008 (1) It shall be unlawful for any person, long-term care
1009 facility, or other entity to willfully interfere with a
1010 representative of the office ~~of State Long-Term Care Ombudsman~~,
1011 the state ~~Long Term Care Ombudsman~~ council, or a local ~~long-term~~
1012 ~~care ombudsman~~ council in the performance of official duties.
1013 (2) It shall be unlawful for any person, long-term care
1014 facility, or other entity to knowingly or willfully take action

1015 or retaliate against any resident, employee, or other person for
1016 filing a complaint with, providing information to, or otherwise
1017 cooperating with any representative of the office ~~of State Long-~~
1018 ~~Term Care Ombudsman~~, the state ~~Long-Term Care Ombudsman~~ council,
1019 or a local ~~long-term care ombudsman~~ council.
1020 (3)~~(a)~~ Any person, long-term care facility, or other
1021 entity that ~~who~~ violates this section:
1022 (a) Shall be liable for damages and equitable relief as
1023 determined by law.
1024 (b) ~~Any person, long-term care facility, or other entity~~
1025 ~~who violates this section~~ Commits a misdemeanor of the second
1026 degree, punishable as provided in s. 775.083.
1027 Section 17. Section 400.0085, Florida Statutes, is
1028 repealed.
1029 Section 18. Section 400.0087, Florida Statutes, is amended
1030 to read:
1031 400.0087 Department ~~Agency~~ oversight; funding.--
1032 (1) The department shall meet the costs associated with
1033 the State Long-Term Care Ombudsman Program from funds
1034 appropriated to it.
1035 (a) The department shall include the costs associated with
1036 support of the State Long-Term Care Ombudsman Program when
1037 developing its budget requests for consideration by the Governor
1038 and submittal to the Legislature.
1039 (b) The department may divert from the federal ombudsman
1040 appropriation an amount equal to the department's administrative
1041 cost ratio to cover the costs associated with administering the

1042 program. The remaining allotment from the Older Americans Act
1043 program shall be expended on direct ombudsman activities.
1044 (2) ~~(1)~~ The department ~~of Elderly Affairs~~ shall monitor the
1045 office, the state council, and the local ~~ombudsman~~ councils to
1046 ensure that each is ~~responsible for~~ carrying out the duties
1047 delegated to it by state ~~by s. 400.0069~~ and federal law. ~~The~~
1048 ~~department, in consultation with the ombudsman, shall adopt~~
1049 ~~rules to establish the policies and procedures for the~~
1050 ~~monitoring of local ombudsman councils.~~
1051 (3) ~~(2)~~ The department is responsible for ensuring that the
1052 office:
1053 (a) Has the objectivity and independence required to
1054 qualify it for funding under the federal Older Americans Act.
1055 (b) ~~of State Long Term Care Ombudsman~~ Provides information
1056 to public and private agencies, legislators, and others.~~;~~
1057 (c) Provides appropriate training to representatives of
1058 the office or of the state or local ~~long term care ombudsman~~
1059 councils.~~; and~~
1060 (d) Coordinates ombudsman services with the Advocacy
1061 Center for Persons with Disabilities and with providers of legal
1062 services to residents of long-term care facilities in compliance
1063 with state and federal laws.
1064 (4) ~~(3)~~ The department ~~of Elderly Affairs is the designated~~
1065 ~~state unit on aging for purposes of complying with the federal~~
1066 ~~Older Americans Act. The Department of Elderly Affairs shall~~
1067 ~~ensure that the ombudsman program has the objectivity and~~
1068 ~~independence required to qualify it for funding under the~~
1069 ~~federal Older Americans Act, and shall carry out the long-term~~

1070 ~~care ombudsman program through the Office of State Long-Term~~
1071 ~~Care Ombudsman. The Department of Elderly Affairs~~ shall also:
1072 (a) Receive and disburse state and federal funds for
1073 purposes that the ~~state~~ ombudsman ~~council~~ has formulated in
1074 accordance with the Older Americans Act.
1075 (b) Whenever necessary, act as liaison between agencies
1076 and branches of the federal and state governments and the State
1077 Long-Term Care Ombudsman Program ~~representatives, the staffs of~~
1078 ~~the state and local ombudsman councils, and members of the state~~
1079 ~~and local ombudsman councils~~.
1080 Section 19. Section 400.0089, Florida Statutes, is amended
1081 to read:
1082 400.0089 Complaint data ~~Agency~~ reports.--The office
1083 ~~Department of Elderly Affairs~~ shall maintain a statewide uniform
1084 reporting system to collect and analyze data relating to
1085 complaints and conditions in long-term care facilities and to
1086 residents~~,~~ for the purpose of identifying and resolving
1087 significant problems. ~~The department and the State Long Term~~
1088 ~~Care Ombudsman Council shall submit such data as part of its~~
1089 ~~annual report required pursuant to s. 400.0067(2)(f) to the~~
1090 ~~Agency for Health Care Administration, the Department of~~
1091 ~~Children and Family Services, the Florida Statewide Advocacy~~
1092 ~~Council, the Advocacy Center for Persons with Disabilities, the~~
1093 ~~Commissioner for the United States Administration on Aging, the~~
1094 ~~National Ombudsman Resource Center, and any other state or~~
1095 ~~federal entities that the ombudsman determines appropriate.~~ The
1096 office ~~State Long Term Care Ombudsman Council~~ shall publish
1097 quarterly and make readily available information pertaining to

1098 the number and types of complaints received by the State Long-
1099 Term Care Ombudsman Program and shall include such information
1100 in the annual report required under s. 400.0065.
1101 Section 20. Section 400.0091, Florida Statutes, is amended
1102 to read:
1103 400.0091 Training.--The ombudsman shall ensure that
1104 ~~provide~~ appropriate training is provided to all employees of the
1105 office ~~of State Long-Term Care Ombudsman~~ and to the members of
1106 the state and local ~~long-term care ombudsman~~ councils~~, including~~
1107 ~~all unpaid volunteers~~.
1108 (1) All state and local council members ~~volunteers~~ and
1109 ~~appropriate~~ employees of the office shall ~~of State Long-Term~~
1110 ~~Care Ombudsman must~~ be given a minimum of 20 hours of training
1111 upon employment with the office or approval ~~enrollment~~ as a
1112 state or local council member ~~volunteer~~ and 10 hours of
1113 continuing education annually thereafter.
1114 (2) The ombudsman shall approve the curriculum for the
1115 initial and continuing education training, which must ~~cover~~, at
1116 a minimum, address:
1117 (a) Resident confidentiality.
1118 (b) Guardianships and powers of attorney.~~,~~
1119 (c) Medication administration.~~,~~
1120 (d) Care and medication of residents with dementia and
1121 Alzheimer's disease.~~,~~
1122 (e) Accounting for residents' funds.~~,~~
1123 (f) Discharge rights and responsibilities.~~, and~~
1124 (g) Cultural sensitivity.
1125 (h) Any other topic recommended by the secretary.

1126 (3) No employee, officer, or representative of the office
1127 or of the state or local ~~long term care ombudsman~~ councils,
1128 other than the ombudsman, may hold himself or herself out as a
1129 representative of the State Long-Term Care Ombudsman Program or
1130 conduct ~~carry out~~ any authorized program ~~ombudsman~~ duty
1131 described in this part ~~or responsibility~~ unless the person has
1132 received the training required by this section and has been
1133 certified ~~approved~~ by the ombudsman as qualified to carry out
1134 ombudsman activities on behalf of the office or the state or
1135 local ~~long term care ombudsman~~ councils.
1136 Section 21. This act shall take effect upon becoming a
1137 law.

HB 1123

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1123 Government Accountability
**SPONSOR(S):** Sansom and others
**TIED BILLS:** HB 1125 **IDEN./SIM. BILLS:** SB 2460

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

## SUMMARY ANALYSIS


HB 1123 creates the Florida Government Accountability Act. The bill provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for the abolition and continuation of state agencies and advisory committees, creates procedures after termination, requires review and monitoring, and provides a savings clause.

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

This bill does not appear to have a fiscal impact on state government revenues, but may have an unknown fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact on local government expenditures or revenues.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides a schedule to abolish state agencies, examining and licensing boards, councils, advisory councils, committees, task forces, coordinating councils, commissions or boards of trustees. This bill creates a legislative committee to review these entities and report its findings and recommendations.

B. EFFECT OF PROPOSED CHANGES:

Similar to laws that are currently in effect in other states, like Texas, the Florida Legislature previously abolished boards, committees, commissions, councils, and agencies, as well as regulations of businesses and professions, pursuant to a schedule and subject to legislative review.

Regulatory Reform Act of 1976/Regulatory Sunset Act

In enacting the Regulatory Reform Act of 1976, the Florida Legislature set forth a schedule to repeal provisions of law that regulated professions, occupations, businesses, or industries.[1] Codified as sections 11.61 and 11.6105, Florida Statutes, the Regulatory Reform Act of 1976 established criteria for the Legislature to consider in determining whether to reestablish a program or function and also provided for the appointment of a select joint committee to assist in implementation.

In 1981, the Regulatory Reform Act of 1976 was substantially reworded and changed to the Regulatory Sunset Act.[2] The Regulatory Sunset Act required each appropriate substantive committee to review programs and functions 15 months prior to the date set for repeal and to make a recommendation regarding continuation, modification, or repeal.

The Legislature repealed the Regulatory Sunset Act in 1991.[3]

Sundown Act

Section 11.611, Florida Statutes, was previously the Sundown Act.[4] The Sundown Act, enacted in 1978, originally provided for the 1979 repeal of boards, committees, commissions, and councils which had not held a meeting after January 1, 1975.[5] The Sundown Act also provided for the 1982 repeal of all other boards, committees, commissions, and councils.[6] The Sundown Act required the Legislature to review these boards, committees, councils, and commissions to determine if any should be reestablished for the public interest.[7] The Sundown Act prohibited boards, committees, commissions, and councils from being established for more than six years.[8]

The Sundown Act was substantially reworded in 1982.[9] The revised Sundown Act contained criteria for the Legislature to consider in determining whether to reestablish an advisory body, commission, or

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[1] Ch. 76-318, Laws of Fla.; additional programs and functions added by ch. 77-457, Laws of Fla.
[2] Ch. 81-318, Laws of Fla.
[3] Ch. 91-429, Laws of Fla. § 4 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.
[4] Section 11.6115, Florida Statutes, codified additional provisions related to the Sundown Act.
[5] Ch. 78-323, Laws of Fla.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 82-46, Laws of Fla.

board of trustees. The revised Sundown Act also set forth a revised schedule for abolishment and review.

The Legislature repealed the Sundown Act in 1991.[10]

Explanation for the Previous Repeal of the Sunset and Sundown Acts

The bill analysis from the repeal of the Regulatory Sunset and Sundown Acts provides the following explanation for their repeal:

> "This committee [Senate Committee on Governmental Operations] first studied the Regulatory Sunset Act and the Sundown Act in 1988. At that time, the committee was directed to assess the laws and their implementation, and to evaluate their accomplishments. The 1988 report considered the overall costs and benefits of the review process of entities subject to repeal under the Sunset and Sundown laws. As well, the prior report identified high tangible costs associated with Sunset and Sundown reviews. The benefits of the laws, while generally acknowledged by both legislative and executive agency staff, were found to be intangible, and therefore difficult to quantify.
>
> The review of the Sunset and Sundown laws revealed that approximately 240 Sunset reviews have occurred between 1977 and 1991. Since then, an estimated 20 regulatory laws have been repealed, and 50 new ones have been created.
>
> There have been approximately 280 Sundown reviews conducted since 1978. Ninety advisory bodies have been repealed since 1978, and an estimated 150 have been created. Of the 90 advisory bodies that have been repealed, 9 were repealed in 1978 without prior reviews, as the law provided, because they have not met in the 5 years prior to the passage of the Sundown Act.
>
> Staff's review found that Sunset reviews are usually more complicated and time-consuming than Sundown reviews. This is due to the technical nature of many laws which regulate professions and industries.
>
> Based on the 1991 review of these laws, and the data available to measure the costs of the reviews, it was concluded that the costs are high. The review also finds, however, that some benefits of the laws are recognized by legislative and agency staff because the laws serve as one mechanism for oversight of executive branch entities. The benefits, which are intangible, are difficult to quantify, while the costs of implementing the laws are very real, and are thus much easier to measure.
>
> The 1991 interim project further indicates that the initial reviews conducted of Sunset and Sundown entities are generally perceived to be more useful, in terms of the substantive results they yield, than are second and other subsequent reviews. Further, although the results of second and other subsequent reviews are generally less substantive, such subsequent reviews require the same amount of time (i.e., 525 analyst-hours for Sunset reviews and 152 analyst-hours for Sundown reviews) as do first-time Sunset and Sundown reviews. The amount of time required of executive agency staff and of legislators is also the same for second and subsequent reviews, even though the benefits gained from the reviews appear to be far less than are those gained in first-time reviews. The review also found that, in 1987, many second-cycle Sunset and Sundown reviews began. This means that many of the reviews conducted since 1987 have been second or third-time reviews for Sunset and Sundown entities.

[10] Ch. 91-429, Laws of Fla. § 5 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.

The findings of this review also suggest that general oversight by legislative staff of executive agencies and of the statutes which govern them has decreased as staff has been required to perform an increasing number of Sunset and Sundown reviews assigned by law. Since general oversight responsibilities are of a more discretionary nature, reviews which are required by statute necessarily take precedence over projects which are discretionary."[11]

This analysis, then, recognizes the value of the review process, particularly the initial review. The State of Florida has not had the benefits of such a process for more than a decade.

Florida Government Accountability Act

HB 1123 creates the Florida Government Accountability Act. The bill recreates chapter 21, Florida Statutes,[12] provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for abolition and continuation, creates procedures after termination, requires review and monitoring, and provides a savings clause.

Definitions

The bill provides definitions[13] for state agency and agency. This definition not only includes departments,[14] but also any other administrative unit of state government scheduled for termination and prior review under the Florida Government Accountability Act.

The bill defines "advisory committee" as "any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees."[15] Advisory committee also includes "any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government."

Legislative Sunset Advisory Committee: Membership

The bill creates the Legislative Sunset Advisory Committee ("LSAC") with the following composition:

- Five members of the Senate;
- One public member appointed by the President of the Senate;
- Five members of the Florida House of Representatives; and
- One public member appointed by the Speaker of the House of Representatives[16]

Each member serves terms of two years and a public member may not serve more than two consecutive two-year terms.[17] The bill prohibits an individual from serving as the public member if he or she is regulated by a state agency that the LSAC will review during the term for which the individual

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[11] Fla. S. Comm. on Gov. Over., SB 28-D (1991) Staff Analysis (Dec. 11, 1991) (on file with comm..).
[12] Chapter 21, Florida Statutes, previously contained provisions related to the State Auditing Department. Most of the provisions were repealed pursuant to chapters 69-82 and 69-106, Laws of Florida.
[13] Fla. HB 1123 (2005), § 21.002 (also defining "committee" to mean the Legislative Sunset Advisory Committee).
[14] Fla. Stat. 20.03(2)
[15] The bill references the definitions in sections 20.03(3), (7), (8), (9), (10), or (12), Florida Statutes.
[16] The bill contains several other provisions related to appointment: (1) Each appointed authority is permitted to designate himself or herself as one of the legislative appointees; (2) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee; (3) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment. Fla. HB 1123 (2005), § 21.003(1), (6), and (7).
[17] Fla. HB 1123 (2005), § 21.003(4) (further providing that a member is considered to have served a term only if the member has served more than half a term).

would serve or if he or she is employed by, participates in the management of, or directly or indirectly has more than a 10-percent interest in a business entity or other organization regulated by a state agency the LSAC will review during the term for which the individual would serve.[18]

LSAC: Organization

The bill requires initial appointments to be made no later than November 30, 2006, and subsequent appointments shall be made not later than January 15 of the year following each organization session of the Legislature.

The bill provides that the LSAC will have a chair and vice chair, each from a different chamber, that alternates each year between the Senate and the House.[19]

The bill sets a quorum for the LSAC as seven members and requires a recorded vote of seven for a final action or recommendation.

The bill permits each member of the LSAC to be reimbursed for actual and necessary expenses incurred in performing LSAC duties.[20]

The bill allows each chamber to employ staff to work for the chair and vice chair on matters related to LSAC activities.

Schedule to Abolish State Agencies/Advisory Committees

The bill provides a schedule to abolish certain state agencies and their advisory committees:[21]

| 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|
| Advisory committees for the Fish and Wildlife Conservation Commission | Department of Children and Family Services | Advisory committees for the Florida Community College System | Agency for Health Care Administration |
| Department of Agriculture and Consumer Services | Department of the Lottery | Advisory committees for the State University System | Agency for Persons with Disabilities |
| Department of Citrus, including the Citrus Commission | Department of Management Services | Agency for Workforce Innovation | Department of Elderly Affairs |
| Department of Community Affairs | Department of State | Department of Education | Department of Health |
| Department of Environmental Protection | | | |
| Department of Highway Safety and Motor Vehicles | | | |
| Water management districts. | | | |

[18] Fla. HB 1123 (2005), § 21.003(2) and (3) (making it grounds for removal to not meet these eligibility criteria, but not impacting the validity of any action taken by the LSAC if a ground for removal existed).
[19] Fla. HB 1123 (2005), § 21.003(8) (A Senate appointee serves as chair during odd-numbered years and as vice-chair during even-numbered years. A House appointee serves as chair during even-numbered years and as vice-chair during odd-numbered years.).
[20] Fla. HB 1123 (2005), § 21.003(10) (Reimbursement for legislative members coming from the appointing chamber and reimbursement for public members coming from LSAC funds.
[21] Fla. HB 1123 (2005), § 21.005.

| 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|
| Department of Business and Professional Regulation | Advisory committees for the State Board of Administration | Department of Corrections | Executive Office of the Governor |
| Department of Transportation | Department of Financial Services, including the Financial Services Commission | Department of Juvenile Justice | Florida Public Service Commission |
| Department of Veterans' Affairs | Department of Revenue | Department of Law Enforcement | |
| | | Department of Legal Affairs | |
| | | Justice Administrative Commission | |
| | | Parole Commission | |

Agency and Advisory Committee Reports and Requests for Assistance

Based on this schedule, the bill requires agencies and their advisory committees to report to the Legislature not later than October 20th of even-numbered years and not later than July 31st of odd-numbered years. The agency must address the specified review criteria and provide any other appropriate or requested information.

The bill allows the LSAC to request the assistance of state agencies and officers and requires assistance when requested. The bill specifically authorizes the LSAC or its designated staff to inspect the records, documents, and files of any state agency.

Review Criteria

The bill requires agencies and advisory committees to address, and the LSAC to consider, fourteen criteria for determining whether a public need exists for the continuation of a state agency or its advisory committees or the performance of the functions of the agency or its advisory committees.[22]

[22] HB 1123 (2005), § 21.011. These are the criteria:

(1) The efficiency with which the agency or advisory committee operates.
(2) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities.
(3) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public.
(4) The extent to which the advisory committee is needed and is used.
(5) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.
(6) Whether the agency has recommended to the Legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates.
(7) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.
(8) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.
(9) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses.
(10) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section.

LSAC Responsibilities

The bill creates several responsibilities for the LSAC based on these criteria.

*Review.* The LSAC is required to review the agency evaluations regarding these criteria.

*Public Hearings.* The LSAC must complete all public hearings concerning the application of these criteria to the agency and its advisory committees by no later than March 1 of the year in which the state agency and its advisory committees are scheduled to be abolished.[23]

*Consultation.* The LSAC has to consult with the Legislative Budget Commission, the Planning and Budgeting Office in the Executive Office of the Governor, the Auditor General, and the Chief Financial Officer, or their successors, on the application of these criteria to the agencies and its advisory committees.

*Report.* The LSAC must report its specific findings regarding these criteria, make recommendations, and provide other information necessary for a complete evaluation of each agency and its advisory committees.

*Recommendations.* The LSAC must make three types of recommendations: (1) on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; (2) on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review; (3) on appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended. The LSAC also must include drafts of legislation necessary to carry out the LSAC's recommendations.

Subpoena Powers

The bill allows the President of the Senate or the Speaker of the House of Representatives to issue subpoenas, which may be served on a witness at any place in the state, to compel the attendance of witnesses and the production of books, records, papers, and other objects necessary or proper for the purposes of the LSAC proceedings. The bill allows the LSAC to request the issuance of a subpoena.

The bill requires testimony taken under subpoena to be reduced to writing and given under oath subject to the penalties of perjury.

The bill provides that a witness who attends a LSAC proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

Abolition and Continuation

An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law. Yet, during the regular session immediately prior to being abolished, a state agency and its advisory committees may be continued by the Legislature for a period not to exceed eight years. The Legislature may, however, only consider one state agency and the

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(11) The extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees.
(12) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 287, Florida Statutes, and section 24, Article I of the Florida Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.
(13) The effect of federal intervention or loss of federal funds if the agency is abolished.
(14) Whether any advisory committee or any other part of the agency exercises its powers and duties independently of the direct supervision of the agency head in violation of section 6, Article IV of the Florida Constitution.

[23] Fla. HB 1123 (2005), § 21.008 (the scope of the public hearings is not limited to this criteria).

agency's functions and advisory committees in a single bill, unless more than one agency, advisory committee, or function is to be consolidated. The bill requires that any bill to continue a state agency, to transfer its functions, or to consolidate it with another agency must mention the affected agencies in the title of the bill.

The bill specifically authorizes the Legislature to abolish a state agency or advisory committee on a date earlier than that scheduled in this chapter or to consider legislation related to a state agency or advisory committee which is scheduled to be abolished.

Procedure after Termination

The bill contains provisions related to concluding business, remaining funds, property, and indebtedness.

*Concluding Agency Business.* Any state agency that is abolished may continue in existence until July 1 of the following year in order to conclude its business.[24] The terminated agency must cease all activities at the expiration of the one-year period and all rules that have been adopted expire, unless otherwise provided by law.

*Funds.* The bill provides that any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on July 1 of the year following abolishment. All money in a dedicated fund of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment is transferred to the General Revenue Fund and any part of law dedicating the money to a specific fund of an abolished agency becomes void on July 1 of the year immediately following abolishment.

*Property.* Property and records in the custody of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment shall be transferred to the Department of Management Services, unless otherwise provided by law.

*Indebtedness.* The bill recognizes the Legislature's continuing obligation to pay bonded indebtedness and all other obligations incurred by a state agency abolished under this chapter. The bill provides that the Florida Government Accountability Act does not impair or impede the payment of bonded indebtedness and other obligations. The bill specifically declares the outstanding bonded indebtedness or other outstanding obligations of an abolished state agency valid and enforceable in accordance with their terms and subject to all applicable terms and conditions. The bill requires the Department of Management Services to continue to carry out all covenants contained in the bonds and in all other obligations. The bill requires the designated state agency to provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and to provide payment from the sources of payment of all other obligations until the bonds and interest on the bonds are paid in full and all other obligations are performed and paid in full. If provided, all funds established by laws or proceedings and bonds or other obligations shall remain with the Chief Financial Officer or the previously designated trustee. If the proceedings do not provide that the funds remain with the Chief Financial Officer or the previously designated trustee, the funds shall be transferred to the designated state agency.

LSAC Review and Monitoring

The bill requires the President of the Senate and the Speaker of the House to forward to the LSAC each bill that creates a new state agency or advisory committee for the purpose of making four determinations:

[24] Fla. HB 1123 (2005), §21.017 (Abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year unless the law provides otherwise.).

(1) Whether the proposed regulatory and other functions of the state agency or advisory committee could be administered by one or more existing state agencies or advisory committees;

(2) Whether the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) Whether the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) Whether the bill provides for adequate protection against conflicts of interest within the state agency or advisory committee.

After reviewing the bill, the LSAC must forward a written comment on the legislation to the sponsor of the bill and to the chair of the substantive legislative committee to which the bill is referred. Implementation is prohibited until a recommendation is made.

The bill also requires LSAC staff to monitor legislation that affects agencies and advisory committees which have undergone review. LSAC staff also are required to periodically report to the members of the LSAC on proposed changes that would modify prior recommendations of the LSAC.

Savings Clause

The bill contains a savings clause which provides that abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition, except as otherwise expressly provided by law.

C. SECTION DIRECTORY:

Section 1: Creates chapter 21, Florida Statutes, the Florida Government Accountability Act, the Legislative Sunset Advisory Committee, and related sunset provisions for state agencies and advisory committees.

Section 2: Provides that the bill takes effect 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, but the exact nature of that impact is unknown. If a state agency or advisory committee is abolished, the state may realize some cost savings. There will, however, be some operational expenses for the LSAC.

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:

None.

## 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:

Advisory Committees of Constitutional Officers, Agencies, or Entities

There may be a constitutional conflict to the extent that this bill abolishes or attempts to abolish advisory committees created under the authority of a constitutional officer, agency, or entity rather than those authorized by statute, which the Legislature has the discretion to abolish.

Previous Constitutional Attacks

The authority of the Legislature to implement a similar provision related to abolishing regulatory programs was upheld after the court dismissed a challenge to the constitutionality of the Regulatory Reform Act of 1976.[25]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Placement in Chapter 21, Florida Statutes

Chapter 11, Florida Statutes, provides for legislative organization, procedures, and staffing. The sponsor may wish to place the Florida Government Accountability Act in chapter 11, Florida Statutes, rather than recreating chapter 21, Florida Statutes.

Public Members on a Legislative Committee

Public members generally are not appointed to serve on standing legislative committees. Even though this committee is an "advisory" committee, some of its powers appear to be similar to those which are normally reserved to committees composed only of legislators, i.e. the power to keep a bill creating an agency from being implemented. Also, it is not clear whether a public member is prohibited from serving as the chair or vice-chair of a committee. The sponsor may wish to address these issues.

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[25] *Alterman Transp. Lines, Inc. v. State*, 405 So.2d 456 (Fla. 1st DCA 1981).

Abbreviated Timeframes after Election Years

The schedule set forth in the bill creates potentially short timeframes for the LSAC to do its required work in years after election years. That is, the bill requires appointment no later than January 15th of the year following an organizational session, but the LSAC must hold public hearings and issue reports by March 1st, potentially a month and a half. For example, if the LSAC were appointed on January 15, 2009, it then has to review four major agencies prior to March 1, 2009: Department of Children and Family Services, Department of the Lottery, Department of Management Services, and the Department of State. The sponsor may wish to address this abbreviated timeframe.

Interaction with Existing Legislative Entities and Structures

The bill does not clearly provide how the LSAC will interact with existing legislative committees and structures such as standing committees, fiscal committees, the Joint Legislative Auditing Committee, and the Office of Program Policy and Government Accountability. Although there is a "consulting" requirement, the sponsor may wish to clarify the intended interaction.

No Distinction between Sunset (Regulatory) and Sundown (Structural/Functional) Review

Unlike the Sunset and Sundown Reviews, this bill combines the structural and functional review of an agency and its advisory committees with regulatory review. The sponsor may wish to address this issue if there is a different intent.

No Implementation without Recommendation

The provision which requires a recommendation by the LSAC before a bill creating an agency or advisory committee can be implemented may create future conflict if the Legislature passes such a bill without this recommendation. The sponsor may wish to address this situation. One way to do this might be to create a time requirement for the LSAC recommendation.

Inspection of Records

The sponsor may wish to strengthen the provision authorizing the LSAC or its designated staff member to inspect the records, documents, and files of any state agency to include access to confidential and exempt records.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to government accountability; creating ch.
3 21, F.S., the Florida Government Accountability Act;
4 providing definitions; creating the Legislative Sunset
5 Advisory Committee; providing for appointment,
6 qualifications, and terms of committee members; providing
7 for vacancies; providing for organization and procedure;
8 authorizing reimbursement for certain expenses; providing
9 for employment of staff; providing a schedule for
10 abolishing state agencies and advisory committees;
11 requiring the committee to conduct prior review and
12 recommend whether to abolish an agency and its advisory
13 committees as scheduled; providing for public hearings;
14 requiring agency and committee reports; providing review
15 criteria; specifying recommendation options; providing for
16 continuation, by law, under certain circumstances;
17 providing for legislative consideration of proposals with
18 respect to such recommendations; providing procedures
19 after termination; providing for issuance of subpoenas;
20 authorizing reimbursement for travel and per diem for
21 witnesses; providing for assistance of and access to state
22 agencies; providing applicability with respect to certain
23 rights, penalties, liabilities, and proceedings; providing
24 for review of proposed legislation creating a new agency
25 or advisory committee; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Chapter 21, Florida Statutes, consisting of
30 sections 21.001, 21.002, 21.003, 21.004, 21.005, 21.006, 21.007,
31 21.008, 21.009, 21.0111, 21.012, 21.0125, 21.013, 21.015,
32 21.016, 21.017, 21.018, 21.019, 21.0211, and 21.022, is created
33 to read:
34 CHAPTER 21
35 GOVERNMENT ACCOUNTABILITY
36 21.001 Short title.--This chapter may be cited as the
37 "Florida Government Accountability Act."
38 21.002 Definitions.--As used in this chapter:
39 (1) "State agency" or "agency" means a department as
40 defined in s. 20.03(2) or any other administrative unit of state
41 government scheduled for termination and prior review under this
42 chapter.
43 (2) "Advisory committee" means any examining and licensing
44 board, council, advisory council, committee, task force,
45 coordinating council, commission, or board of trustees as
46 defined in s. 20.03(3), (7), (8), (9), (10), or (12) or any
47 group, by whatever name, created to provide advice or
48 recommendations to one or more agencies, departments, divisions,
49 bureaus, boards, sections, or other units or entities of state
50 government.
51 (3) "Committee" means the Legislative Sunset Advisory
52 Committee.
53 21.003 Legislative Sunset Advisory Committee.--
54 (1) The Legislative Sunset Advisory Committee is created
55 and shall consist of five members of the Senate, one public
56 member appointed by the President of the Senate, and five

57 members of the House of Representatives, and one public member
58 appointed by the Speaker of the House of Representatives. Each
59 appointing authority may designate himself or herself as one of
60 the legislative appointees.
61 (2) An individual is not eligible for appointment as a
62 public member if the individual or the individual's spouse is:
63 (a) Regulated by a state agency that the committee will
64 review during the term for which the individual would serve; or
65 (b) Employed by, participates in the management of, or
66 directly or indirectly has more than a 10-percent interest in a
67 business entity or other organization regulated by a state
68 agency the committee will review during the term for which the
69 individual would serve.
70 (3) It is a ground for removal of a public member from the
71 committee if the member does not have the qualifications
72 required by subsection (2) for appointment to the committee at
73 the time of appointment or does not maintain the qualifications
74 while serving on the committee. The validity of the committee's
75 action is not affected by the fact that it was taken when a
76 ground for removal of a public member from the committee
77 existed.
78 (4) Legislative and public members shall serve terms of 2
79 years. A public member may not serve more than two consecutive
80 2-year terms; and, for purposes of this prohibition, a member is
81 considered to have served a term only if the member has served
82 more than half of the term.
83 (5) Initial appointments shall be made not later than
84 November 30, 2006, and subsequent appointments shall be made not

85 later than January 15 of the year following each organization
86 session of the Legislature.
87 (6) If a legislative member ceases to be a member of the
88 house from which he or she was appointed, the member vacates his
89 or her membership on the committee.
90 (7) If a vacancy occurs, the appropriate appointing
91 authority shall appoint a person to serve for the remainder of
92 the unexpired term in the same manner as the original
93 appointment.
94 (8) The committee shall have a chair and vice chair as
95 presiding officers. The chair and vice chair must alternate each
96 year between the two membership groups appointed by the
97 President of the Senate and the Speaker of the House of
98 Representatives. The chair and vice chair may not be from the
99 same membership group. The President of the Senate shall
100 designate a presiding officer from his appointed membership
101 group who shall preside as chair during the odd-numbered year
102 and as vice chair during the even-numbered year, and the Speaker
103 of the House of Representatives shall designate the other
104 presiding officer from his appointed membership group who shall
105 preside as chair during the even-numbered year and as vice chair
106 during the odd-numbered year.
107 (9) Seven members of the committee constitute a quorum. A
108 final action or recommendation may not be made unless approved
109 by a recorded vote of a majority of the committee's full
110 membership.
111 (10) Each member of the committee is entitled to
112 reimbursement for actual and necessary expenses incurred in

113 performing committee duties. Each legislative member is entitled
114 to reimbursement from the appropriate fund of the member's
115 respective house. Each public member is entitled to
116 reimbursement from funds appropriated for use by the committee.
117 21.004 Staff.--The Senate and the House of Representatives
118 may each employ staff to work for the chair and vice chair of
119 the committee on matters related to committee activities.
120 21.005 Schedule for abolishing state agencies and advisory
121 committees.--The following state agencies, including their
122 advisory committees, or the following advisory committees of
123 agencies are abolished according to the following schedule:
124 (1) Abolished July 1, 2008:
125 (a) Advisory committees for the Fish and Wildlife
126 Conservation Commission.
127 (b) Department of Agriculture and Consumer Services.
128 (c) Department of Citrus, including the Citrus Commission.
129 (d) Department of Community Affairs.
130 (e) Department of Environmental Protection.
131 (f) Department of Highway Safety and Motor Vehicles.
132 (g) Water managements districts.
133 (2) Abolished July 1, 2009:
134 (a) Department of Children and Family Services.
135 (b) Department of the Lottery.
136 (c) Department of Management Services.
137 (d) Department of State.
138 (3) Abolished July 1, 2010:
139 (a) Advisory committees for the Florida Community College
140 System.

141 (b) Advisory committees for the State University System.
142 (c) Agency for Workforce Innovation.
143 (d) Department of Education.
144 (4) Abolished July 1, 2011:
145 (a) Agency for Health Care Administration.
146 (b) Agency for Persons with Disabilities.
147 (c) Department of Elderly Affairs.
148 (d) Department of Health.
149 (5) Abolished July 1, 2012:
150 (a) Department of Business and Professional Regulation.
151 (b) Department of Transportation.
152 (c) Department of Veterans' Affairs.
153 (6) Abolished July 1, 2013:
154 (a) Advisory committees for the State Board of
155 Administration.
156 (b) Department of Financial Services, including the
157 Financial Services Commission.
158 (c) Department of Revenue.
159 (7) Abolished July 1, 2014:
160 (a) Department of Corrections.
161 (b) Department of Juvenile Justice.
162 (c) Department of Law Enforcement.
163 (d) Department of Legal Affairs.
164 (e) Justice Administrative Commission.
165 (f) Parole Commission.
166 (8) Abolished July 1, 2015:
167 (a) Executive Office of the Governor.
168 (b) Florida Public Service Commission.

169 21.006 Agency report to committee.--Not later than October
170 30 of each even-numbered year and not later than July 31 of each
171 odd-numbered year of the year preceding the year in which a
172 state agency and its advisory committees are scheduled to be
173 abolished, the agency shall report to the committee:
174 (1) Information regarding the application to the agency of
175 the criteria in s. 21.0111.
176 (2) Any other information that the agency considers
177 appropriate or that is requested by the committee.
178 21.007 Committee duties.--Not later than March 1 of the
179 year in which a state agency is scheduled to be abolished, the
180 committee shall:
181 (1) Review and take action necessary to verify the reports
182 submitted by the agency under s. 21.006.
183 (2) Consult with the Legislative Budget Commission, the
184 Planning and Budgeting Office in the Executive Office of the
185 Governor, the Auditor General, and the Chief Financial Officer,
186 or their successors, on the application to the agency of the
187 criteria provided in s. 21.0111.
188 (3) Conduct a performance evaluation of the agency based
189 on the criteria provided in s. 21.0111 and prepare a written
190 report.
191 (4) Review the implementation of committee recommendations
192 contained in the reports presented to the Legislature during the
193 preceding legislative session.
194 21.008 Public hearings.--Not later than March 1 of the
195 year in which a state agency and its advisory committees are
196 scheduled to be abolished, the committee shall have finished

197 conducting all public hearings concerning, but not limited to,
198 the application to the agency and its advisory committees of the
199 criteria provided in s. 21.0111.
200 21.009 Committee report.--
201 (1) By March 1 of each year, the committee shall present
202 to the President of the Senate, the Speaker of the House of
203 Representatives, and the Governor a report on the agencies and
204 advisory committees scheduled to be abolished that year.
205 (2) In the report, the committee shall include:
206 (a) Its specific findings regarding each of the criteria
207 prescribed by s. 21.0111.
208 (b) Its recommendations based on the matters prescribed by
209 s. 21.012.
210 (c) Other information the committee considers necessary
211 for a complete evaluation of each agency and its advisory
212 committees.
213 21.0111 Criteria for review.--The committee shall consider
214 the following criteria in determining whether a public need
215 exists for the continuation of a state agency or its advisory
216 committees or for the performance of the functions of the agency
217 or its advisory committees:
218 (1) The efficiency with which the agency or advisory
219 committee operates.
220 (2) An identification of the objectives intended for the
221 agency or advisory committee and the problem or need that the
222 agency or advisory committee was intended to address, the extent
223 to which the objectives have been achieved, and any activities
224 of the agency in addition to those granted by statute and the

225 authority for these activities.
226 (3) An assessment of less restrictive or alternative
227 methods of providing any regulatory function for which the
228 agency is responsible while adequately protecting the public.
229 (4) The extent to which the advisory committee is needed
230 and is used.
231 (5) The extent to which the jurisdiction of the agency and
232 the programs administered by the agency overlap or duplicate
233 those of other agencies and the extent to which the programs
234 administered by the agency can be consolidated with the programs
235 of other state agencies.
236 (6) Whether the agency has recommended to the Legislature
237 statutory changes calculated to be of benefit to the public
238 rather than to an occupation, business, or institution that the
239 agency regulates.
240 (7) The promptness and effectiveness with which the agency
241 disposes of complaints concerning persons affected by the
242 agency.
243 (8) The extent to which the agency has encouraged
244 participation by the public in making its rules and decisions as
245 opposed to participation solely by those it regulates and the
246 extent to which the public participation has resulted in rules
247 compatible with the objectives of the agency.
248 (9) The extent to which the agency has complied with
249 applicable requirements of:
250 (a) An agency of the Federal Government or of this state
251 regarding equality of employment opportunity and the rights and
252 privacy of individuals.

253 (b) State law and applicable rules of any state agency
254 regarding purchasing goals and programs for historically
255 underutilized businesses.
256 (10) The extent to which changes are necessary in the
257 enabling statutes of the agency so that the agency can
258 adequately comply with the criteria listed in this section.
259 (11) The extent to which the agency issues and enforces
260 rules relating to potential conflicts of interest of its
261 employees.
262 (12) The extent to which the agency complies with public
263 records and public meetings requirements under chapters 119 and
264 287 and s. 24, Art. I of the State Constitution and follows
265 records management practices that enable the agency to respond
266 efficiently to requests for public information.
267 (13) The effect of federal intervention or loss of federal
268 funds if the agency is abolished.
269 (14) Whether any advisory committee or any other part of
270 the agency exercises its powers and duties independently of the
271 direct supervision of the agency head in violation of s. 6, Art.
272 IV of the State Constitution.
273 21.012 Recommendations.--In its report on a state agency,
274 the committee shall:
275 (1) Make recommendations on the abolition, continuation,
276 or reorganization of each affected state agency and its advisory
277 committees and on the need for the performance of the functions
278 of the agency and its advisory committees.
279 (2) Make recommendations on the consolidation, transfer,
280 or reorganization of programs within state agencies not under

281 review when the programs duplicate functions performed in
282 agencies under review.
283 (3) Recommend appropriation levels for each state agency
284 and advisory committee for which abolition or reorganization is
285 recommended under subsection (1) or subsection (2).
286 (4) Include drafts of legislation necessary to carry out
287 the committee's recommendations under subsection (1) or
288 subsection (2).
289 21.0125 Monitoring of recommendations.--During each
290 legislative session, the staff of the committee shall monitor
291 legislation affecting agencies that have undergone review under
292 this chapter and shall periodically report to the members of the
293 committee on proposed changes that would modify prior
294 recommendations of the committee.
295 21.013 Abolition of advisory committees.--An advisory
296 committee is abolished on the date set for abolition of the
297 agency unless the advisory committee is expressly continued by
298 law.
299 21.015 Continuation by law.--
300 (1) During the regular session immediately before a state
301 agency and its advisory committees are scheduled to be
302 abolished, the Legislature, by law, may continue the agency or
303 any of its advisory committees for a period not to exceed 8
304 years.
305 (2) This chapter does not prohibit the Legislature from:
306 (a) Abolishing a state agency or advisory committee on a
307 date earlier than that scheduled in this chapter; or
308 (b) Considering any other legislation relative to a state

309 agency or advisory committee scheduled to be abolished under
310 this chapter.
311 21.016 Legislative consideration.--
312 (1) Except as provided by subsection (2), the Legislature
313 may not consider in one bill the continuation, transfer, or
314 modification of more than one state agency and the agency's
315 functions and advisory committees.
316 (2) If more than one agency, advisory committee, or
317 function is to be consolidated, the Legislature may consider in
318 one bill only the agencies or advisory committees to be
319 consolidated.
320 (3) A bill to continue a state agency, to transfer its
321 functions, or to consolidate it with another agency must mention
322 the affected agencies in the title of the bill.
323 21.017 Procedure after termination.--
324 (1) A state agency that is abolished may continue in
325 existence until July 1 of the following year to conclude its
326 business. Unless the law provides otherwise, abolishment does
327 not reduce or otherwise limit the powers and authority of the
328 state agency during the concluding year. A state agency is
329 terminated and shall cease all activities at the expiration of
330 the 1-year period. Unless the law provides otherwise, all rules
331 that have been adopted by the state agency expire at the
332 expiration of the 1-year period.
333 (2) Any unobligated and unexpended appropriations of an
334 abolished agency or advisory committee lapse on July 1 of the
335 year following abolishment.
336 (3) Except as provided by subsection (5) or as otherwise

337 provided by law, all money in a dedicated fund of an abolished
338 state agency or advisory committee on July 1 of the year
339 immediately following abolishment is transferred to the General
340 Revenue Fund. The part of the law dedicating the money to a
341 specific fund of an abolished agency becomes void on July 1 of
342 the year immediately following abolishment.
343 (4) If not otherwise provided by law, property and records
344 in the custody of an abolished state agency or advisory
345 committee on July 1 of the year immediately following
346 abolishment shall be transferred to the Department of Management
347 Services.
348 (5) The Legislature recognizes the state's continuing
349 obligation to pay bonded indebtedness and all other obligations,
350 including lease, contract, and other written obligations,
351 incurred by a state agency abolished under this chapter, and
352 this chapter does not impair or impede the payment of bonded
353 indebtedness and all other obligations, including lease,
354 contract, and other written obligations, in accordance with
355 their terms. If an abolished state agency has outstanding bonded
356 indebtedness or other outstanding obligations, including lease,
357 contract, and other written obligations, the bonds and all other
358 obligations, including lease, contract, and other written
359 obligations, remain valid and enforceable in accordance with
360 their terms and subject to all applicable terms and conditions
361 of the laws and proceedings authorizing the bonds and all other
362 obligations, including lease, contract, and other written
363 obligations. If not otherwise provided by law, the Department of
364 Management Services shall continue to carry out all covenants

365 contained in the bonds and in all other obligations, including
366 lease, contract, and other written obligations, and the
367 proceedings authorizing them, including the issuance of bonds,
368 and the performance of all other obligations, including lease,
369 contract, and other written obligations, to complete the
370 construction of projects or the performance of other
371 obligations, including lease, contract, and other written
372 obligations. The designated state agency shall provide payment
373 from the sources of payment of the bonds in accordance with the
374 terms of the bonds and shall provide payment from the sources of
375 payment of all other obligations, including lease, contract, and
376 other written obligations, in accordance with their terms,
377 whether from taxes, revenues, or otherwise, until the bonds and
378 interest on the bonds are paid in full and all other
379 obligations, including lease, contract, and other written
380 obligations, are performed and paid in full. If the proceedings
381 so provide, all funds established by laws or proceedings
382 authorizing the bonds or authorizing other obligations,
383 including lease, contract, and other written obligations, shall
384 remain with the Chief Financial Officer or the previously
385 designated trustees. If the proceedings do not provide that the
386 funds remain with the Chief Financial Officer or the previously
387 designated trustees, the funds shall be transferred to the
388 designated state agency.
389 21.018 Subpoena power.--
390 (1) The President of the Senate or the Speaker of the
391 House of Representatives may issue process to compel the
392 attendance of witnesses and the production of books, records,

393 papers, and other objects necessary or proper for the purposes
394 of the committee proceedings. The process may be served on a
395 witness at any place in this state.
396 (2) If a majority of the committee directs the issuance of
397 a subpoena, the chair shall request that the President of the
398 Senate or the Speaker of the House of Representatives issue the
399 subpoena.
400 (3) Testimony taken under subpoena must be reduced to
401 writing and given under oath subject to the penalties of
402 perjury.
403 (4) A witness who attends a committee proceeding under
404 process is entitled to the same mileage and per diem as a
405 witness who appears before a grand jury in this state.
406 21.019 Assistance of and access to state agencies.--
407 (1) The committee may request the assistance of state
408 agencies and officers. When assistance is requested, a state
409 agency or officer shall assist the committee.
410 (2) In carrying out its functions under this chapter, the
411 committee or its designated staff member may inspect the
412 records, documents, and files of any state agency.
413 21.0211 Saving provision.--Except as otherwise expressly
414 provided by law, abolition of a state agency does not affect
415 rights and duties that matured, penalties that were incurred,
416 civil or criminal liabilities that arose, or proceedings that
417 were begun before the effective date of the abolition.
418 21.022 Review of proposed legislation creating a new
419 agency or advisory committee.--
420 (1) Each bill filed in the Senate or the House of

421 Representatives that would create a new state agency or a new
422 advisory committee to a state agency shall be forwarded by the
423 President of the Senate or the Speaker of the House of
424 Representatives, as applicable, to the committee.
425 (2) The committee shall review the bill to determine if:
426 (a) The proposed regulatory and other functions of the
427 state agency or advisory committee could be administered by one
428 or more existing state agencies or advisory committees;
429 (b) The form of regulation, if any, proposed by the bill
430 is the least restrictive form of regulation that will adequately
431 protect the public;
432 (c) The bill provides for adequate public input regarding
433 any regulatory function proposed by the bill; and
434 (d) The bill provides for adequate protection against
435 conflicts of interest within the state agency or advisory
436 committee.
437 (3) After reviewing the bill, the committee shall forward
438 a written comment on the legislation to the sponsor of the bill
439 and to the chair of the substantive legislative committee to
440 which the bill is referred, and implementation cannot take place
441 until a recommendation is made.
442 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1125 Public Records
**SPONSOR(S):** Sansom and others
**TIED BILLS:** HB 1123 **IDEN./SIM. BILLS:** SB 2462

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

## SUMMARY ANALYSIS


This bill creates a public records exemption for the working papers of the Legislative Sunset Advisory Committee. Working papers includes "all documentary and other information." Working papers must be prepared as part of the work of the Legislative Sunset Advisory Committee in conducting evaluations and preparing reports.

The bill also provides, similar to an existing provision, that if a record held by another entity is confidential and exempt by law, it remains confidential and exempt if the Legislative Sunset Committee receives the document in connection with the performance of its duties.

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 public records.

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.

Relevant Public Records Exemptions: Legislature

Section 11.0431, Florida Statutes, exempts the following public records[4] from inspection and copying:

- *Records or information held by the legislative branch of government that would be confidential or exempt if held by an agency[5] or any other unit of government;[6]*
- A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint;[7]

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[1] Fla. Stat. § 119.07(1)(a) (2005).
[2] Fla. Const. art. 1, § 24.
[3] *Id.*
[4] Fla. Stat § 11.0431(4) (2005) (defines public record as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.").
[5] Fla. Stat. § 119.011 (2005).
[6] Fla. Stat. § 11.0431(1)(a) (2005).
[7] Fla. Stat. § 11.0431(2)(b) (2005) (exempt until "the complaint is dismissed, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.").

- A legislatively produced draft, or a legislative request for a draft, of a bill, resolution, memorial, legislative rule, or amendment;[8]

- A draft of a bill analysis or fiscal note;[9]

- A draft, request for a draft, amendment, and supporting documents for a reapportionment plan or redistricting plan;[10]

- Records prepared for or used in any executive session of the Senate;[11]

- Portions of records of former legislative investigating committees whose records are sealed or confidential;[12]

- Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics;[13] and

- Portions of correspondence held by the legislative branch which, if disclosed, would reveal: (1) information otherwise exempt from disclosure by law; (2) an individual's medical treatment, history, or condition; or (3) the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.[14]

A New Public Records Exemption for the Legislature

This bill provides that working papers of the Legislative Sunset Advisory Committee are confidential and exempt from section 119.07(1), Florida Statutes, and article I, section 24(a), Florida Constitution. Working papers includes "all documentary and other information." The working papers must be prepared as part of the work of the Legislative Sunset Advisory Committee in conducting evaluations and preparing reports.

The bill also provides that if a record held by another entity is confidential and exempt by law, it remains confidential and exempt if the Legislative Sunset Committee receives the document in connection with the performance of its duties.

Public Records Exemption Review: Open Government Sunset Review Act

Section 119.15, Florida Statutes, mandates the review and repeal or reenactment of any exemption from public records requirements in the fifth year after the enactment of a new exemption. Unless the Legislature acts to reenact the newly created exemption, it is repealed on October 2nd of the fifth year. The bill recognizes this required review and provides for repeal on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

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[8] Fla. Stat. § 11.0431(2)(c) (2005) (provided the draft "is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.").
[9] Fla. Stat. § 11.0431(2)(d) (2005) (until "the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.").
[10] Fla. Stat. § 11.0431(2)(e) (2005).
[11] Fla. Stat. § 11.0431(2)(f) (2005) (until "10 years after the date on which the executive session was held.").
[12] Fla. Stat. § 11.0431(2)(g) (2005) (applies to records "as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.").
[13] Fla. Stat. § 11.0431(2)(h) (2005) (unless "the member requesting the opinion authorizes in writing the release of such information; provided, however, that all advisory opinions must be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.").
[14] Fla. Stat. § 11.0431(2)(i) (2005).

Public Records Exemption for Alternative Investments: Public Necessity Statement

This bill provides a public necessity statement to comport with the requirements of article 1, section 24(c) of the Florida Constitution.

Contingent Effective Date

The bill takes effect July 1, 2006 only if HB 1123 or similar legislation is adopted by the Legislature.

C. SECTION DIRECTORY:

Section 1: Creates section 21.0195, Florida Statutes, to create a public records exemption for the Legislative Sunset Advisory Committee.

Section 2: Sets froth the public necessity statement for the public records exemption.

Section 3: Provides an effective date of July 1, 2006, provided HB 1123 or similar legislation is adopted.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

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 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 1, section 24(c) of the Florida Constitution contains three requirements for any general law creating an exemption to the constitutional 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: (1) passed by a two-third votes of each house, (2) state with specificity the public necessity justifying the exemption, and (3) be no broader than necessary to accomplish the stated purpose of the law. As such, the bill requires a two-thirds vote for passage. The adequacy of the public necessity statement and whether the bill is broader than necessary are ultimately matters of judicial interpretation. It should be noted, however, that the exemption for the working papers is broad and does not have a time limitation or provision related to the release to third parties outside of the legislative process as contained in other legislative exemptions.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Placement of Exemption

This bill places this public records exemption in chapter 21, as recreated by HB 1123 (2005). Yet, public records exemptions specific to the Legislature are currently in section 11.0431, Florida Statutes. The sponsor may wish to place this public records exemption in this section or elsewhere in chapter 11, Florida Statutes, which relates to legislative organization, procedures, and staffing.

Expansive Exemption: Work Papers

Including "all documentary or other information" in the exemption for working papers makes the exemption quite broad. The provision also has no time limitation or provision related to the release to third parties outside of the legislative process as contained in other legislative exemptions. The sponsor may wish to consider narrowing the scope of the exemption.

Duplicative Exemption: Flow of Confidentiality and Exemption

The provision of the bill which provides that the confidential and exempt status of any record stays with it when used by the Legislative Sunset Advisory Committee appears to be duplicative of the exemption in section 11.0431(2)(a), Florida Statutes, which already provides that records or information held by the legislative branch of government remains confidential or exempt if that record would be confidential and exempt if held by an agency or any other unit of government.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to public records; creating s. 21.0195,
3 F.S.; exempting from public records requirements working
4 papers, including all documentary or other information,
5 prepared or maintained by the Legislative Sunset Advisory
6 Committee in performing its duties under ch. 21, F.S., to
7 conduct an evaluation and prepare a report; specifying
8 that information received for such purpose that is
9 confidential and exempt shall remain confidential and
10 exempt; providing for future legislative review and
11 repeal; providing a statement 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 21.0195, Florida Statutes, is created
17 to read:
18 21.0195 Confidentiality of information to conduct an
19 evaluation and prepare a report.--
20 (1) A working paper, including all documentary or other
21 information, prepared or maintained by the committee in
22 performing its duties under this chapter to conduct an
23 evaluation and prepare a report is exempt from the provisions of
24 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
25 (2) A record held by another entity that is considered to
26 be confidential and exempt by law and that the committee
27 receives in connection with the performance of the committee's
28 functions under this chapter remains confidential and exempt

29 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
30 State Constitution.
31 (3) This section is subject to the Open Government Sunset
32 Review Act of 1995 in accordance with s. 119.15 and shall stand
33 repealed on October 2, 2011, unless reviewed and saved from
34 repeal through reenactment by the Legislature.
35 Section 2. The Legislature finds that it is a public
36 necessity that the working papers, including all documentary or
37 other information, prepared or maintained by the Legislative
38 Sunset Advisory Committee in performing its duties under chapter
39 21, Florida Statutes, to conduct an evaluation and prepare a
40 report on whether to abolish a state agency and its advisory
41 committees as defined in s. 21.002, Florida Statutes, be made
42 exempt from public records requirements. The Legislature finds
43 that the release of such information would hinder the ability of
44 the committee to conduct its evaluation and prepare its report
45 on whether to abolish a state agency and its advisory committees
46 because employees and other interested persons might be
47 reluctant to provide information knowing that the information
48 would be public and could potentially affect their employment or
49 other dealings with the agency under review. Protecting such
50 information would help the committee complete a more thorough
51 and reliable evaluation and therefore make a better
52 recommendation as to whether or not to terminate a state agency
53 and its advisory committees.
54 Section 3. This act shall take effect July 1, 2006, if
55 House Bill 1123 or similar legislation is adopted in the same
56 legislative session or an extension thereof and becomes law.

HB 1145

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1145 Official State Designations
**SPONSOR(S):** Evers
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1494

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

## SUMMARY ANALYSIS


The bill declares "In God We Trust" as the official motto of the State of Florida.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

History

The Department of State's Office of Cultural and Historical Programs provides the following history of the Seal of the State of Florida:[1]

> The elements and basic design instructions for Florida's State Seal were established by the Legislature in 1868. Early that year, Florida's newly adopted State Constitution had directed that: "The Legislature shall, at the first session, adopt a seal for the state, and such seal shall be the size of an American silver dollar, but said seal shall not again be changed after its adoption by the Legislature."[2]
>
> So the Legislature, acting quickly upon the mandate, passed and sent to Governor Harrison Reed a Joint Resolution on August 6, 1868 specifying "That a Seal of the size of the American silver dollar, having in the center thereof a view of the sun's rays over a high land in the distance, a cocoa tree, a steamboat on water, and an Indian female scattering flowers in the foreground, encircled by the words, 'Great Seal of the State of Florida: In God We Trust', be and the same is hereby adopted as the Great Seal of the State of Florida." *Some people also consider the "In God We Trust" phrase the State Motto, although there is no official designation of a State Motto in the Florida Statutes.*
>
> Florida's present Constitution, (Art. II, Sec. 4), continues to require the seal to be prescribed by law.

(Emphasis added.) The effect of the proposed legislation is to correct this omission and statutorily determine that "In God We Trust" is the official motto of the State of Florida.

C. SECTION DIRECTORY:

Section 1 creates 15.0301, F.S., designating "In God We Trust" as the official motto of the State of Florida.

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.

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[1] Available online at: http://dhr.dos.state.fl.us/facts/symbols/seals.cfm.

[2] Article XVI, Section 20, 1868 Constitution of the State of Florida. Available online here: http://www.floridamemory.com/Collections/Constitution/1868_index.cfm.

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.

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:

The bill raises a potential federal constitutional issue regarding the separation of church and state, protected in the First Amendment of the Constitution of the United States, which begins, "Congress shall make no law respecting an establishment of religion...."

"In God We Trust" is the official motto of the United States of America.[3] The federal motto has been challenged multiple times and has been found to be constitutional. In *Aronow v. United States*, 432 F.2d 242 (1970) the Ninth Circuit Court of Appeals ruled that:

> "It is quite obvious that the national motto and the slogan on coinage and currency 'In God We Trust' has nothing whatsoever to do with the establishment of religion. Its use is of patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise."

In *Madalyn Murray O'Hair, et al. v. W. Michael Blumenthal, Secretary of Treasury, et al.*, 588 F.2d 1144 (1979), the Fifth Circuit Court of Appeals sustained a prior decision by the United States District Court (Western District of Texas). The Western District of Texas had expanded on the *Aronow* citation above, saying:

> From this it is easy to deduce that the Court concluded that the primary purpose of the slogan was secular; it served a secular ceremonial purpose in the obviously secular function of providing a medium of exchange. As such it

[3] 36 U.S.C. s. 302 (2005).

> is equally clear that the use of the motto on the currency or otherwise does not have a primary effect of advancing religion.

The Supreme Court of the United States recently handed down another Establishment Clause decision, though not directly dealing with a state or federal motto. On June 14, 2004, the Supreme Court issued a decision upholding the phrase "One Nation under God" in the Pledge of Allegiance.[4] The Plaintiff, Newdow, was denied relief on issues of standing,[5] however, in her concurrence with the judgment, Justice O'Connor wrote that

> [G]overnment can, in a discrete category of cases, acknowledge or refer to the divine without offending the Constitution. This category of "Ceremonial deism" most clearly encompasses such things as the national motto ("In God We Trust"), religious references in traditional patriotic songs such as the Star-Spangled Banner, and the words with which the Marshal of this Court opens each of its sessions ("God Save the United States and this honorable Court.")[6]

At least three other states also have official mottos that mention "God."[7]

- Arizona: *Ditat Deus.* (Latin: "God Enriches.")
- Ohio: "With God, All Things Are Possible."[8]
- South Dakota: "Under God, The People Rule."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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[4] *Elk Grove Unified School District v. Newdow*, 124 Sup.Ct. 2301 (2004).

[5] Summarizing very briefly: Mr. Newdow was a non-custodial parent challenging a school recitation of the Pledge of Allegiance on behalf of his child. Justice Stevens delivered the opinion of the Court, finding that, based on lower family-court rulings, Mr. Newdow did not have standing to challenge the school's recitation of the Pledge each morning. Several justices filed concurrences in the opinion. These Justices generally agreed with the ultimate outcome but believed that Mr. Newdow should be denied relief on substantive constitutional grounds instead of procedural grounds.

[6] Ironically, Justice O'Connor errs when mentioning Florida in the sole footnote of her concurrence. She states that Florida's official state motto is "In God We Trust," and that the state has placed its motto on its state seal. As mentioned above in the quotation from the Department of State's Office of Cultural and Historical Programs, the opposite will in fact be true, if this legislation is successful.

[7] A fourth, Colorado, comes close. The state motto of Colorado is *Nil sine numine,* Latin for " Nothing without Providence," but also is translated as "Nothing without a will." Wikipedia, the egalitarian online encyclopedia (which is open to editing by any reader, and thus sometimes challenged for veracity), contains an enlightening discussion about this Latin phrase and its potential religiosity. The article is available here: http://en.wikipedia.org/wiki/Nil_sine_numine.

[8] Taken from Matthew 19:25-26, the Holy Bible (King James Version). A detailed summary of Ohio litigation (ultimately upholding Ohio's right to mention God in its motto) is available here: http://www.religioustolerance.org/sta_mott.htm.

1 A bill to be entitled
2 An act relating to official state designations; creating
3 s. 15.0301, F.S.; designating an official state motto;
4 providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Section 15.0301, Florida Statutes, is created
9 to read:
10 15.0301 State motto.--"In God We Trust" is hereby
11 designated and declared the official motto of the State of
12 Florida.
13 Section 2. This act shall take effect July 1, 2006.

PCB GO 06-04A

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-04 OGSR Medical and Health Information
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

## SUMMARY ANALYSIS


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

Current law provides a public records exemption for medical information, health information, and financial account numbers held by the Department of Health. The bill reenacts and expands the exemption for medical and health records making it applicable to all agencies. It repeals the public records exemption for financial account numbers because it is duplicative of an exemption found in current law.

This bill provides for retroactive application and for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal non-recurring 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 expands the public records exemption thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Financial Account Numbers

Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).[1] The exemption applies to all agencies.[2]

Medical and Health Information

Current law provides several agency-specific public records exemptions for medical and health information. For example, the Florida Automobile Joint Underwriting Association has a public records exemption for information relating to the medical condition or medical status of an employee.[3] Medical information pertaining to an agency employee is exempt from public records requirements.[4] The health records of a veteran admitted to residency at the Veterans' Domiciliary Home of Florida are confidential and exempt.[5] An exemption applicable to all agencies for medical and health information does not exist.

Department of Health

Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.[6] The information is confidential and exempt[7] and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

---

[1] Section 119.071(5)(b), F.S.

[2] "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.

[3] Section 627.311(4), F.S.

[4] Section 119.071(4)(b), F.S.

[5] Section 296.09, F.S.

[6] Section 119.0712(1), F.S.

[7] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Pursuant to the Open Government Sunset Review Act,[8] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

**Effect of Bill**

The bill reenacts and expands the public records exemption for the Department of Health. The bill expands the exemption to include medical and health information held by *any* agency, thus, creating a general exemption from public records requirements. It provides for retroactive application of the exemption.[9]

The bill removes the exemption for financial account numbers because it is duplicative of the general exemption[10] found in current law.

Current law authorizes the release of medical or health information to a health research entity that has entered into a data-use agreement with the department. The bill continues this exception; however, it reorganizes the requirements that must be included in the data-use agreement.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public records exemption for medical and health records.

Section 2 provides a public necessity statement.

Section 3 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:

   *See* FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   *See* FISCAL COMMENTS.

---

[8] Section 119.15, F.S.

[9] In 2001, the Florida Supreme Court ruled that a public records exemption does not apply retroactively unless the legislation clearly provides for retroactive application of the exemption. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[10] Section 119.071(5)(b), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

## 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 State 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 *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

The Act also 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding medical and health
4 information; amending s. 119.0721, F.S.; expanding the
5 public records exemption; providing for retroactive
6 application; providing for future review and repeal;
7 providing a statement of public necessity; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (1) of section 119.0712, Florida
13 Statutes, is renumbered as paragraph (g) of subsection (5) of
14 section 119.071, Florida Statutes, and is amended to read:
15 119.071 General exemptions from inspection or copying of
16 public records.--
17 (5) OTHER PERSONAL INFORMATION.--
18 (g)1. ~~119.0712 Executive branch agency-specific exemptions~~
19 ~~from inspection or copying of public records.--~~
20 ~~(1) DEPARTMENT OF HEALTH.--~~Medical records or health records
21 ~~All personal identifying information; bank account numbers; and~~
22 ~~debit, charge, and credit card numbers contained in records~~
23 ~~relating to an individual's personal health or eligibility for~~
24 ~~health-related services~~ held by an agency before, on, or after
25 October 1, 2006, ~~the Department of Health~~ are confidential and
26 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution~~, except as otherwise provided in this subsection~~.

28 2. Except as otherwise provided by law, medical records or
29 health records ~~information made confidential and exempt by this~~
30 ~~subsection~~ shall be disclosed:
31 a. ~~(a)~~ With the express written consent of the individual or
32 the individual's legally authorized representative.
33 b. ~~(b)~~ In a medical emergency, but only to the extent
34 necessary to protect the health or life of the individual.
35 c. ~~(c)~~ By court order upon a showing of good cause.
36 d. ~~(d)~~ To a health research entity performing research of
37 scientific merit~~,~~ if the request is not an administrative burden
38 for the agency and the entity enters into a data-use agreement
39 with the agency. The data-use agreement must provide that the
40 entity will:
41 I. Use ~~seeks~~ the records ~~or data~~ pursuant to a research
42 protocol approved by the agency and a human studies institutional
43 review board; ~~department,~~
44 II. Not permit the identification of persons;
45 III. Not use the records for any other purpose;
46 IV. Not conduct intrusive follow-back contacts;
47 V. Maintain ~~Maintains~~ the records ~~or data~~ in accordance
48 with the approved protocol;
49 VI. Acknowledge that the copies of records issued pursuant
50 to this subparagraph are the property of the agency;
51 VII. Destroy the records after the research is concluded;
52 VIII. Notify the agency in writing once the entity has
53 destroyed the records;~~,~~ and
54 VII. Pay the copying fees provided in ~~enters into a purchase~~
55 ~~and data-use agreement with the department, the fee provisions of~~
56 ~~which are consistent with~~ s. 119.07(4).

57

58 ~~The department may deny a request for records or data if the~~
59 ~~protocol provides for intrusive follow-back contacts, has not~~
60 ~~been approved by a human studies institutional review board, does~~
61 ~~not plan for the destruction of confidential records after the~~
62 ~~research is concluded, is administratively burdensome, or does~~
63 ~~not have scientific merit. The agreement must restrict the~~
64 ~~release of any information that would permit the identification~~
65 ~~of persons, limit the use of records or data to the approved~~
66 ~~research protocol, and prohibit any other use of the records or~~
67 ~~data. Copies of records or data issued pursuant to this paragraph~~
68 ~~remain the property of the department.~~
69 3. This paragraph ~~subsection~~ is subject to the Open
70 Government Sunset Review Act in accordance with s. 119.15 and
71 shall stand repealed on October 2, 2011 ~~2006~~, unless reviewed and
72 saved from repeal through reenactment by the Legislature.
73 Section 2. The Legislature finds that it is a public
74 necessity that medical records or health records held by an
75 agency before, on, or after October 1, 2006, be made confidential
76 and exempt from public records requirements, with certain
77 exceptions. Matters of personal health are traditionally private
78 and confidential concerns between the patient and the health care
79 provider. The private and confidential nature of personal health
80 matters pervades both the public and private health care sectors.
81 For these reasons, the individual's expectation of and right to
82 privacy in all matters regarding his or her personal health
83 necessitates this exemption. The Legislature further finds it is
84 a public necessity to protect a person's medical records or
85 health records held by an agency because the release of such

86 records could be defamatory to the person or could cause
87 unwarranted damage to the name or reputation of the person.
88 Section 3. This act shall take effect October 1, 2006.

PCB GO 06-07A

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-07 OGSR Communications Services Tax Simplification Law
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

## SUMMARY ANALYSIS


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

The bill reenacts the public records exemption for the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

**Background**

In 2000, the Legislature enacted the "Communications Services Tax Simplification Law."[1] The act combined seven different state and local taxes and fees and replaced those revenues with a two-tiered tax composed of a state tax and a local option tax on communications services. The new tax structure took effect October 1, 2001.

In 2001, the Legislature created a public records exemption for information received by the Department of Revenue pursuant to the Communications Services Tax Simplification Law. All information contained in returns, reports, accounts, and declarations received by the department, in addition to investigative reports and information and letters of technical advice, are exempt from public records requirements. The exemption authorizes release of the information for limited purposes. Any person who willfully and knowingly releases the exempt information for purposes not authorized by law commits a misdemeanor of the first degree.[2] Pursuant to the Open Government Sunset Review Act,[3] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes grammatical changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 213.053, F.S., to remove the repeal date.

Section 2 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 may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees

[1] Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.
[2] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed $1,000 (s. 775.083(1)(d), F.S.).
[3] Section 119.15, F.S.

must be retrained. Because the bill eliminates the repeal, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

The Act also 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is

narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the Communications Services
4 Tax Simplification Law; amending s. 213.053, F.S.; making
5 organizational and grammatical changes; deleting the
6 provision that provides for the repeal of the exemption
7 under the Open Government Sunset Review Act; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 213.053, Florida Statutes, is amended to
13 read:
14 213.053 Confidentiality and information sharing.--
15 (1)~~(a) The provisions of~~ This section applies ~~apply~~ to:
16 (a) Section ~~s.~~ 125.0104, county government;
17 (b) Section ~~s.~~ 125.0108, tourist impact tax;
18 (c) Chapter 175, municipal firefighters' pension trust
19 funds;
20 (d) Chapter 185, municipal police officers' retirement
21 trust funds;
22 (e) Chapter 198, estate taxes;
23 (f) Chapter 199, intangible personal property taxes;
24 (g) Chapter 201, excise tax on documents;
25 (h) Chapter 202, the Communications Services Tax
26 Simplification Law;
27 (i) Chapter 203, gross receipts taxes;
28 (j) Chapter 211, tax on severance and production of
29 minerals;

30 (k) Chapter 212, tax on sales, use, and other transactions;
31 (l) Chapter 220, income tax code;
32 (m) Chapter 221, emergency excise tax;
33 (n) Section ~~s.~~ 252.372, emergency management, preparedness,
34 and assistance surcharge;
35 (o) Section s. 370.07(3), Apalachicola Bay oyster
36 surcharge;
37 (p) Chapter 376, pollutant spill prevention and control;
38 (q) Section ~~s.~~ 403.718, waste tire fees;
39 (q) Section ~~s.~~ 403.7185, lead-acid battery fees;
40 (r) Section ~~s.~~ 538.09, registration of secondhand dealers;
41 (s) Section ~~s.~~ 538.25, registration of secondary metals
42 recyclers;
43 (t) Sections ~~ss.~~ 624.501 and 624.509-624.515, insurance
44 code;
45 (u) Section ~~s.~~ 681.117, motor vehicle warranty enforcement;
46 and
47 (v) Section ~~s.~~ 896.102, reports of financial transactions
48 in trade or business.
49 ~~(b) The provisions of this section also apply to chapter~~
50 ~~202, the Communications Services Tax Simplification Law. This~~
51 ~~paragraph is subject to the Open Government Sunset Review Act of~~
52 ~~1995 in accordance with s. 119.15, and shall stand repealed on~~
53 ~~October 2, 2006, unless reviewed and saved from repeal through~~
54 ~~reenactment by the Legislature.~~
55 (2)(a) ~~Except as provided in subsections (3), (4), (5),~~
56 ~~(6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), and~~
57 ~~(17),~~ All information contained in returns, reports, accounts, ~~or~~
58 declarations received by the department, including investigative

59 reports and information and including letters of technical
60 advice, is confidential except for official purposes and is
61 exempt from ~~the provisions of~~ s. 119.07(1).
62 (b) Any officer or employee, or former officer or employee,
63 of the department who divulges any such information in any
64 manner, except for such official purposes, commits a misdemeanor
65 of the first degree, punishable as provided in s. 775.082 or s.
66 775.083.
67 (3) The department shall permit a taxpayer, his or her
68 authorized representative, or the personal representative of an
69 estate to inspect the taxpayer's return and may furnish him or
70 her an abstract of such return. A taxpayer may authorize the
71 department in writing to divulge specific information concerning
72 the taxpayer's account.
73 (4) The department, while providing unemployment tax
74 collection services under contract with the Agency for Workforce
75 Innovation through an interagency agreement pursuant to s.
76 443.1316, may release unemployment tax rate information to the
77 agent of an employer, which agent provides payroll services for
78 more than 500 employers, pursuant to the terms of a memorandum of
79 understanding. The memorandum of understanding must state that
80 the agent affirms, subject to the criminal penalties contained in
81 ss. 443.171 and 443.1715, that the agent will retain the
82 confidentiality of the information, that the agent has in effect
83 a power of attorney from the employer which permits the agent to
84 obtain unemployment tax rate information, and that the agent
85 shall provide the department with a copy of the employer's power
86 of attorney upon request.

87 (5) ~~(4)~~ Nothing contained in this section shall prevent the
88 department from:
89 (a) Publishing statistics so classified as to prevent the
90 identification of particular accounts, reports, declarations, or
91 returns; or ~~prevent the department from~~
92 (b) Disclosing to the Chief Financial Officer the names and
93 addresses of those taxpayers who have claimed an exemption
94 pursuant to s. 199.185(1)(i) or a deduction pursuant to s.
95 220.63(5).
96 (6) ~~(5)~~ The department may make available to the Secretary
97 of the Treasury of the United States or his or her delegate, the
98 Commissioner of Internal Revenue of the United States or his or
99 her delegate, the Secretary of the Department of the Interior of
100 the United States or his or her delegate, or the proper officer
101 of any state or his or her delegate, exclusively for official
102 purposes, information to comply with any formal agreement for the
103 mutual exchange of state information with the Internal Revenue
104 Service of the United States, the Department of the Interior of
105 the United States, or any state.
106 (7)(a) ~~(6)~~ Any information received by the Department of
107 Revenue in connection with the administration of taxes,
108 including, but not limited to, information contained in returns,
109 reports, accounts, or declarations filed by persons subject to
110 tax, shall be made available ~~by the department~~ to the following
111 in the performance of their official duties:
112 1. The Auditor General or his or her authorized agent; ~~,~~
113 2. The director of the Office of Program Policy Analysis
114 and Government Accountability or his or her authorized agent; ~~,~~

115 3. The Chief Financial Officer or his or her authorized
116 agent;~~,~~
117 4. The Director of the Office of Insurance Regulation of
118 the Financial Services Commission or his or her authorized
119 agent;~~, or~~
120 5. A property appraiser or tax collector or their
121 authorized agents pursuant to s. 195.084(1);~~, in the performance~~
122 ~~of their official duties,~~ or to
123 6. Designated employees of the Department of Education
124 solely for determination of each school district's price level
125 index pursuant to s. 1011.62(2).~~;~~
126 (b) ~~However,~~ No information shall be disclosed as provided
127 in paragraph (a) ~~to the Auditor General or his or her authorized~~
128 ~~agent, the director of the Office of Program Policy Analysis and~~
129 ~~Government Accountability or his or her authorized agent, the~~
130 ~~Chief Financial Officer or his or her authorized agent, the~~
131 ~~Director of the Office of Insurance Regulation or his or her~~
132 ~~authorized agent, or to a property appraiser or tax collector or~~
133 ~~their authorized agents, or to designated employees of the~~
134 ~~Department of Education~~ if such disclosure is prohibited by
135 federal law.
136 (c) Any person designated in paragraph (a) ~~The Auditor~~
137 ~~General or his or her authorized agent, the director of the~~
138 ~~Office of Program Policy Analysis and Government Accountability~~
139 ~~or his or her authorized agent, the Chief Financial Officer or~~
140 ~~his or her authorized agent, the Director of the Office of~~
141 ~~Insurance Regulation or his or her authorized agent, and the~~
142 ~~property appraiser or tax collector and their authorized agents,~~
143 ~~or designated employees of the Department of Education~~ shall be

144 subject to the same requirements of confidentiality and the same
145 penalties for violation of the requirements as the department.
146 (d) For the purpose of this subsection, "designated
147 employees of the Department of Education" means only those
148 employees directly responsible for calculation of price level
149 indices pursuant to s. 1011.62(2). It does not include the
150 supervisors of such employees or any other employees or elected
151 officials within the Department of Education.
152 (8) ~~(7)~~ Notwithstanding any other provision of this section,
153 the department may provide:
154 (a) Information relative to chapter 211, chapter 376, or
155 chapter 377 to the proper state agency in the conduct of its
156 official duties.
157 (b) Names, addresses, and dates of commencement of business
158 activities of corporations to the Division of Corporations of the
159 Department of State in the conduct of its official duties.
160 (c) Information relative to chapter 212 and chapters 561
161 through 568 to the Division of Alcoholic Beverages and Tobacco of
162 the Department of Business and Professional Regulation in the
163 conduct of its official duties.
164 (d) Names, addresses, and sales tax registration
165 information to the Division of Hotels and Restaurants of the
166 Department of Business and Professional Regulation in the conduct
167 of its official duties.
168 (e) Names, addresses, taxpayer identification numbers, and
169 outstanding tax liabilities to the Department of the Lottery and
170 the Office of Financial Regulation of the Financial Services
171 Commission in the conduct of their official duties.

172 (f) State tax information to the Nexus Program of the
173 Multistate Tax Commission pursuant to any formal agreement for
174 the exchange of mutual information between the department and the
175 commission.
176 (g) Tax information to principals, and their designees, of
177 the Revenue Estimating Conference for the purpose of developing
178 official revenue estimates.
179 (h) Names and addresses of persons paying taxes pursuant to
180 part IV of chapter 206 to the Department of Environmental
181 Protection in the conduct of its official duties.
182 (i) Information relative to chapters 212 and 326 to the
183 Division of Florida Land Sales, Condominiums, and Mobile Homes of
184 the Department of Business and Professional Regulation in the
185 conduct of its official duties.
186 (j) Information authorized pursuant to s. 213.0535 to
187 eligible participants and certified public accountants for such
188 participants in the Registration Information Sharing and Exchange
189 Program.
190 (k)1. Payment information relative to chapters 199, 201,
191 212, 220, 221, and 624 to the Office of Tourism, Trade, and
192 Economic Development, or its employees or agents that are
193 identified in writing by the office to the department, in the
194 administration of the tax refund program for qualified defense
195 contractors authorized by s. 288.1045 and the tax refund program
196 for qualified target industry businesses authorized by s.
197 288.106.
198 2. Information relative to tax credits taken by a business
199 under s. 220.191 and exemptions or tax refunds received by a
200 business under s. 212.08(5)(j) to the Office of Tourism, Trade,

201 and Economic Development, or its employees or agents that are
202 identified in writing by the office to the department, in the
203 administration and evaluation of the capital investment tax
204 credit program authorized in s. 220.191 and the semiconductor,
205 defense, and space tax exemption program authorized in s.
206 212.08(5)(j).
207 (l) Information relative to chapter 212 and the Bill of
208 Lading Program to the Office of Agriculture Law Enforcement of
209 the Department of Agriculture and Consumer Services in the
210 conduct of its official duties.
211 (m) Information relative to chapter 198 to the Agency for
212 Health Care Administration in the conduct of its official
213 business relating to ss. 409.901-409.9101.
214 (n) Information contained in returns, reports, accounts, or
215 declarations to the Board of Accountancy in connection with a
216 disciplinary proceeding conducted pursuant to chapter 473 when
217 related to a certified public accountant participating in the
218 certified audits project, or to the court in connection with a
219 civil proceeding brought by the department relating to a claim
220 for recovery of taxes due to negligence on the part of a
221 certified public accountant participating in the certified audits
222 project. In any judicial proceeding brought by the department,
223 upon motion for protective order, the court shall limit
224 disclosure of tax information when necessary to effectuate the
225 purposes of this section.
226 (o) Information relative to ss. 376.70 and 376.75 to the
227 Department of Environmental Protection in the conduct of its
228 official business and to the facility owner, facility operator,
229 and real property owners as defined in s. 376.301.

230 (p) Information relative to ss. 199.1055, 220.1845, and
231 376.30781 to the Department of Environmental Protection in the
232 conduct of its official business.
233 (q) Names, addresses, and sales tax registration
234 information to the Division of Consumer Services of the
235 Department of Agriculture and Consumer Services in the conduct of
236 its official duties.
237 (r) Information relative to the returns required by ss.
238 175.111 and 185.09 to the Department of Management Services in
239 the conduct of its official duties. The Department of Management
240 Services is, in turn, authorized to disclose payment information
241 to a governmental agency or the agency's agent for purposes
242 related to budget preparation, auditing, revenue or financial
243 administration, or administration of chapters 175 and 185.
244 (s) Names, addresses, and federal employer identification
245 numbers, or similar identifiers, to the Department of Highway
246 Safety and Motor Vehicles for use in the conduct of its official
247 duties.
248 (t) Information relative to the tax exemptions under ss.
249 212.031, 212.06, and 212.08 for those persons qualified under s.
250 288.1258 to the Office of Film and Entertainment. The Department
251 of Revenue shall provide the Office of Film and Entertainment
252 with information in the aggregate.
253 (u) Information relative to s. 220.187 to the Department of
254 Education in the conduct of its official business.
255 (v) Information relative to chapter 202 to each local
256 government that imposes a tax pursuant to s. 202.19 in the
257 conduct of its official duties as specified in chapter 202.
258 Information provided under this paragraph may include, but is not

259 limited to, any reports required pursuant to s. 202.231, audit
260 files, notices of intent to audit, tax returns, and other
261 confidential tax information in the department's possession
262 relating to chapter 202. A person or an entity designated by the
263 local government in writing to the department as requiring access
264 to confidential taxpayer information shall have reasonable access
265 to information provided pursuant to this paragraph. Such person
266 or entity may disclose such information to other persons or
267 entities with direct responsibility for budget preparation,
268 auditing, revenue or financial administration, or legal counsel.
269 Such information shall only be used for purposes related to
270 budget preparation, auditing, and revenue and financial
271 administration. Any confidential and exempt information furnished
272 to a local government, or to any person or entity designated by
273 the local government as authorized by this paragraph~~, that is~~
274 ~~exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I~~
275 ~~of the State Constitution pursuant to this section shall continue~~
276 ~~to be exempt when so provided, and~~ may not be further disclosed
277 by the recipient except as provided by this paragraph.
278 (w) Tax registration information to the Agency for
279 Workforce Innovation for use in the conduct of its official
280 duties~~, which information may not be redisclosed by the Agency~~
281 ~~for Workforce Innovation~~.
282 (x) Rental car surcharge revenues authorized by s.
283 212.0606, reported according to the county to which the surcharge
284 was attributed to the Department of Transportation.
285
286 Disclosure of information under this subsection shall be pursuant
287 to a written agreement between the executive director and the

288 agency. Such agencies, governmental or nongovernmental, shall be
289 bound by the same requirements of confidentiality as the
290 Department of Revenue. Breach of confidentiality is a misdemeanor
291 of the first degree, punishable as provided by s. 775.082 or s.
292 775.083.
293 (9) ~~(8)~~ The Department of Revenue shall provide returns,
294 reports, accounts, or declarations received by the department,
295 including investigative reports and information, or information
296 contained in such documents, pursuant to an order of a judge of a
297 court of competent jurisdiction or pursuant to a subpoena duces
298 tecum only when the subpoena is:
299 (a) Issued by a state attorney, a United States attorney,
300 or a court in a criminal investigation or a criminal judicial
301 proceeding;
302 (b) Issued by a state or federal grand jury; or
303 (c) Issued by a state attorney, the Department of Legal
304 Affairs, the State Fire Marshal, a United States attorney, or a
305 court in the course of a civil investigation or a civil judicial
306 proceeding under the state or federal racketeer influenced and
307 corrupt organization act or under chapter 896.
308 (10) ~~(9)~~ (a) Notwithstanding other provisions of this
309 section, the department shall, subject to paragraph (c) and to
310 the safeguards and limitations of paragraphs (b) and (d),
311 disclose to the governing body of a municipality, a county, or a
312 subcounty district levying a local option tax, or any state tax
313 that ~~which~~ is distributed to units of local government based upon
314 place of collection, which the department is responsible for
315 administering, names and addresses only of the taxpayers granted
316 a certificate of registration pursuant to s. 212.18(3) who reside

317 within or adjacent to the taxing boundaries of such municipality,
318 county, or subcounty district when sufficient information is
319 supplied by the municipality, the county, or subcounty district
320 as the department by rule may prescribe, provided such governing
321 bodies are following s. 212.18(3) relative to the denial of an
322 occupational license after the department cancels a dealer's
323 sales tax certificate of registration.
324 (b) Such information shall be disclosed only if the
325 department receives an authenticated copy of a resolution adopted
326 by the governing body requesting it.
327 (c) After receipt of such information, the governing body
328 and its officers and employees are subject to the same
329 requirements of confidentiality and the same penalties for
330 violating confidentiality as the department and its employees.
331 (d) The resolution requesting such information shall
332 provide assurance that the governing body and its officers and
333 employees are aware of the confidentiality ~~those~~ requirements and
334 of the penalties for their violation of such requirements.~~, and~~
335 The resolution shall describe the measures that will be put into
336 effect to ensure such confidentiality. The officer of the
337 department who is authorized to receive, consider, and act upon
338 such requests shall, if satisfied that the assurances in the
339 resolution are adequate to assure confidentiality, grant the
340 request.
341 (e)~~(d)~~ Nothing in this subsection authorizes disclosure of
342 any information prohibited by federal law from being disclosed.
343 (11)~~(10)~~ Notwithstanding any other provision of this
344 section, with respect to a request for verification of a
345 certificate of registration issued pursuant to s. 212.18 to a

346 specified dealer or taxpayer or with respect to a request by a
347 law enforcement officer for verification of a certificate of
348 registration issued pursuant to s. 538.09 to a specified
349 secondhand dealer or pursuant to s. 538.25 to a specified
350 secondary metals recycler, the department may disclose whether
351 the specified person holds a valid certificate or whether a
352 specified certificate number is valid or whether a specified
353 certificate number has been canceled or is inactive or invalid
354 and the name of the holder of the certificate. This subsection
355 shall not be construed to create a duty to request verification
356 of any certificate of registration.
357 (12) ~~(11)~~ The department may provide to a United States
358 Trustee, or his or her designee, for any United States Bankruptcy
359 Court, exclusively for official purposes in connection with
360 administering a bankruptcy estate, information relating to
361 payment or nonpayment of taxes imposed by any revenue law of this
362 state by a trustee, debtor, or debtor in possession, including
363 any amount paid or due.
364 (13) ~~(12)~~ The department may disclose certain state sales
365 tax information relating to the cancellation or revocation of
366 sales and use tax certificates of registration for the failure to
367 collect and remit sales tax. This information is limited to the
368 sales tax certificate number, trade name, owner's name, business
369 location address, and the reason for the cancellation or
370 revocation.
371 (14) ~~(13)~~ Notwithstanding the provisions of s. 896.102(2),
372 the department may allow full access to the information and
373 documents required to be filed with it under s. 896.102(1) to
374 federal, state, and local law enforcement and prosecutorial

375 agencies, and to the Office of Financial Regulation of the
376 Financial Services Commission, and any of those agencies may use
377 the information and documents in any civil or criminal
378 investigation and in any court proceedings.
379 (15) ~~(14)~~ (a) Notwithstanding any other provision of this
380 section, the department shall, subject to the safeguards
381 specified in paragraph (c), disclose to the Division of
382 Corporations of the Department of State the name, address,
383 federal employer identification number, and duration of tax
384 filings with this state of all corporate or partnership entities
385 which are not on file or have a dissolved status with the
386 Division of Corporations and which have filed tax returns
387 pursuant to either chapter 199 or chapter 220.
388 (b) The Division of Corporations shall use such information
389 only in the pursuit of its official duties relative to
390 nonqualified foreign or dissolved corporations in the recovery of
391 fees and penalties due and owing the state.
392 (c) All information exchanged between the Division of
393 Corporations and the department shall be subject to the same
394 requirements of confidentiality as the Department of Revenue.
395 (16) (a) ~~(15)~~ The department may disclose confidential
396 taxpayer information contained in returns, reports, accounts, or
397 declarations filed with the department by persons subject to any
398 state or local tax to the child support enforcement program, to
399 assist in the location of parents who owe or potentially owe a
400 duty of support, as defined in s. 409.2554, pursuant to Title IV-
401 D of the Social Security Act, their assets, their income, and
402 their employer, and to the Department of Children and Family

403 Services for the purpose of diligent search activities pursuant
404 to chapter 39.
405 (b) Nothing in this subsection authorizes the disclosure of
406 information if such disclosure is prohibited by federal law.
407 Employees of the child support enforcement program and of the
408 Department of Children and Family Services are bound by the same
409 requirements of confidentiality and the same penalties for
410 violation of the requirements as the department.
411 (17) ~~(16)~~ The department may provide to the person against
412 whom transferee liability is being asserted pursuant to s.
413 212.10(1) information relating to the basis of the claim.
414 (18) ~~(17)~~ The department may disclose to a person entitled
415 to compensation pursuant to s. 213.30 the amount of any tax,
416 penalty, or interest collected as a result of information
417 furnished by such person.
418 Section 2. This act shall take effect October 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-14 OGSR Total Maximum Daily Loads
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1212

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

## SUMMARY ANALYSIS


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

The bill reenacts the public records exemption for agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

**Background**

The Florida Watershed Restoration Act and Total Maximum Daily Loads

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the basic framework for pollution control in the nation's water bodies. Its primary goal was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the intent of the CWA was to restore and protect the health of the nation's water bodies.[1]

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired" (i.e., do not meet specific pollutant limits for their designated uses) must be submitted to the U.S. Environmental Protection Agency under section 303(d) of the CWA. States are required to develop total maximum daily loads (TMDL) for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs generally were ignored by the states until environmental groups began filing lawsuits.[2]

In 1999, the Florida Legislature passed the Florida Watershed Restoration Act (WRA), which codified the establishment of TMDLs for pollutants of water bodies.[3] The WRA requires the Department of Environmental Protection (DEP) to promulgate rules relating to the methodology for assessing, calculating, allocating, and implementing the TMDL process.[4] The WRA also directs that the TMDL process be integrated with existing protection and restoration programs, and coordinated with all state agencies and affected parties.[5]

TMDLs describe the amount of each pollutant a water body can receive without violating state water quality standards.[6] TMDLs are the sum of waste load allocations, load allocations, and a margin of safety to account for uncertain conditions. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas. Even though an individual discharge into a water body may meet established standards, the cumulative and multiplier effect of discharges from numerous sources can cause a water body not to meet the quality standards.[7]

DEP may develop a basin management action plan (BMAP) as part of the development and implementation of a TMDL for a water body.[8] The plan must:

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[1] *See House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.
[2] *Id.*
[3] Chapter 99-223, Laws of Florida; s. 403.067, F.S.
[4] Section 403.067(3)(b), F.S.
[5] Subsections (1) and (3) of section 403.067, F.S.
[6] Section 403.067(6)(a), F.S.
[7] *See House of Representatives Staff Analysis HB 1839 CS* by the State Resources Council, April 25, 2005, at 2.
[8] Section 403.067(7)(a)1., F.S.

- Integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL;
- Restore designated uses of the water body;
- Provide for phased implementation of strategies;
- Establish a schedule for implementing strategies;
- Establish a basis for evaluating the plan's effectiveness;
- Identify feasible funding strategies; and
- Equitably allocate pollutant reductions to basins as a whole or to each point or nonpoint source.[9]

The BMAP also must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is achieved over time.[10] Progress assessments are required every five years and revisions to the plan are required, as appropriate.[11]

Public Records Exemption

Current law provides a public records exemption for certain agricultural records. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information that are reported to the Department of Agriculture and Consumer Services as part of best management practices for reducing water pollution are confidential and exempt[12] from public records requirements.[13] Upon request, the department may release the confidential and exempt records to DEP or any water management district.

Pursuant to the Open Government Sunset Review Act,[14] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

**Effect of Bill**

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

The bill removes the provision requiring DEP or any water management district with authorized access to such records to maintain the confidential and exempt status of those records. In *Ragsdale v. State*,[15] 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 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.[16]

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[9] *Id.*
[10] Section 403.067(7)(a)5., F.S.
[11] *Id.*
[12] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[13] Section 403.067(7)(c)5., F.S.
[14] Section 119.15, F.S.
[15] 720 So.2d 203 (Fla. 1998).
[16] *Id.* at 206, 207.

In *City of Riviera Beach v. Barfield*,[17] 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."[18] As such, the provision is unnecessary and has been removed, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

C. SECTION DIRECTORY:

Section 1 amends s. 403.067(7), F.S., to remove the October 2, 2006, repeal date.

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

## 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:

   The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

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 local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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[17] 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*.

[18] *Id.* at 1137.

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. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

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

The Act 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 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding total maximum daily loads;
4 amending s. 403.067, F.S.; making editorial changes;
5 removing superfluous language; deleting the provision that
6 provides for the repeal of the exemption under the Open
7 Government Sunset Review Act; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (c) of subsection (7) of section
12 403.067, Florida Statutes, is amended to read:
13 403.067 Establishment and implementation of total maximum
14 daily loads.--
15 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
16 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--
17 (c) Best management practices.--
18 1. The department, in cooperation with the water management
19 districts and other interested parties, as appropriate, may
20 develop suitable interim measures, best management practices, or
21 other measures necessary to achieve the level of pollution
22 reduction established by the department for nonagricultural
23 nonpoint pollutant sources in allocations developed pursuant to
24 subsection (6) and this subsection. These practices and measures
25 may be adopted by rule by the department and the water management
26 districts pursuant to ss. 120.536(1) and 120.54, and, where
27 adopted by rule, shall be implemented by those parties
28 responsible for nonagricultural nonpoint source pollution.

29 2. The Department of Agriculture and Consumer Services may
30 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
31 suitable interim measures, best management practices, or other
32 measures necessary to achieve the level of pollution reduction
33 established by the department for agricultural pollutant sources
34 in allocations developed pursuant to subsection (6) and this
35 subsection. These practices and measures may be implemented by
36 those parties responsible for agricultural pollutant sources and
37 the department, the water management districts, and the
38 Department of Agriculture and Consumer Services shall assist with
39 implementation. In the process of developing and adopting rules
40 for interim measures, best management practices, or other
41 measures, the Department of Agriculture and Consumer Services
42 shall consult with the department, the Department of Health, the
43 water management districts, representatives from affected farming
44 groups, and environmental group representatives. Such rules shall
45 also incorporate provisions for a notice of intent to implement
46 the practices and a system to assure the implementation of the
47 practices, including recordkeeping requirements.
48 3. Where interim measures, best management practices, or
49 other measures are adopted by rule, the effectiveness of such
50 practices in achieving the levels of pollution reduction
51 established in allocations developed by the department pursuant
52 to subsection (6) and this subsection shall be verified at
53 representative sites by the department. The department shall use
54 best professional judgment in making the initial verification
55 that the best management practices are effective and, where
56 applicable, shall notify the appropriate water management
57 district and the Department of Agriculture and Consumer Services

58 of its initial verification prior to the adoption of a rule
59 proposed pursuant to this paragraph. Implementation, in
60 accordance with rules adopted under this paragraph, of practices
61 that have been initially verified to be effective, or verified to
62 be effective by monitoring at representative sites, by the
63 department, shall provide a presumption of compliance with state
64 water quality standards and release from the provisions of s.
65 376.307(5) for those pollutants addressed by the practices, and
66 the department is not authorized to institute proceedings against
67 the owner of the source of pollution to recover costs or damages
68 associated with the contamination of surface water or groundwater
69 caused by those pollutants.
70 4. Where water quality problems are demonstrated, despite
71 the appropriate implementation, operation, and maintenance of
72 best management practices and other measures according to rules
73 adopted under this paragraph, the department, a water management
74 district, or the Department of Agriculture and Consumer Services,
75 in consultation with the department, shall institute a
76 reevaluation of the best management practice or other measure.
77 Should the reevaluation determine that the best management
78 practice or other measure requires modification, the department,
79 a water management district, or the Department of Agriculture and
80 Consumer Services, as appropriate, shall revise the rule to
81 require implementation of the modified practice within a
82 reasonable time period as specified in the rule.
83 5. ~~Individual~~ Agricultural records relating to processes or
84 methods of production, ~~or relating to~~ costs of production,
85 profits, or other financial information held by ~~which are~~
86 ~~otherwise not public records, which are reported to~~ the

87 Department of Agriculture and Consumer Services pursuant to
88 subparagraphs 3. and 4. or pursuant to any rule adopted pursuant
89 to subparagraph 2. are ~~shall be~~ confidential and exempt from s.
90 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon
91 request, records made confidential and exempt pursuant to this
92 subparagraph shall be released to ~~of~~ the department or any water
93 management district~~, the Department of Agriculture and Consumer~~
94 ~~Services shall make such individual agricultural records~~
95 ~~available to that agency, provided that the confidentiality~~
96 ~~specified by this subparagraph for such records is maintained~~.
97 ~~This subparagraph is subject to the Open Government Sunset Review~~
98 ~~Act of 1995 in accordance with s. 119.15, and shall stand~~
99 ~~repealed on October 2, 2006, unless reviewed and saved from~~
100 ~~repeal through reenactment by the Legislature.~~
101 6. The provisions of subparagraphs 1. and 2. shall not
102 preclude the department or water management district from
103 requiring compliance with water quality standards or with current
104 best management practice requirements set forth in any applicable
105 regulatory program authorized by law for the purpose of
106 protecting water quality. Additionally, subparagraphs 1. and 2.
107 are applicable only to the extent that they do not conflict with
108 any rules adopted by the department that are necessary to
109 maintain a federally delegated or approved program.
110 Section 2. This act shall take effect October 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-27 Strategic Asset Lands Management
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2070

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

## SUMMARY ANALYSIS


The bill revises sections of statute pertaining to the inventory, acquisition, management, sale, and exchange of state lands. Specifically, the bill:

- Requires that all lands titled in the name of the Board of Trustees of the Internal Improvement Trust Fund or any state agency be inventoried and mapped.
- Authorizes the Department of Environmental Protection (DEP) to contract with the Florida Natural Areas Inventory to implement mapping requirements subject to legislative appropriation.
- Clarifies responsibilities of the Division of State Lands (division) at DEP with respect to nonconservation lands, and limits the Acquisition and Restoration Council's oversight of state lands to conservation lands.
- Revises the state's sale and exchange process to create a distinction between the sale of state lands as surplus property and the exchange of state lands for land of equal or higher benefit.
- Directs the division to keep records of all requests for the sale or exchange of state lands, and provides that all requests for the state to sell or exchange property be made in writing.
- Expands the purposes for which a local government may use surplused or exchanged property to include affordable housing projects or meeting the capital improvements element or a concurrency requirement of a local comprehensive land use plan.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government –**

The bill potentially reduces the number of steps required to sell or exchange surplus state land, thereby delivering unused government land back to county tax rolls.

The bill requires the Division of State Lands to contract with the Florida Natural Areas Inventory at Florida State University for certain mapping and inventory services.

B. EFFECT OF PROPOSED CHANGES:

**Ownership, Management, and Inventory of State Lands**

Current Situation

Art. IV, s. 4 of the State Constitution, establishes the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture as the Board of Trustees (BOT) of both the Internal Improvement Trust Fund and the Land Acquisition Trust Fund. The BOT is charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may inure to, the state or any of its agencies, except as otherwise provided by law.[1] Section 253.02, F.S., provides that the board may not sell, transfer, or otherwise dispose of any lands the title to which is vested in the BOT except by a vote of at least three of the four trustees.

Statutory provisions governing the acquisition and disposal of lands by the state are contained in Chapters 253 and 259, F.S. The Department of Environmental Protection (DEP) is directed to provide administrative staff to the BOT, and the Division of State Lands (Division) within DEP performs staff duties and functions related to the acquisition, administration, and disposition of lands which are titled in the name of the BOT.[2]

Concurrent with the Division's support of the BOT, the Acquisition and Restoration Council (ARC)[3] is responsible for evaluating, selecting, and ranking land acquisition projects, and can add or delete projects from the master acquisition list.[4] At least once a year, the list approved by ARC is submitted to the BOT for approval.[5] The BOT can remove projects from the list but may not add projects and may not reprioritize the list.[6] The ARC is supported by Division staff. Under current statutes, the roles of the Division and the ARC are sometimes unclear in relation to conservation lands vs. non-conservation lands.[7]

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[1] Section 253.02, F.S.
[2] Section 253.002, F.S.
[3] The ARC is created in s. 259.035, F.S., and consists of nine members – four appointees of the Governor, the Secretary of the Department of Environmental Protection, the Director of the Division of Forestry of the Department of Agriculture and Consumer Affairs, the Executive Director of the Florida Fish and Wildlife Conservation Commission, the Director of the Division of Historical Resources at the Department of State, and the Secretary of the Department of Community Affairs.
[4] Section 259.035(4) – (6), F.S.
[5] *Id.*
[6] See generally s. 259.041, F.S.
[7] Broadly speaking, the term "conservation lands" means any lands purchased by the state under its land-acquisition programs described in Chapter 259, F.S. These programs include Florida Preservation 2000 and Florida Forever programs. "Non-conservation lands" are, by definition, all other state lands.

Changes

The bill clarifies the obligations of the BOT, Division, and ARC, and streamlines BOT's authority to sell or exchange state land. The bill identifies sales and exchanges as two separate methods of state land disposal, and clarifies sections in which the distinction between a sale and an exchange is required.

The Division is authorized to review all requests to sublease non-conservation lands, all land management plans for non-conservation lands, and all requests to sell or exchange nonconservation lands owned by the state. Similarly, the bill removes all responsibilities relating to non-conservation lands from the ARC, and clarifies that ARC will review all requests to sublease conservation lands, all land management plans for conservation lands, and all requests to sell or exchange conservation lands owned by the state.

The bill authorizes the Division to contract with the Florida Natural Areas Inventory[8] in order to improve the inventory requirements contained in Chapter 253, F.S.[9] In an additional attempt to improve the inventory status, the bill directs the Department of Revenue to share current tax roll data used to prepare the BOT inventory with the Division for use in compiling an additional inventory of all state, federal, water management district, and local government lands.[10] The BOT's annual inventory of all publicly owned lands in the state must include a summary of all surplus lands sold and exchanged by the state each year, and must indicate if those lands were acquired or managed by the state for conservation purposes or if they were non-conservation lands.

**Surplus Lands**

Current

The disposal of surplus state lands is controlled by statutory and constitutional[11] provisions which provide for the sale or exchange of state lands. To dispose of non-conservation lands, the BOT must determine that the property is no longer needed.[12] To dispose of conservation lands, the BOT must determine that the property is no longer needed for the conservation purposes for which it was acquired,[13] and in cases where conservation land is exchanged, the exchange must result in a net positive conservation benefit to the state.[14] In all cases, the surplusing of state lands requires an affirmative vote of at least three of the members of the BOT.[15] All property sold or exchanged by the BOT first must be offered to the county in which the property is located.[16]

Section 253.0341, F.S., creates an expedited surplusing process for local governments to submit a surplus request directly to the BOT. The BOT may make a determination to surplus non-conservation lands without a recommendation of the ARC or the Division, and must consider the local government request within 60 days of receipt.[17] Local government requests for the state to surplus conservation lands must be reviewed by the ARC for a recommendation on the request, and a final determination

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[8] The FNAI is a non-profit organization administered by Florida State University, and is a member of The Nature Conservancy's international network of environmental programs. On its website at www.fnai.org, the group describes its primary mission as "gathering, interpreting, and disseminating information critical to the conservation of Florida's biological diversity." Funding to the FNAI is provided through contracts and grants including work for DEP, the Florida Fish and Wildlife Conservation Commission, and other state and federal agencies.

[9] See ss. 253.034(8)(a) and 253.03(8)(a), F.S.

[10] The Department of Revenue currently is directed to share this data with the President of the Senate and the Speaker of the House of Representatives.

[11] Art. X, s. 18, Constitution of the State of Florida (adopted November 1998).

[12] Section 253.034(6), F.S.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] Section 253.034(6)(f), F.S. This requirement is waived when the request to surplus is made under s. 253.034(6)(j), F.S.

[17] Section 253.0341, F.S.

must be made by the BOT within 120 days of receipt of the request.[18] Local governments purchasing surplus property for less than appraised value must retain the title for at least ten years.[19] Lands may be purchased by county governments for purposes of building internal improvements such as public schools, libraries, fire or police substations.[20]

Surplusing requests may be made by any public or private entity or person and are submitted to the lead managing agency for review prior to review by the ARC.[21] Requests for surplusing submitted by an entity other than a local government are guided by the provisions of s. 253.034(6), F.S.

Changes

The bill revises the state's surplusing process to provide that conservation lands determined by the BOT as eligible for sale or exchange are reclassified as nonconservation lands.

All lands determined by the BOT as eligible for sale are designated as surplus land and may be sold by an affirmative vote of at least three BOT members. Lands deemed eligible for exchange must be exchanged by a vote of at least three BOT members. Non-conservation lands not included in any agency's land use plan are deemed surplus and are recommended for sale or exchange, unless (i) the Division issues a written justification detailing the reason for retaining the land, or (ii) an agency revises its land use plan to incorporate the parcel at issue.

The bill clarifies that conservation land exchanges must result in a net positive conservation benefit to the state, and expands the purposes for which a local government may use surplus or exchanged property. These additional uses include affordable housing projects or programs, or to meet the capital improvements element or a concurrency requirement of a local comprehensive land use plan.

With regard to public requests to sell or exchange state lands, the bill requires that requests be submitted in writing by the public or private entity or person making the request and that denial of a request for the sale or exchange of state lands be made in writing and include the reason for denial. The Division must keep records of all requests for the sale or exchange of state lands and keep records of approvals or denials of those requests. The lead managing agency must submit a copy of the request for sale or exchange of state lands to the Division for its records.

C. SECTION DIRECTORY:

Section 1 amends s. 253.002, F.S., providing additional definitions.

Section 2 amends s. 253.03, F.S., providing additional requirements for the Division's obligation to inventory state lands.

Section 3 amends s. 253.034, F.S., streamlining and clarifying provisions regarding surplus lands and the duties of the BOT, the Division, and the ARC.

Section 4 amends 253.0341, F.S., clarifying processes relating to the sale or exchange of surplus land to county or local governments.

Section 5 amends 253.42, F.S., adding additional public purposes for which local governments may accept state surplus land.

Section 6 provides an effective date of July 1, 2006.

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[18] *Id.*
[19] Section 253.034(6)(g)2., F.S.
[20] Section 253.034(6)(f), F.S.
[21] Section 253.034(6)(j), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not directly create, modify, amend, or eliminate a state revenue source. If the legislation results in additional sales of surplus lands, the state would be the recipient of such funds.

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 directly create, modify, amend, or eliminate a local revenue source. Local governments may see a slight increase in the local property tax base if more surplus state lands are returned to the general public.

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:

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:

The bill conforms the Board's current authority to proscribe rules relating to the Division of State Land to language changes made throughout the bill. The authority is not substantively broadened or lessened.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to state lands; amending s. 253.002, F.S.;
3 clarifying the duties of the Department of Environmental
4 Protection, the water management districts, and the
5 Department of Agriculture and Consumer Services with
6 respect to state lands; authorizing the Board of Trustees
7 of the Internal Improvement Trust Fund to delegate certain
8 duties; amending s. 253.03, F.S., relating to the
9 administration of state lands by the board of trustees;
10 requiring that an inventory of publicly owned lands
11 identify lands exchanged by the state and surplus lands
12 sold by the state; requiring that the Department of
13 Revenue submit current tax roll data to the board of
14 trustees and to the Division of State Lands to be used for
15 inventory purposes; amending s. 253.034, F.S.; revising
16 definitions; clarifying requirements for the use of lands
17 acquired for greenways and trails; requiring that all
18 management agreements, leases, or other instruments
19 authorizing the use of state lands be reviewed by the
20 board of trustees or its designees; authorizing the
21 Division of State Lands to review subleases for
22 conservation lands less than 160 acres in size; providing
23 for the Acquisition and Restoration Council to review only
24 land management plans for conservation lands; revising
25 requirements relating to the disposal of state lands;
26 requiring that state lands determined to be eligible for
27 sale by the board of trustees be designated as surplus
28 lands; providing that lands determined by the board to be
29 eligible for exchange may not be designated as surplus

30 lands; requiring that the sale or exchange of state
31 conservation lands result in a net positive conservation
32 benefit; authorizing the Division of State Lands to
33 recommend the sale or exchange of nonconservation lands
34 directly to the board of trustees; authorizing the
35 Acquisition and Restoration Council to recommend to the
36 board of trustees that the sale or management of state
37 conservation lands is more appropriate to a county or
38 other unit of local government; expanding the purposes for
39 which a county or local government may use lands purchased
40 from or exchanged with the state; providing for the
41 Division of State Lands to recommend to the board of
42 trustees that the sale or management of nonconservation
43 lands is more appropriate to a county or other unit of
44 local government; providing that local government uses of
45 nonconservation lands may not be limited by the board of
46 trustees; requiring that all requests for the sale or
47 exchange of state lands be submitted in writing to the
48 lead managing agency; requiring that requests be reviewed
49 by the lead managing agency within a specified timeframe;
50 establishing a process for the Division of State Lands or
51 the Acquisition and Restoration Council to hear requests
52 not heard by the lead managing agency in a timely fashion;
53 requiring that the denial of all requests be made in
54 writing and include the reason for denial; requiring that
55 the Division of State Lands keep records documenting all
56 requests for the sale or exchange of state lands;
57 providing circumstances in which state lands being sold or
58 exchanged need not be offered first to local or state

59 governments; requiring state agencies collecting
60 information that may be useful to the Division of State
61 Lands in preparing the state inventory of lands to share
62 that information with the division; requiring that the
63 state inventory of lands be completed by a specified date;
64 amending s. 253.0341, F.S.; providing for requests by
65 counties and local governments for the sale or exchange of
66 state lands to be submitted in writing directly to the
67 board of trustees; authorizing the board of trustees to
68 sell or exchange state nonconservation lands without a
69 review by the Division of State Lands; removing the
70 authority of the Acquisition and Restoration Council to
71 review such requests; providing an exception for property
72 being offered by the state for sale or exchange to a local
73 government; amending s. 253.42, F.S.; revising
74 requirements for the exchange of state lands by the board
75 of trustees; establishing conditions in which uses of
76 property by a local government are not subject to approval
77 by the board of trustees and may not be considered by the
78 board of trustees as a condition of exchange; expanding
79 the purposes for which property exchanged by the state may
80 be used by a county or unit of local government; providing
81 an effective date.
82
83 Be It Enacted by the Legislature of the State of Florida:
84
85 Section 1. Section 253.002, Florida Statutes, is amended to
86 read:
87 (Substantial rewording of section. See

88 s. 253.002, F.S., for present text.)
89 253.002 Department of Environmental Protection, water
90 management districts, and Department of Agriculture and Consumer
91 Services; duties with respect to state lands.--
92 (1) As used in this section, the term:
93 (a) "Board" means the Board of Trustees of the Internal
94 Improvement Trust Fund.
95 (b) "Department" means the Department of Environmental
96 Protection.
97 (c) "District" means a water management district created in
98 s. 373.069.
99 (2)(a) The Department of Environmental Protection shall
100 perform all staff duties and functions related to the
101 acquisition, administration, and disposition of all state lands,
102 title to which is or will be vested in the Board of Trustees of
103 the Internal Improvement Trust Fund. Staff duties and functions
104 include the collection, compilation, distribution, and mapping of
105 data that documents all state-owned lands and identifies
106 conservation and nonconservation lands, as those lands are
107 defined in this chapter. All lands titled in the name of the
108 board or any state agency shall be inventoried and mapped.
109 Subject to legislative appropriation, the department may contract
110 with the Florida Natural Areas Inventory at Florida State
111 University as necessary to implement the provisions of this
112 paragraph.
113 (b) Unless expressly prohibited by law, the board may
114 delegate to the department any statutory duty or obligation
115 relating to the acquisition, administration, or disposition of
116 lands, title to which is or will be vested in the board. However,

117 the ability to use, transfer, withdraw, or sell water on or under
118 lands, title to which shall be vested in the board or any state
119 agency, may not be negotiated by the board or department as a
120 condition of acquiring the property.
121 (3) A water management district shall perform all staff
122 duties and functions related to the review of applications to use
123 sovereignty submerged lands for an activity regulated under part
124 IV of chapter 373 and for which the district has permitting
125 authority as provided in an operating agreement adopted pursuant
126 to s. 373.046(4). The board may delegate the authority for a
127 water management district to take final agency action, without
128 any action on behalf of the board, for such applications;
129 however, the responsibility of a district under this subsection
130 is subject to the department's general supervisory authority
131 established in s. 373.026(7).
132 (4) The Department of Agriculture and Consumer Services
133 shall perform the staff duties and functions related to the
134 review of applications and compliance with conditions for the use
135 of sovereignty submerged lands under authorizations or leases
136 issued pursuant to ss. 253.67-253.75 and 597.010. The board may
137 delegate to the Department of Agriculture and Consumer Services
138 the authority to take final agency action on behalf of the board
139 concerning applications for the use of sovereignty submerged
140 lands for activities for which that department is responsible
141 pursuant to ss. 253.67-253.75 and 597.010. Upon issuing an
142 aquaculture lease or conducting other real property transactions
143 relating to aquaculture, the Department of Agriculture and
144 Consumer Services must send a copy of the lease or real property
145 document and the accompanying survey to the department.

146 (5) The board shall retain the authority to take final
147 agency action on establishing any areas for leasing, new leases,
148 expanding existing lease areas, or changing the type of
149 activities authorized in existing leases.
150 (6) The board is not limited or prohibited from amending
151 any authority delegated under this section, and shall adopt by
152 rule any delegation of authority to take final agency action
153 without action by the board on applications for the uses of
154 sovereignty submerged lands authorized in this section. Final
155 agency actions taken by the department, a district, or the
156 Department of Agriculture and Consumer Services, without action
157 by the board, for applications to use sovereignty submerged lands
158 are subject to s. 373.4275.
159 (7) Notwithstanding any other provisions of this section,
160 the board, the department, and the Department of Legal Affairs
161 retain the concurrent authority to assert or defend title to
162 sovereignty submerged lands.
163 Section 2. Paragraphs (a) and (b) of subsection (8) of
164 section 253.03, Florida Statutes, are amended to read:
165 253.03 Board of trustees to administer state lands; lands
166 enumerated.--
167 (8)(a) The Board of Trustees of the Internal Improvement
168 Trust Fund shall prepare, using tax roll data provided by the
169 Department of Revenue, an annual inventory of all publicly owned
170 lands within the state. Such inventory must ~~shall~~ include all
171 lands owned by any unit of state government or local government;
172 by the Federal Government, to the greatest extent possible; and
173 by any other public entity. The inventory also must include a
174 summary of all surplus lands sold by the state and all lands

175 exchanged by the state and must indicate whether the lands sold
176 or exchanged were acquired or managed for conservation purposes
177 or were nonconservation lands. The board shall submit a summary
178 report of the inventory and a list of major discrepancies between
179 the inventory and the tax roll data to the President of the
180 Senate and the Speaker of the House of Representatives on or
181 before March 1 of each year.
182 (b) In addition to any other parcel data available, the
183 inventory shall include a legal description or proper reference
184 thereto, the number of acres or square feet within the
185 boundaries, and the assessed value of all publicly owned uplands.
186 To the greatest extent practicable, the legal description or
187 proper reference thereto and the number of acres or square feet
188 shall be determined for all publicly owned submerged lands. For
189 the purposes of this subsection, the term "submerged lands" means
190 publicly owned lands below the ordinary high-water mark of fresh
191 waters and below the mean high-water line of salt waters
192 extending seaward to the outer jurisdiction of the state. By
193 October 31 of each year, the Department of Revenue shall furnish,
194 in machine-readable form, annual, current tax roll data for
195 public lands to the board and to the Division of State Lands to
196 be used in compiling the inventory and the inventory required in
197 s. 253.034(8).
198 Section 3. Section 253.034, Florida Statutes, is amended to
199 read:
200 253.034 State-owned lands; management; uses; disposal.--
201 (1)(a) All lands acquired to fulfill the purposes of
202 ~~pursuant to~~ chapter 259 shall be managed to serve the public
203 interest by protecting and conserving land, air, water, and the

204 state's natural resources, which contribute to the public health,
205 welfare, and economy of the state. These lands shall be managed
206 to provide for areas of natural-resource-based ~~natural resource~~
207 ~~based~~ recreation, and to ensure the survival of plant and animal
208 species and the conservation of finite and renewable natural
209 resources. The state's lands and natural resources shall be
210 managed using a stewardship ethic that assures these resources
211 will be available for the benefit and enjoyment of all people of
212 the state~~, both present and future~~. It is the intent of the
213 Legislature that, where feasible and consistent with the goals of
214 protection and conservation of natural resources associated with
215 lands held in the public trust by the Board of Trustees of the
216 Internal Improvement Trust Fund, public land not designated for
217 single-use purposes pursuant to paragraph (2)(b) be managed for
218 multiple-use purposes. All multiple-use land management
219 strategies shall address public access and enjoyment, resource
220 conservation and protection, ecosystem maintenance and
221 protection, and protection of threatened and endangered species,
222 and the degree to which public-private partnerships or endowments
223 may allow the entity with management responsibility to enhance
224 its ability to manage these lands. The council created in s.
225 259.035 shall recommend rules to the board of trustees, and the
226 board shall adopt rules necessary to carry out the purposes of
227 this section.
228 (b) Where necessary and appropriate for all state-owned
229 lands located in projects that are larger than 1,000 acres and
230 that are managed for multiple uses, buffers may be formed around
231 any areas requiring special protection or having special
232 management needs. The total acreage used to form any such buffers

233 may not exceed more than one-half of the total acreage of the
234 entire project. Multiple uses within a buffer area may be
235 restricted to provide the necessary buffering effect desired.
236 Multiple use in this context includes uses of land or resources
237 by more than one management entity, including private-sector land
238 managers. Lands identified as multiple-use lands in a land
239 management plan shall be managed to enhance and conserve the
240 lands and resources for the enjoyment of the people of the state.
241 (c) All submerged lands shall be considered single-use
242 lands and shall be managed primarily for the maintenance of
243 essentially natural conditions, the propagation of fish and
244 wildlife, and public recreation, including hunting and fishing
245 where deemed appropriate by the managing entity.
246 (d) Lands acquired for uses other than conservation,
247 outdoor resource-based recreation, or archaeological or historic
248 preservation may not be designated conservation lands except as
249 otherwise authorized under this section. These lands include, but
250 are not limited to, correction and detention facilities, military
251 installations and facilities, state office buildings, maintenance
252 yards, state university or state community college campuses,
253 agricultural field stations or offices, tower sites, law
254 enforcement and license facilities, laboratories, hospitals,
255 clinics, and other sites that possess no significant natural or
256 historical resources.
257 (e) Lands acquired by the state as a gift, through
258 donation, or by any other conveyance for which no consideration
259 was paid, and which are not managed for conservation, outdoor
260 resource-based recreation, or archaeological or historic
261 preservation under a land management plan approved by the board

262 of trustees are not conservation lands.
263 (2) As used in this section, the term ~~the following phrases~~
264 ~~have the following meanings~~:
265 (a) "Multiple use" means the harmonious and coordinated
266 management of timber, recreation, conservation of fish and
267 wildlife, forage, archaeological and historic sites, habitat and
268 other biological resources, or water resources so that they are
269 utilized in the combination that will best serve the people of
270 the state, making the most judicious use of the land for some or
271 all of these resources and giving consideration to the relative
272 values of the various resources. ~~Where necessary and appropriate~~
273 ~~for all state-owned lands that are larger than 1,000 acres in~~
274 ~~project size and are managed for multiple uses, buffers may be~~
275 ~~formed around any areas that require special protection or have~~
276 ~~special management needs. Such buffers shall not exceed more than~~
277 ~~one-half of the total acreage. Multiple uses within a buffer area~~
278 ~~may be restricted to provide the necessary buffering effect~~
279 ~~desired. Multiple use in this context includes both uses of land~~
280 ~~or resources by more than one management entity, which may~~
281 ~~include private sector land managers. In any case, lands~~
282 ~~identified as multiple-use lands in the land management plan~~
283 ~~shall be managed to enhance and conserve the lands and resources~~
284 ~~for the enjoyment of the people of the state.~~
285 (b) "Single use" means the management of land for one
286 particular purpose to the exclusion of all other purposes, except
287 that the managing ~~using~~ entity shall have the option of including
288 in its management program compatible secondary purposes that
289 ~~which~~ will not detract from or interfere with the primary
290 management purpose. The term includes ~~Such single uses may~~

291 ~~include~~, but is ~~are~~ not limited ~~necessarily restricted~~ to, the
292 use of agricultural lands for production of food and livestock,
293 the use of improved sites and grounds for institutional purposes,
294 and the use of lands for parks, preserves, wildlife management,
295 archaeological or historic sites, or wilderness areas where the
296 maintenance of essentially natural conditions is important. ~~All~~
297 ~~submerged lands shall be considered single-use lands and shall be~~
298 ~~managed primarily for the maintenance of essentially natural~~
299 ~~conditions, the propagation of fish and wildlife, and public~~
300 ~~recreation, including hunting and fishing where deemed~~
301 ~~appropriate by the managing entity.~~
302 (c) "Conservation lands" means lands that are ~~currently~~
303 managed for conservation, outdoor resource-based recreation, or
304 archaeological or historic preservation, except those lands that
305 were acquired solely to facilitate the acquisition of other
306 conservation lands. ~~Lands acquired for uses other than~~
307 ~~conservation, outdoor resource-based recreation, or~~
308 ~~archaeological or historic preservation shall not be designated~~
309 ~~conservation lands except as otherwise authorized under this~~
310 ~~section. These lands shall include, but not be limited to, the~~
311 ~~following: correction and detention facilities, military~~
312 ~~installations and facilities, state office buildings, maintenance~~
313 ~~yards, state university or state community college campuses,~~
314 ~~agricultural field stations or offices, tower sites, law~~
315 ~~enforcement and license facilities, laboratories, hospitals,~~
316 ~~clinics, and other sites that possess no significant natural or~~
317 ~~historical resources.~~ However, lands acquired solely to
318 facilitate the acquisition of other conservation lands, and for
319 which the land management plan has not yet been completed or

320 updated, may be evaluated by the Board of Trustees of the
321 Internal Improvement Trust Fund on a case-by-case basis to
322 determine if they will be designated conservation lands.
323 (d) "Council" means the Acquisition and Restoration Council
324 created in s. 259.035.
325 (e) "Division" means the Division of State Lands within
326 the Department of Environmental Protection.
327
328 ~~Lands acquired by the state as a gift, through donation, or by~~
329 ~~any other conveyance for which no consideration was paid, and~~
330 ~~which are not managed for conservation, outdoor resource-based~~
331 ~~recreation, or archaeological or historic preservation under a~~
332 ~~land management plan approved by the board of trustees are not~~
333 ~~conservation lands.~~
334 (3) In recognition that recreational trails purchased with
335 ~~rails-to-trails~~ funds of the greenways and trails program
336 ~~pursuant to s. 259.101(3)(g) or s. 259.105(3)(h)~~ have had
337 historic transportation uses and that their linear character may
338 extend many miles, transportation crossings shall be allowed on
339 recreational trails purchased pursuant to s. 259.101(3)(g) or s.
340 259.105(3)(h). Where these crossings are determined to be
341 necessary, the location and design must balance the need to
342 protect trails users from collisions with automobiles and, to the
343 greatest extent possible, the use of overpasses and underpasses
344 should be considered in order to mitigate the effects on humans
345 and environmental resources. The value of the land shall be paid
346 and based on fair market value. ~~the Legislature intends that when~~
347 ~~the necessity arises to serve public needs, after balancing the~~
348 ~~need to protect trail users from collisions with automobiles and~~

349 ~~a preference for the use of overpasses and underpasses to the~~
350 ~~greatest extent feasible and practical, transportation uses shall~~
351 ~~be allowed to cross recreational trails purchased pursuant to s.~~
352 ~~259.101(3)(g) or s. 259.105(3)(h). When these crossings are~~
353 ~~needed, the location and design should consider and mitigate the~~
354 ~~impact on humans and environmental resources, and the value of~~
355 ~~the land shall be paid based on fair market value.~~
356 (4)(a) No management agreement, lease, or other instrument
357 authorizing the use of lands owned by the Board of Trustees of
358 the Internal Improvement Trust Fund shall be executed for a
359 period greater than is necessary to provide for the reasonable
360 use of the land for the existing or planned life cycle or
361 amortization of the improvements, except that an easement in
362 perpetuity may be granted by the Board of Trustees of the
363 Internal Improvement Trust Fund if the improvement is a
364 transportation facility.
365 (b) All management agreements, leases, or other instruments
366 authorizing the use of lands, the title to which is vested in the
367 board, shall be reviewed for approval by the board or its
368 designees.
369 (c) An entity managing or leasing state-owned lands from
370 the board, other than conservation lands, may not sublease such
371 lands without prior review by the division. ~~and, for conservation~~
372 ~~lands, by~~ The Acquisition and Restoration Council created in s.
373 259.035 must review all requests to sublease state-owned
374 conservation lands, except for subleases of conservation lands
375 less than 160 acres in size. ~~All management agreements, leases,~~
376 ~~or other instruments authorizing the use of lands owned by the~~
377 ~~board shall be reviewed for approval by the board or its~~

378 ~~designee. The council is not required to review subleases of~~
379 ~~parcels which are less than 160 acres in size.~~
380 (5)(a) Each lead manager of conservation lands shall submit
381 to the Division of State Lands a land management plan at least
382 every 10 years in a form and manner prescribed by rule by the
383 board and in accordance with the provisions of s. 259.0321 ~~s.~~
384 ~~259.032~~. Each lead manager of conservation lands shall also
385 update a land management plan whenever the manager proposes to
386 add new facilities or make substantive land use or management
387 changes that were not addressed in the approved plan, or within 1
388 year after ~~of~~ the addition of significant new lands.
389 (b) Each manager of nonconservation lands shall submit to
390 the Division of State Lands a land use plan at least every 10
391 years in a form and manner prescribed by rule by the board. The
392 division shall review each plan for compliance with the
393 requirements of this section ~~subsection~~ and the requirements of
394 the rules established by the board pursuant to this paragraph
395 ~~section~~.
396 (c) All land management ~~use~~ plans, whether for single-use
397 or multiple-use properties, shall include an analysis of the
398 property to determine if any significant natural or cultural
399 resources are located on the property. Such resources include
400 archaeological and historic sites, state and federally listed
401 plant and animal species, and imperiled natural communities and
402 unique natural features. If such resources occur on the property,
403 the lead manager shall consult with the Division of State Lands
404 and other appropriate agencies to develop management strategies
405 to protect such resources. Land management ~~use~~ plans shall also
406 provide for the control of invasive nonnative plants and

407 conservation of soil and water resources, including a description
408 of how the lead manager plans to control and prevent soil erosion
409 and soil or water contamination. Land management ~~use~~ plans
410 submitted by a lead manager shall include reference to
411 appropriate statutory authority for such use or uses and shall
412 conform to the appropriate policies and guidelines of the state
413 land management plan. If a newly acquired property has a valid
414 conservation plan developed by a soil and conservation district,
415 the conservation plan shall be used to guide management of the
416 property until a formal land management plan is adopted.
417 (d) Management plans for ~~managed~~ areas larger than 1,000
418 acres must ~~shall~~ contain an analysis of the multiple-use
419 potential of the property, including an analysis of ~~which~~
420 ~~analysis shall include~~ the potential of the property to generate
421 revenues to enhance the management of the property. Additionally,
422 the plan must ~~shall~~ contain an analysis of the potential use of
423 private land managers to facilitate the restoration or management
424 of these lands. ~~In those cases where a newly acquired property~~
425 ~~has a valid conservation plan that was developed by a soil and~~
426 ~~conservation district, such plan shall be used to guide~~
427 ~~management of the property until a formal land use plan is~~
428 ~~completed.~~
429 (e) ~~(a)~~ The Division of State Lands shall make available to
430 the public a copy of each land management plan for property
431 ~~parcels~~ that exceeds ~~exceed~~ 160 acres in size.
432 (f) The Acquisition and Restoration Council shall review
433 each plan for the management of conservation lands for compliance
434 with the requirements of this section ~~subsection~~, the
435 requirements of chapter 259, and the requirements of the rules

436 established by the board pursuant to this section. The council
437 shall also consider ~~the propriety of~~ the recommendations of the
438 managing entity with regard to the future use of the property,
439 the protection of fragile or nonrenewable resources, the
440 potential for alternative or multiple uses not recognized by the
441 managing entity, and the possibility of disposal of the property
442 or portions of the property by the board. After its review, the
443 council shall submit the plan, along with its recommendations and
444 comments, to the board. The council shall specifically recommend
445 if ~~to~~ the board should ~~whether to~~ approve the plan as submitted,
446 approve the plan with modifications, or reject the plan.
447 (g) ~~(b)~~ The Board of Trustees of the Internal Improvement
448 Trust Fund shall consider the land management plan submitted by
449 each entity and the recommendations of the council and the
450 Division of State Lands for conservation lands, and the
451 recommendations of the division for nonconservation lands, and
452 shall approve the plan with or without modification or reject
453 such plan. The use or possession of any state-owned lands which
454 ~~such lands that~~ is not in accordance with an approved land
455 management plan is subject to termination by the board.
456 (6) The Board of Trustees of the Internal Improvement Trust
457 Fund shall determine which lands, the title to which is vested in
458 the board, are eligible for sale or exchange. Any lands that are
459 determined to be eligible for sale shall be designated by the
460 board as surplus lands. Any lands that are determined to be
461 eligible for exchange shall be exchanged for lands of equal or
462 higher monetary value or, in the case of conservation lands, a
463 net positive conservation benefit, and may not be designated as
464 surplus lands.

465 (a) For the sale of conservation lands as defined in this
466 section, the board shall determine that the lands are no longer
467 needed for the conservation purposes for which they were
468 acquired. Lands designated by the board as no longer being needed
469 for conservation purposes shall be reclassified as
470 nonconservation lands and shall be declared to be surplus lands
471 that may be sold by an affirmative vote of three members of the
472 board.
473 (b) For the sale of all other lands, the board shall make a
474 determination that the lands are no longer needed for the
475 purposes for which they were being used and are surplus lands
476 that may be sold by an affirmative vote of three members of the
477 board.
478 (c) In all instances where lands are being exchanged
479 instead of sold, the board must determine by an affirmative vote
480 of three members that the lands are no longer needed for the
481 purposes for which they are being used or were acquired. In cases
482 where conservation lands are exchanged, the exchange must result
483 in a net positive conservation benefit. ~~may be surplused. For~~
484 ~~conservation lands, the board shall make a determination that the~~
485 ~~lands are no longer needed for conservation purposes and may~~
486 ~~dispose of them by an affirmative vote of at least three members.~~
487 ~~In the case of a land exchange involving the disposition of~~
488 ~~conservation lands, the board must determine by an affirmative~~
489 ~~vote of at least three members that the exchange will result in a~~
490 ~~net positive conservation benefit. For all other lands, the board~~
491 ~~shall make a determination that the lands are no longer needed~~
492 ~~and may dispose of them by an affirmative vote of at least three~~
493 ~~members.~~

494 (d)1.~~(a)~~ For the purposes of this subsection, all lands
495 acquired by the state prior to July 1, 1999, the title to which
496 is vested in the board, and which were acquired using proceeds
497 from the Preservation 2000 bonds, the Conservation and Recreation
498 Lands Trust Fund, the Water Management Lands Trust Fund,
499 Environmentally Endangered Lands Program, and the Save Our Coast
500 Program ~~and titled to the board, which lands are identified as~~
501 ~~core parcels or within original project boundaries,~~ shall be
502 deemed to have been acquired for conservation purposes.
503 2.~~(b)~~ For any lands acquired ~~purchased~~ by the state on or
504 after July 1, 1999, the title to which is vested in the board,
505 the board shall determine which lands are acquired for
506 conservation purposes prior to approving the acquisition ~~a~~
507 ~~determination shall be made by the board prior to acquisition as~~
508 ~~to those parcels that shall be designated as having been acquired~~
509 ~~for conservation purposes~~.
510 3. No lands acquired for use by the Department of
511 Corrections, the Department of Management Services for use as
512 state offices, the Department of Transportation, except those
513 specifically managed for conservation or recreation purposes, or
514 the State University System or the Florida Community College
515 System shall be designated as having been purchased for
516 conservation purposes.
517 (e)~~(c)~~ At least every 10 years, as a component of each land
518 management plan or land use plan and in a form and manner
519 prescribed by rule by the board, each manager shall evaluate and
520 indicate to the board those lands that are not being used for the
521 purpose for which they were originally leased.

522 1. For conservation lands, the council shall review and
523 shall recommend to the board whether such lands should remain ~~be~~
524 ~~retained~~ in public ownership or be sold or exchanged ~~disposed of~~
525 by the board.
526 2. For nonconservation lands, the division shall review such
527 lands and shall recommend to the board whether such lands should
528 remain ~~be retained~~ in public ownership or be sold or exchanged
529 ~~disposed of~~ by the board. Such lands are presumed to be surplus
530 lands to be sold or exchanged by the board, pursuant to the
531 provisions of subsection (f)2. below.
532 (f)1.~~(d)~~ Conservation lands owned by the board which are
533 not actively managed by any state agency or for which a land
534 management plan has not been completed pursuant to subsection (5)
535 shall be reviewed by the council or its successor for its
536 recommendation as to whether such lands should be sold or
537 exchanged ~~disposed of~~ by the board.
538 2. Nonconservation lands owned by the board which are not
539 actively managed by any state agency or for which a land use plan
540 has not been completed pursuant to subsection (5) are presumed to
541 be surplus lands to be sold or exchanged by the board. The
542 division shall recommend each of these lands for sale or exchange
543 by the board, unless the division justifies, in writing, the
544 decision not to make such a recommendation, or unless an agency
545 amends its land use plan to include such land.
546 (g)1.~~(e)~~ Prior to any decision by the board to sell or
547 exchange conservation ~~surplus~~ lands, the Acquisition and
548 Restoration Council shall review and make recommendations to the
549 board concerning the request for sale or exchange ~~surplusing~~. The
550 council shall determine whether the request ~~for surplusing~~ is

551 compatible with the resource values of and management objectives
552 for such lands.
553 2. Prior to any decision by the board to sell or exchange
554 nonconservation lands, the division shall determine whether the
555 request is compatible with the management objectives for such
556 lands.
557 (h)1. In reviewing conservation lands, the title to which
558 is vested in the board, the council must consider whether such
559 lands are more appropriately owned or managed by the county or
560 other unit of local government in which the lands are located.
561 The council must recommend to the board whether the sale or
562 exchange of such lands is in the best interest of the state and
563 the county or other unit of local government for use as a public
564 school, public library, fire or law enforcement substation,
565 government, judicial, or recreation center, as part of an
566 affordable housing project or program, or to comply with the
567 capital improvement elements or a concurrency requirement of a
568 local comprehensive land use plan as required in s. 163.3177.
569 Such lands shall be offered to the county or unit of local
570 government for a period of 30 days.
571 2. In reviewing nonconservation lands, the title to which
572 is vested in the board, the division must consider whether such
573 lands are more appropriately owned or managed by the county or
574 other unit of local government in which the lands are located,
575 and shall recommend to the board whether the sale or exchange of
576 such lands is in the best interest of the state and the county or
577 other unit of local government. Such lands shall be offered to
578 the county or unit of local government for a period of 30 days.
579 Local government uses of lands conveyed under the provisions of

580 this subparagraph may not be limited by the board.
581 3. If a county or other unit of local government does not
582 elect to acquire lands under the provisions of this paragraph,
583 the board may determine that the sale, lease, exchange, or
584 conveyance of such lands to other governmental agencies is in the
585 public interest and represents the best use of such lands.
586 4. Lands for which a county, other unit of local
587 government, or other governmental agencies have expressed no
588 interest shall be available for sale or exchange on the private
589 market.
590 ~~(f)1. In reviewing lands owned by the board, the council~~
591 ~~shall consider whether such lands would be more appropriately~~
592 ~~owned or managed by the county or other unit of local government~~
593 ~~in which the land is located. The council shall recommend to the~~
594 ~~board whether a sale, lease, or other conveyance to a local~~
595 ~~government would be in the best interests of the state and local~~
596 ~~government. The provisions of this paragraph in no way limit the~~
597 ~~provisions of ss. 253.111 and 253.115. Such lands shall be~~
598 ~~offered to the state, county, or local government for a period of~~
599 ~~30 days. Permittable uses for such surplus lands may include~~
600 ~~public schools; public libraries; fire or law enforcement~~
601 ~~substations; and governmental, judicial, or recreational centers.~~
602 ~~County or local government requests for surplus lands shall be~~
603 ~~expedited throughout the surplusing process. If the county or~~
604 ~~local government does not elect to purchase such lands in~~
605 ~~accordance with s. 253.111, then any surplusing determination~~
606 ~~involving other governmental agencies shall be made upon the~~
607 ~~board deciding the best public use of the lands. Surplus~~
608 ~~properties in which governmental agencies have expressed no~~

609 ~~interest shall then be available for sale on the private market.~~
610 ~~2. Notwithstanding subparagraph 1., any surplus lands that~~
611 ~~were acquired by the state prior to 1958 by a gift or other~~
612 ~~conveyance for no consideration from a municipality, and which~~
613 ~~the department has filed by July 1, 2006, a notice of its intent~~
614 ~~to surplus, shall be first offered for reconveyance to such~~
615 ~~municipality at no cost, but for the fair market value of any~~
616 ~~building or other improvements to the land, unless otherwise~~
617 ~~provided in a deed restriction of record. This subparagraph~~
618 ~~expires July 1, 2006.~~
619 (i)~~(g)~~ The sales ~~sale~~ price of surplus lands ~~determined to~~
620 ~~be surplus pursuant to this subsection~~ shall be determined by the
621 division and shall take into consideration an appraisal of the
622 property, or, when the estimated value of the land is less than
623 $100,000, a comparable sales analysis or a broker's opinion of
624 value, and the price paid by the state to originally acquire the
625 lands.
626 1.~~a.~~ A written valuation of surplus land being sold
627 ~~determined to be surplus~~ pursuant to this subsection, and related
628 documents used to form the valuation or which pertain to the
629 valuation, are confidential and exempt from s. 119.07(1) and s.
630 24(a), Art. I of the State Constitution until 2 weeks before the
631 contract or agreement regarding the purchase~~, exchange, or~~
632 ~~disposal~~ of the surplus land is first considered for approval by
633 the board. Notwithstanding the exemption provided under this
634 subparagraph, the division may disclose appraisals, valuations,
635 or valuation information regarding surplus land during
636 negotiations for the sale ~~or exchange~~ of the land, during the
637 marketing effort or bidding process associated with the sale~~,~~

638 ~~disposal, or exchange~~ of the land to facilitate closure of such
639 effort or process, when the passage of time has made the
640 conclusions of value invalid, or when negotiations or marketing
641 efforts concerning the land are concluded.
642 2.~~b.~~ This subparagraph is subject to the Open Government
643 Sunset Review Act of 1995 in accordance with s. 119.15, and shall
644 stand repealed on October 2, 2009, unless reviewed and saved from
645 repeal through reenactment by the Legislature.
646 3.~~2.~~ A unit of government that acquires title to lands
647 hereunder for less than appraised value may not sell or transfer
648 title to all or any portion of the lands to any private owner for
649 a period of 10 years. Any unit of government seeking to transfer
650 or sell lands pursuant to this paragraph shall first allow the
651 board of trustees to reacquire such lands for the price at which
652 the board sold such lands.
653 (j)~~(h)~~ Where land designated by the board to be surplus
654 land was ~~a unit of government~~ acquired ~~land~~ by gift, donation,
655 grant, quitclaim deed, or other such conveyance where no monetary
656 consideration was exchanged, the purchase price of such land ~~sold~~
657 ~~as surplus~~ may be based on one appraisal. If ~~In the event that~~ a
658 single appraisal yields a value equal to or greater than $1
659 million, a second appraisal is required. The individual or entity
660 requesting the surplus land shall select and use appraisers from
661 the list of approved appraisers maintained by the Division of
662 State Lands in accordance with s. 253.025(7)(b) and shall ~~s.~~
663 ~~253.025(6)(b). The individual or entity requesting the surplus is~~
664 ~~to~~ incur all costs of the appraisals.
665 (k)~~(i)~~ ~~After reviewing the recommendations of the council,~~
666 ~~the board shall determine whether lands identified for surplus~~

667 ~~are to be held for other public purposes or whether such lands~~
668 ~~are no longer needed.~~ The board may require an agency to release
669 its interest in land designated by the board to be surplus land
670 ~~such lands~~. For an agency that has requested the use of land ~~a~~
671 ~~property~~ that was designated ~~to be declared~~ as surplus, the ~~said~~
672 agency must have the land ~~property~~ under lease within 6 months
673 after ~~of~~ the date of expiration of the notice provisions required
674 under this subsection and s. 253.111.
675 (l)~~(j)~~1. Requests for the sale or exchange of lands may be
676 made by any public or private entity or person and must be
677 submitted in writing to the lead managing agency for review. The
678 lead managing agency shall have 90 days to review such requests
679 and make recommendations concerning the sale or exchange to the
680 council or its successor for the sale or exchange of conservation
681 lands or to the division for the sale or exchange of lands other
682 than conservation lands as defined in this section.
683 2. A request for the sale or exchange of lands which has
684 not been reviewed by the lead managing agency shall be forwarded
685 to the division for lands other than conservation lands or to the
686 council or its successor for conservation lands. A request for
687 the sale or exchange of lands other than conservation lands shall
688 be immediately scheduled for review by the division, but must be
689 reviewed not later than 15 days after receipt by the division.
690 3. If the lead managing agency, the council or its
691 successor, or the division recommends that the board deny a
692 request for the sale or exchange of lands, the denial must be in
693 writing and include the reason for the denial.
694 4. Records documenting all requests for the sale or
695 exchange of lands, the title to which is vested in the board, and

696 approvals or denials of those requests shall be kept by the
697 Division of State Lands. Denial of a request for the sale or
698 exchange of state-owned lands must be submitted to the requesting
699 entity in writing and must specifically provide the reason for
700 denial. Copies of requests for the sale or exchange of lands
701 shall be forwarded to the division unless the lead managing
702 agency forwards the original written request when submitting a
703 recommendation concerning the sale or exchange of lands.
704 5. Lands approved for sale under the provisions of this
705 paragraph are not required to be offered to local or state
706 governments as provided in paragraph (h). ~~Requests for surplusing~~
707 ~~may be made by any public or private entity or person. All~~
708 ~~requests shall be submitted to the lead managing agency for~~
709 ~~review and recommendation to the council or its successor. Lead~~
710 ~~managing agencies shall have 90 days to review such requests and~~
711 ~~make recommendations. Any surplusing requests that have not been~~
712 ~~acted upon within the 90-day time period shall be immediately~~
713 ~~scheduled for hearing at the next regularly scheduled meeting of~~
714 ~~the council or its successor. Requests for surplusing pursuant to~~
715 ~~this paragraph shall not be required to be offered to local or~~
716 ~~state governments as provided in paragraph (f).~~
717 (m) ~~(k)~~ Proceeds from any sale of surplus lands pursuant to
718 this subsection shall be deposited into the fund from which such
719 lands were acquired. However, if the fund from which the lands
720 were originally acquired no longer exists, such proceeds shall be
721 deposited into an appropriate account to be used for land
722 management by the lead managing agency assigned to manage the
723 lands prior to the lands being designated as ~~declared~~ surplus
724 lands. Funds received from the sale of surplus nonconservation

725 lands, or lands that were acquired by gift, by donation, or for
726 no consideration, shall be deposited into the Internal
727 Improvement Trust Fund.
728 (n) ~~(l)~~ Notwithstanding the provisions of this subsection,
729 no ~~such~~ disposition of land shall be made if such disposition
730 would have the effect of causing all or any portion of the
731 interest on any revenue bonds issued to acquire lands to lose the
732 exclusion from gross income for federal income tax purposes.
733 (o) ~~(m)~~ The sale of filled, formerly submerged land that
734 does not exceed 5 acres in area is not subject to review by the
735 division ~~council or its successor~~.
736 (p) ~~(n)~~ The board may adopt rules to implement the
737 provisions of this section, which may include procedures for
738 administering ~~surplus land~~ requests for the sale or exchange of
739 lands and criteria for when the division may approve requests on
740 behalf of the board for the sale or exchange of nonconservation
741 lands ~~to surplus nonconservation lands on behalf of the board~~.
742 (7) This section shall not be construed so as to affect:
743 (a) Other provisions of this chapter relating to oil, gas,
744 or mineral resources.
745 (b) The exclusive use of ~~state-owned~~ land, the title to
746 which is vested in the board, that is subject to a lease by the
747 Board of Trustees of the Internal Improvement Trust Fund of such
748 ~~state-owned~~ land for private uses and purposes.
749 (c) Sovereignty lands not leased for private uses and
750 purposes.
751 (8)(a) Notwithstanding other provisions of this section,
752 the Division of State Lands is directed to prepare a state
753 inventory of all federal lands and all lands titled in the name

754 of the state, a state agency, a water management district, or a
755 local government on a county-by-county basis. To facilitate the
756 development of the state inventory, each county shall direct the
757 appropriate county office with authority over the information to
758 provide the division with a county inventory of all lands
759 identified as federal lands and lands titled in the name of the
760 state, a state agency, a water management district, or a local
761 government. At the request of the division, state agencies
762 collecting information from the counties that will assist the
763 division in completing the state inventory shall provide such
764 information to the division. The state inventory shall be
765 completed by October 1, 2006.
766 (b) The state inventory must distinguish between lands
767 purchased by the state or a water management district as part of
768 a core parcel or within original project boundaries, as those
769 terms are used to meet the ~~surplus~~ requirements of subsection (6)
770 for the sale or exchange of lands, and lands purchased by the
771 state, a state agency, or a water management district which are
772 not essential or necessary for conservation purposes.
773 (c) In any county having a population of 75,000 or less, or
774 a county having a population of 100,000 or less that is
775 contiguous to a county having a population of 75,000 or less, in
776 which more than 50 percent of the lands within the county
777 boundary are federal lands and lands titled in the name of the
778 state, a state agency, a water management district, or a local
779 government, those lands titled in the name of the state or a
780 state agency which are not essential or necessary to meet
781 conservation purposes may, upon request of a public or private
782 entity, be made available for purchase through the ~~state's~~

783 ~~surplusing~~ process created in subsection (6). Rights-of-way for
784 existing, proposed, or anticipated transportation facilities are
785 exempt from the requirements of this paragraph. Priority
786 consideration shall be given to buyers, public or private,
787 willing to return the property to productive use so long as the
788 property can be reentered onto the county ad valorem tax roll.
789 Property acquired with matching funds from a local government
790 shall not be made available for purchase without the consent of
791 the local government.
792 (9) Land management plans required to be submitted by the
793 Department of Corrections, the Department of Juvenile Justice,
794 the Department of Children and Family Services, or the Department
795 of Education are not subject to the provisions for review by the
796 division or the council or its successor described in subsection
797 (5). Management plans filed by these agencies shall be made
798 available to the public for a period of 90 days at the
799 administrative offices of the parcel or project affected by the
800 management plan and at the Tallahassee offices of each agency.
801 Any plans not objected to during the public comment period shall
802 be deemed approved. Any plans for which an objection is filed
803 shall be submitted to the Board of Trustees of the Internal
804 Improvement Trust Fund for consideration. The Board of Trustees
805 of the Internal Improvement Trust Fund shall approve the plan
806 with or without modification, or reject the plan. The use or
807 possession of any such lands which is not in accordance with an
808 approved land management plan is subject to termination by the
809 board.
810 (10) In addition to the uses for which conservation lands
811 are being managed pursuant to subsection (1) and chapter 259, the

812 following additional uses of conservation lands acquired pursuant
813 to ~~the Florida Forever program and other~~ state-funded
814 conservation land acquisition ~~purchase~~ programs shall be
815 authorized, upon a finding by the board of trustees, if they meet
816 the criteria specified in paragraphs (a)-(e): water resource
817 development projects, water supply development projects,
818 stormwater management projects, linear facilities, and
819 sustainable agriculture and forestry. Such additional uses are
820 authorized where:
821 (a) The proposed use is not inconsistent with the
822 management plan for such lands;
823 (b) The proposed use is compatible with the natural
824 ecosystem and resource values of such lands;
825 (c) The proposed use is appropriately located on such lands
826 and ~~where~~ due consideration has been ~~is~~ given to the use of other
827 available lands;
828 (d) The using entity reasonably compensates the board of
829 trustees ~~titleholder~~ for such use based upon an appropriate
830 measure of value; and
831 (e) The use is consistent with the public interest.
832
833 A decision by the board of trustees pursuant to this section
834 shall be given a presumption of correctness. Moneys received from
835 the use of state lands pursuant to this section shall be returned
836 to the lead managing entity in accordance with the provisions of
837 s. 259.032(11)(d).
838 (11) Lands listed as projects for acquisition shall ~~may~~ be
839 managed to maintain or enhance those resources the state is
840 seeking to protect by acquiring the land ~~for conservation~~

841 ~~pursuant to s. 259.032,~~ on an interim basis by a private party in
842 anticipation of a state purchase and in accordance with a
843 contractual arrangement between the acquiring agency and the
844 private party, which ~~that~~ may include management service
845 contracts, leases, cost-share arrangements or resource
846 conservation agreements. ~~Lands designated as eligible under this~~
847 ~~subsection shall be managed to maintain or enhance the resources~~
848 ~~the state is seeking to protect by acquiring the land.~~ Funding
849 for these contractual arrangements may originate from the
850 documentary stamp tax revenue deposited into the Conservation and
851 Recreation Lands Trust Fund and Water Management Lands Trust
852 Fund. No more than 5 percent of funds allocated under the trust
853 funds shall be expended for this purpose.
854 (12) Any lands available to governmental employees,
855 including water management district employees, for hunting or
856 other recreational purposes shall also be made available to the
857 general public for such purposes, subject to the constitutional
858 authority of the Fish and Wildlife Conservation Commission to
859 regulate hunting and fishing on state and water management
860 district lands.
861 ~~(13) Notwithstanding the provisions of this section, funds~~
862 ~~from the sale of property by the Department of Highway Safety and~~
863 ~~Motor Vehicles located in Palm Beach County are authorized to be~~
864 ~~deposited into the Highway Safety Operating Trust Fund to~~
865 ~~facilitate the exchange as provided in the General Appropriations~~
866 ~~Act, provided that at the conclusion of both exchanges the values~~
867 ~~are equalized. This subsection expires July 1, 2006.~~
868 Section 4. Section 253.0341, Florida Statutes, is amended
869 to read:

870 253.0341 Surplus of state-owned lands to counties or local
871 governments.--Counties and other units of local governments may
872 submit written ~~surplusing~~ requests for the sale or exchange of
873 state-owned lands directly to the board of trustees. County or
874 local government requests for the state to sell or exchange state
875 lands ~~surplus conservation or nonconservation lands, whether for~~
876 ~~purchase or exchange,~~ shall be expedited throughout the
877 surplusing process. Property jointly acquired by the state and
878 other entities may ~~shall~~ not be sold or exchanged ~~surplused~~
879 without the consent of all joint owners.
880 (1) The decision to sell or exchange state ~~surplus state-~~
881 ~~owned~~ nonconservation lands may be made by the board without a
882 review of, or a recommendation on, the request from ~~the~~
883 ~~Acquisition and Restoration Council or~~ the Division of State
884 Lands. ~~Such~~ Requests for such ~~nonconservation~~ lands shall be
885 considered by the board within 60 days after ~~of~~ the board's
886 receipt of the written request.
887 (2) County or local government written requests for the
888 sale or exchange of state ~~surplusing of state-owned~~ conservation
889 lands are subject to review of, and recommendation on, the
890 request to the board by the Acquisition and Restoration Council.
891 Requests to sell or exchange ~~surplus~~ conservation lands shall be
892 considered by the board within 120 days after ~~of~~ the board's
893 receipt of the request.
894 (3) The provisions of this section do not apply to property
895 offered for sale or exchange by the state to a county or unit of
896 local government pursuant to s. 253.034(6).
897 Section 5. Section 253.42, Florida Statutes, is amended to
898 read:

899 253.42 Board of trustees may exchange lands.--The
900 provisions of this section apply to all lands owned by, vested
901 in, or titled in the name of the board whether the lands were
902 purchased ~~acquired~~ by the state ~~as a purchase,~~ or acquired
903 through gift, donation, or any other conveyance for which no
904 consideration was paid.
905 (1) Subject to the provisions of ss. 253.034 and 253.0341,
906 the board of trustees may exchange any lands owned by, vested in,
907 or titled in the name of the board for other lands in the state
908 owned by counties, local governments, individuals, or private or
909 public corporations, and may fix the terms and conditions of any
910 such exchange. Any nonconservation lands that were acquired by
911 the state through gift, donation, or any other conveyance for
912 which no consideration was paid must first be offered in exchange
913 ~~at no cost~~ to a county or local government unless otherwise
914 provided in a deed restriction of record or other legal
915 impediment, and so long as the use proposed by the county or
916 local government is for a public purpose. For conservation lands
917 acquired by the state through gift, donation, or any other
918 conveyance for which no consideration was paid, the state may
919 request land of equal conservation value from the county or local
920 government but no other consideration.
921 (2) In exchanging state conservation ~~state-owned~~ lands
922 purchased ~~not acquired~~ by the state ~~through gift, donation, or~~
923 ~~any other conveyance for which no consideration was paid,~~ with
924 counties or local governments, the board shall require an
925 exchange of equal value. Equal value is defined as the
926 conservation benefit of the lands being offered for exchange by a
927 county or local government being equal or greater in conservation

928 benefit than the state-owned lands. Such exchanges may include
929 cash transactions if based on an appropriate measure of value of
930 the state-owned land, but must also include the determination of
931 a net-positive conservation benefit by the Acquisition and
932 Restoration Council as provided in s. 253.034~~, irrespective of~~
933 ~~appraised value~~.
934 (3) The board shall select and agree upon the state lands
935 to be exchanged, shall agree to ~~and~~ the lands to be conveyed to
936 the state, and shall pay or receive any sum of money deemed
937 necessary by the board for the purpose of equalizing the value of
938 the exchanged property. The board is authorized to make and enter
939 into contracts or agreements for such purpose or purposes.
940 (4)(a) The public purposes of lands exchanged under the
941 provisions of this section with a county or local government
942 include:
943 1. Public schools;
944 2. Public libraries;
945 3. Fire or law enforcement substations;
946 4. Governmental, judicial, or recreational centers;
947 5. Affordable housing projects or programs; or
948 6. The capital improvement elements or the concurrency
949 requirements that are required under a local comprehensive land
950 use plan as provided in s. 163.3177.
951 (b) The use of lands exchanged under this section by a
952 county or unit of local government may not be limited by rules of
953 the board.
954 Section 6. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-31 Institute of Food & Agricultural Sciences Supplemental Retirement Program
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1042

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

## SUMMARY ANALYSIS


This proposed committee bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9. The bill consolidates the supplemental retirement benefit program of the Institute of Food and Agricultural Sciences into the Florida Retirement System. The bill requires the transfer of assets and the assumption of liabilities and obligations. The bill provides that these participants are not members of the Florida Retirement System. The bill makes conforming changes to the supplemental benefit program, sets the required employer contribution rate, and removes an investment limitation. The bill makes a legislative finding about fulfilling an important state interest.

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

This bill does not appear to have a fiscal impact on the revenues of state government. By setting the required employer contribution rate for supplemental benefit program participants, this bill appears to have a fiscal impact on the expenditures of state government. This contribution rate is lower than the current contribution rate and is expected, along with the consolidation, to eliminate the need for annual contribution rate increases and additional subsidies from the General Revenue Fund.

This bill does not appear to have a fiscal impact on the revenues or expenditures of local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – Government cost savings are anticipated from the consolidation of this supplemental retirement benefit program into the Florida Retirement System.

B. EFFECT OF PROPOSED CHANGES:

Background on the Institute of Food and Agricultural Science

The Institute of Food and Agricultural Sciences ("IFAS") is a federal-state-county partnership at the University of Florida that was created in 1964 and is "dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible."[1]

- IFAS has 13 research and education centers with a total of 19 locations (including demonstration sites) throughout Florida.[2] IFAS also has Florida Cooperative Extension Service offices in all 67 counties that the counties operate and maintain.[3]

- For Fiscal Year 2004-2005, IFAS had a budget of $262 million. Approximately 52 percent or $136.4 million of that budget was General Revenue.[4]

- As of December 5, 2005, IFAS had approximately 2,262 full-time equivalent employees:

| | On Campus | Off-Campus | County | Total |
|---|---|---|---|---|
| *State Supported* | | | | |
| Faculty | 355 | 164 | 255 | 774 |
| Staff | 583 | 405 | 18 | 1006 |
| Totals | 938 | 569 | 273 | 1780 |
| *Grant Supported* | | | | |
| Faculty | 148 | 56 | 30 | 234 |
| Staff | 181 | 59 | 8 | 248 |
| Totals | 329 | 115 | 38 | 482 |

Supplemental Retirement Benefits Program: Background and Eligibility

Eighty-one of these IFAS employees[5] are participants in a supplemental retirement benefits program ("IFAS SRBP") the Legislature created in 1984.[6] The Legislature enacted this IFAS Supplemental Retirement Act to "provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to certain retired employees of the Institute of Food and Agricultural

[1] Univ. of Fla., Inst. of Food and Ag. Sci., *IFAS Facts*, available at http://analysis2001.ifas.ufl.edu/facts150.htm (last updated Feb. 1, 2006; last visited Mar. 19, 2006) (IFAS was created by the then governing body for higher education through the reorganization of existing programs).
[2] *Id.* (IFAS has 1,255 buildings, 3,190,448 gross square feet, and 16,591 acres throughout the state.).
[3] *Id.*
[4] *Id.* (This is the General Revenue breakdown: 22 percent for teaching (pass through), 46 percent for research, 24 percent for extension and 8 percent is for other.).
[5] Milliman, Inc., Actuarial Valuation of the IFAS Supplemental Retirement Program as of July 1, 2005, Exhibit B (Mar. 1, 2006) (on file with the Div. of Ret., Fla. Dep't of Mgmt. Serv) [hereinafter Milliman, 2005 IFAS Valuation].
[6] Ch. 84-358, Laws of Fla.

Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system."[7]

There are six eligibility requirements for participation in the IFAS SRBP:

(1) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(2) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(3) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(4) The person must have attained the age of 62.

(5) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute. Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program shall not constitute membership in the Florida Retirement System.

(6) The person must have been employed with the institute prior to, and on, July 1, 1983.[8]

It is this sixth criteria (IFAS employment prior/on July 1, 1983) which "closes" participation in the IFAS SRBP. In addition to the active employees, there are 97 retired participants and beneficiaries and 36 participants who are no longer employed by IFAS but have vested benefits.[9] Thus, there are a total of 228 participants in the IFAS SRBP.[10]

IFAS SRBP: Calculation and Funding

The amount of the IFAS SRBP benefit is the deficiency between the amount earned by the employee under the federal Civil Service Retirement System and the amount the employee would have received under the Florida Retirement System[11] and the primary insurance under Social Security at age 62.[12]

The IFAS SRBP is funded from two sources: a monthly contribution by IFAS of a specified percentage of an employee's gross monthly salary[13] and returns on investments. Yet, since 2002, these sources have been insufficient to fund the required supplemental benefits. This funding insufficiency can be attributed to three factors:

(1) *The closed nature of the plan.* With a closed plan, as more participants retire, there are a smaller number of active employees to bear the burden of any increased costs for the program.[14]

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[7] Fla. Stat. § 121.40(1) and (2) (2005).
[8] Fla. Stat. § 121.40(4) (2005).
[9] Milliman, 2005 IFAS Valuation.
[10] *Id.*
[11] Fla. Stat. § 121.40(5)(a) (2005) ("An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System.").
[12] Fla. Stat. § 121.40(5)(b) (2005).
[13] Fla. Stat. § 121.40(12) (2005).
[14] There are currently 81 active participants who can fund program insufficiencies through contributions for the 113 retired participants. Milliman, 2005 IFAS Valuation. This is in contrast to the Florida Retirement System which has three active employees for each person

(2) *The nature of the benefit.* Because part of the IFAS supplemental benefit payment is based on Social Security, it "varies inversely as a percentage of pay."[15] That is, it has higher costs, as a percentage of pay, at lower salary levels than at higher salary levels.

(3) *More limited returns on investments.* Returns on investments are more limited than those of the Florida Retirement System because the State Board of Administration is required to "consider investment techniques...which are directed toward developing minimum risk procedures supporting a prescribed liability schedule."[16] This has resulted in "underlying investments that are not diversified and simply not able to satisfy the benefit demands."[17]

With limited investment returns, only one other funding mechanism was available to address the increased benefit demands: increase the employer payroll contributions. From July 1, 2003 to July 1, 2005, the employer contribution rate was set at 13.83 percent – almost double the previous amounts of 6.96 percent and 7.17 percent.[18] Based on the actuarial valuation of the IFAS SRBP, the employer contribution rate was set at 20.23 percent for the period between July 1, 2005 through June 30, 2006.[19] The Legislature, however, appropriated $500,000 from the General Revenue Fund to fund the increased employer contribution for the IFAS SRBP.[20]

IFAS SRBP: Going Forward

The increased benefit demands on the IFAS SRBP are expected to continue. In fact, the most recent valuation of the IFAS SRBP recommends a contribution rate of 26.86 percent, effective July 1, 2006.[21] In its consideration of this issue, staff for the Committee on Governmental Oversight and Productivity noted three methods for addressing the recurring funding imbalance: (1) continue to raise the employer contribution rate as required; (2) place a limit on the employer contribution rate and provide annual supplemental appropriations to cover the increased costs; or (3) merge the IFAS SRBP with the Florida Retirement System.[22] Merging the IFAS SRBP with the Florida Retirement System was the recommended option:

> "Active and retired members and beneficiaries would not notice a change as their benefits would not be compromised. Due to the small asset and liability base of IFAS, its incorporation within the FRS would condition only a small adverse dollar impact. The FRS has more than $112 billion in assets and includes a $10 billion actuarial surplus. Under this option, no additional payroll costs would be passed along to its 840 member employers...
>
> ...Unlike the two other options that provide only annual or biennial relief, this alternative will permanently address the IFAS funding imbalance. After such transfer, the employer payroll costs will decline significantly and reflect the rates charged for the Regular Class in the Florida Retirement System."[23]

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receiving a benefit. Fla. Senate, Comm. on Gov't Over. and Prod., *Interim Project Report 2006-132: The Supplemental Retirement Program of the Institute of Food and Agricultural Sciences at the University of Florida*, (Sept. 2005) (available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-132go.pdf) (last visited Mar. 19, 2005) [hereinafter Interim Project Report].

[15] Milliman, 2005 IFAS Valuation.

[16] Fla. Stat. § 121.40(13) (2005).

[17] Interim Project Report at 2.

[18] Fla. Stat. 121.40(12) (2005).

[19] Ch. 2005-93, Laws of Fla.

[20] Ch. 2005-70, Laws of Fla., §8(5) ("From the funds in Specific Appropriation 2091, $500,000 is appropriated from the General Revenue Fund to the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida to fund the increased employer contribution for the IFAS retirement plan.").

[21] Milliman 2005 IFAS Valuation.

[22] Interim Project Report at 2.

[23] *Id.*

Transferring the IFAS SRBP to the Florida Retirement System

This proposed committee bill implements the recommendation to transfer the IFAS SRBP to the Florida Retirement System.

The bill consolidates the IFAS SRBP into the Florida Retirement System. The bill requires the transfer of assets and the assumption of all liabilities related to the payment of supplemental monthly benefits to retired employees of the IFAS and their surviving beneficiaries as well as all obligations in regard to funding and administering benefits accrued for the benefit of retired employees of the IFAS and their surviving beneficiaries.

The bill provides that participation in the IFAS SRBP does not constitute membership in the Florida Retirement System.

The bill makes conforming changes to the IFAS Supplemental Retirement Act, sets the required contribution rate at 17.57 percent, and removes the investment limitation.

The bill provides a legislative finding that it fulfills an important state interest.

The bill takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Creates section 121.047, Florida Statutes, to consolidate the IFAS SRBP with the Florida Retirement System.

Section 2: Amends section 121.40, Florida Statutes, to make conforming changes and remove investment limitations.

Section 3: Makes a legislative finding 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:

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

2. Expenditures:

   The bill amends the contribution rate for participants of the IFAS SRBP, which is designed to fund the program in a way that is cost-neutral to the Florida Retirement System. When applied to the July 2005 payroll of IFAS, the 17.57 percent contribution rate yields the following estimated expenditures for IFAS:

| | |
|---|---|
| Year 1 – FY 2006-2007 | $1,012,134 |
| Year 2 – FY 2007-2008 | $ 975,086 |
| Year 3 – FY 2008-2009 | $ 872,535 |

   This rate is lower than the current rate of 20.23 percent and is expected to eliminate the need for annual increases to the contribution rate or further subsidies from the General Revenue Fund like the $500,000 provided in 2005.

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 Enrolled Actuary retained by the Department of Management Services has concluded that "once an appropriate rate is determined, it should not harm the Florida Retirement System and should benefit the IFAS program to be consolidated within the system."[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:

Retirement System Benefit Changes

Benefit increases to publicly funded retirement systems are governed by section 14 of article X of the Florida Constitution:

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

This bill does not increase the benefits to the members or beneficiaries. According to the Department of Management Services, this bill complies with the requirements of section 14 of article X of the Florida Constitution.[25]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[24] Fla. Dep't of Mgmt. Serv., SB 1042 (2006) Staff Analysis (Feb. 6, 2006) (on file with dep't).
[25] *Id.*

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; creating
3 s. 121.047, F.S.; consolidating the operation of the
4 Institute of Food and Agricultural Sciences Supplemental
5 Retirement Program under the Florida Retirement System;
6 providing for assumption of program liabilities and
7 obligations; abolishing the Institute of Food and
8 Agricultural Sciences Supplemental Retirement Trust Fund;
9 barring program participants from membership in the
10 Florida Retirement System; amending s. 121.40, F.S.,
11 relating to the establishment and administration of the
12 Institute of Food and Agricultural Sciences Supplemental
13 Retirement Program; conforming provisions to changes made
14 by the act; redefining the term "trust fund" for purposes
15 of administering the program; providing a rate of monthly
16 contributions; removing provisions relating to investments
17 of the program trust fund; providing a declaration of
18 important state interest; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 121.047, Florida Statutes, is created to
23 read:
24 121.047 Consolidation of liabilities and assets; Institute
25 of Food and Agricultural Sciences Supplemental Retirement
26 Program; restriction.--
27 (1) Effective July 1, 2006, the Institute of Food and
28 Agricultural Sciences Supplemental Retirement Program, as
29 established under s. 121.40, shall be consolidated under the
30 Florida Retirement System and the system shall assume:

31 (a) All liabilities related to the payment of supplemental
32 monthly benefits to retired employees of the institute and their
33 surviving beneficiaries; and
34 (b) All obligations in regard to funding and administering
35 benefits accrued for the benefit of retired employees of the
36 institute and their surviving beneficiaries.
37 (2) The administrator shall, as of July 1, 2006, cause to
38 be transferred to the trust fund of the Florida Retirement System
39 all assets of the Institute of Food and Agricultural Sciences
40 Supplemental Retirement Trust Fund, including moneys, securities,
41 and other property accumulated to date, as well as all
42 liabilities and obligations connected therewith. Upon such
43 transfer of assets, liabilities, and obligations, the Institute
44 of Food and Agricultural Sciences Supplemental Retirement Trust
45 Fund shall be abolished and the administrator shall become the
46 trustee of any funds transferred to the Florida Retirement
47 System.
48 (3) Participation in the Institute of Food and Agricultural
49 Sciences Supplemental Retirement Program does not constitute
50 membership in the Florida Retirement System.
51 Section 2. Section 121.40, Florida Statutes, is amended to
52 read:
53 121.40 Cooperative extension personnel at the Institute of
54 Food and Agricultural Sciences; supplemental retirement
55 benefits.--
56 (1) SHORT TITLE.--This section shall be known and may be
57 cited as the "Institute of Food and Agricultural Sciences
58 Supplemental Retirement Act."
59 (2) PURPOSE.--The purpose of this act is to provide a
60 supplement to the monthly retirement benefits being paid under

61 the federal Civil Service Retirement System to, or with respect
62 to, certain retired employees of the Institute of Food and
63 Agricultural Sciences at the University of Florida, whose
64 positions were ineligible for coverage under a state-supported
65 retirement system.
66 (3) DEFINITIONS.--The definitions provided in s. 121.021
67 shall not apply to this program ~~section~~ except when specifically
68 cited. For the purposes of this section, the following words or
69 phrases have the respective meanings set forth:
70 (a) "Institute" means the Institute of Food and
71 Agricultural Sciences of the University of Florida.
72 (b) "Department" means the Department of Management
73 Services.
74 (c) "Participant" means any employee of the institute who
75 is eligible to receive a supplemental benefit under this program
76 as provided in subsection (4).
77 (d) "Trust fund" means the Florida Retirement System
78 ~~Institute of Food and Agricultural Sciences Supplemental~~
79 ~~Retirement~~ Trust Fund.
80 (e) "Creditable service" means any service subsequent to
81 December 1, 1970, with the institute as a cooperative extension
82 employee holding both state and federal appointments, that is
83 credited for retirement purposes by the institute toward a
84 federal Civil Service Retirement System annuity.
85 (4) ELIGIBILITY FOR SUPPLEMENT.--To be eligible for a
86 benefit under this program pursuant to the provisions of this
87 section, a person must meet all of the following eligibility
88 criteria:
89 (a) The person must have held both state and federal
90 appointments while employed at the institute, and have completed

91 10 years of creditable service with the institute, subsequent to
92 December 1, 1970.
93 (b) The person must be participating in the federal Civil
94 Service Retirement System based on service at the institute.
95 (c) The person must have retired from the institute on or
96 after January 1, 1985, and must have been eligible for benefits
97 under the federal Civil Service Retirement System commencing
98 immediately upon the termination of service with the institute.
99 (d) The person must have attained the age of 62.
100 (e) The person must not be entitled to any benefit from a
101 state-supported retirement system or from social security based
102 upon service as a cooperative extension employee of the
103 institute. Participation in the Institute of Food and
104 Agricultural Sciences Supplemental Retirement Program shall not
105 constitute membership in the Florida Retirement System.
106 (f) The person must have been employed with the institute
107 prior to, and on, July 1, 1983.
108 (5) SUPPLEMENT AMOUNT.--The supplemental payment shall
109 provide a benefit to the retiree equal to the amount by which the
110 retirement annuity, without a survivor benefit, earned by the
111 employee under the federal Civil Service Retirement System with
112 respect to service as a cooperative extension employee of the
113 institute after December 1, 1970, is inferior to:
114 (a) An amount equal to the option one retirement benefit
115 that the employee would have been entitled to receive at his or
116 her normal retirement age under the Florida Retirement System,
117 attributable only to creditable service after December 1, 1970,
118 as a cooperative extension employee of the institute, excluding
119 any past or prior service credit, had such employee been a member
120 of the Florida Retirement System; plus

121 (b) An amount equal to the primary insurance amount that
122 the individual employee would have been entitled to receive under
123 social security at age 62 had he or she been covered for such
124 employment, such amount to be computed in accordance with the
125 Social Security Act only with respect to employment as a
126 cooperative extension employee of the institute after December 1,
127 1970.
128 (6) PAYMENT OF SUPPLEMENT.--Any participant who retires on
129 or after January 1, 1985, from the federal Civil Service
130 Retirement System as a cooperative extension employee of the
131 institute at the University of Florida and who satisfies all of
132 the eligibility criteria specified in subsection (4) shall be
133 entitled to receive a supplemental benefit <u>under this program</u>
134 computed in accordance with subsection (5), to begin July 1,
135 1985, or the month of retirement, or the month in which the
136 participant becomes age 62, whichever is later. Upon application
137 to the administrator, the participant shall receive a monthly
138 supplemental benefit which shall commence on the last day of the
139 month of retirement and shall be payable on the last day of the
140 month thereafter during his or her lifetime. A participant may
141 have federal income tax and health insurance premiums deducted
142 from his or her monthly supplemental benefit in the same manner
143 as provided in s. 121.091(14)(a) and (b) for monthly retirement
144 benefits under the Florida Retirement System.
145 (7) OPTIONAL FORMS OF SUPPLEMENTAL RETIREMENT
146 BENEFITS.--Prior to the receipt of the first monthly supplemental
147 retirement payment <u>under this program</u>, a participant shall elect
148 to receive the supplemental retirement benefits to which he or
149 she is entitled under subsection (6) in accordance with s.
150 121.091(6).


CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

151 (8) DEATH BENEFITS.--
152 (a) If the employment of a participant of this program is
153 terminated by reason of his or her death subsequent to the
154 completion of 10 years of creditable service with the institute
155 but prior to his or her actual retirement, such 10-year period
156 having commenced on or after December 1, 1970, it shall be
157 assumed that the participant had met all of the eligibility
158 requirements under this section and had retired from the federal
159 Civil Service Retirement System and under this section as of the
160 date of death, having elected, in accordance with subsection (7),
161 the optional form of supplemental payment most favorable to his
162 or her beneficiary, as determined by the administrator. The
163 monthly supplemental benefit provided in this paragraph shall be
164 paid to the participant's beneficiary (spouse or other financial
165 dependent) upon such beneficiary's attaining the age of 62 and
166 shall be paid thereafter for the beneficiary's lifetime.
167 (b) If a participant of this program dies subsequent to his
168 or her actual retirement under the federal Civil Service
169 Retirement System but prior to attaining age 62, and such
170 participant was otherwise eligible for supplemental benefits
171 under this section, it shall be assumed that the participant had
172 met all of the eligibility requirements under this section and
173 had retired as of the date of death, having elected, in
174 accordance with subsection (7), the optional form of supplemental
175 payment most favorable to his or her beneficiary, as determined
176 by the administrator. The monthly supplemental benefit provided
177 in this paragraph shall be paid to the participant's beneficiary
178 (spouse or other financial dependent) upon such beneficiary's
179 attaining the age of 62 and shall be paid thereafter for the
180 beneficiary's lifetime.

181 (9) DESIGNATION OF BENEFICIARIES.--Each participant of this
182 program may designate beneficiaries in accordance with s.
183 121.091(8).
184 (10) COST-OF-LIVING ADJUSTMENT OF SUPPLEMENTAL
185 BENEFITS.--On each July 1, the supplemental benefit of each
186 retired participant of this program and each annuitant thereof
187 shall be adjusted as provided in s. 121.101.
188 (11) EMPLOYMENT AFTER RETIREMENT: LIMITATION.--Any person
189 who is receiving a supplemental retirement benefit under this
190 program ~~section~~ may be reemployed by any private or public
191 employer after retirement and receive supplemental retirement
192 benefits pursuant to this section and compensation from his or
193 her employer, without any limitations. However, if a retired
194 participant who is receiving a supplemental retirement benefit
195 under this section is reemployed at the institute in a position
196 as a cooperative extension employee of the institute, he or she
197 shall forfeit all rights to supplemental retirement benefits in
198 accordance with the eligibility provisions of paragraph (4)(e).
199 (12) CONTRIBUTIONS.--
200 (a) For the purpose ~~purposes~~ of funding the supplemental
201 benefits provided by this section, the institute is authorized
202 and required to pay, commencing July 1, 1985, the necessary
203 monthly contributions from its appropriated budget. These amounts
204 shall be paid into the Florida Retirement System ~~Institute of~~
205 ~~Food and Agricultural Sciences Supplemental Retirement~~ Trust
206 Fund~~, which is hereby created~~.
207 (b) The monthly contributions required to be paid pursuant
208 to paragraph (a) on the gross monthly salaries, from all sources
209 with respect to such employment, paid to those employees of the
210 institute who hold both state and federal appointments and who

211 participate in the federal Civil Service Retirement System shall
212 be as follows:
213

| Dates of Contribution Rate Changes | Percentage Due |
|---|---|
| July 1, 1985, through December 31, 1988 | 6.68% |
| January 1, 1989, through December 31, 1993 | 6.35% |
| January 1, 1994, through December 31, 1994 | 6.69% |
| January 1, 1995, through June 30, 1996 | 6.82% |
| July 1, 1996, through June 30, 1998 | 5.64% |
| July 1, 1998, through June 30, 2001 | 7.17% |
| July 1, 2001, through June 30, 2003 | 6.96% |
| July 1, 2003, through June 30, 2005 | 13.83% |

222

~~Effective~~ July 1, 2005, through June 30, 2006 ~~2007~~ 20.23%

Effective July 1, 2006 17.57%

~~(13) INVESTMENT OF THE TRUST FUND.--~~

~~(a) The State Board of Administration shall invest and reinvest available funds of the trust fund in accordance with the provisions of ss. 215.44-215.53. The board shall consider investment techniques, such as contingent immunization or the development of a dedicated portfolio, which are directed toward developing minimum-risk procedures for supporting a prescribed liability schedule.~~

~~(b) Costs incurred in carrying out the provisions of this section shall be deducted from the interest earnings accruing to the trust fund.~~

(13) ~~(14)~~ ADMINISTRATION OF PROGRAM ~~SYSTEM~~.--

(a) The department shall make such rules as are necessary for the effective and efficient administration of this program ~~system~~. The secretary of the department shall be the administrator of the program ~~system~~. The funds to pay the expenses for such administration shall be appropriated from the interest earned on investments made for the Florida Retirement System Trust Fund.

(b) The department may ~~is authorized to~~ require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its duties and responsibilities under this section.

~~(c) The administrator shall cause an actuarial study of the system to be made at least once every 2 years and shall report~~



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

250 ~~the results of such study to the next session of the Legislature~~
251 ~~following completion of the study.~~
252 Section 3. The Legislature finds that a proper and
253 legitimate state purpose is served when employees and retirees of
254 the state and of its political subdivisions, and the dependents,
255 survivors, and beneficiaries of such employees and retirees, are
256 extended the basic protections afforded by governmental
257 retirement systems that provide fair and adequate benefits that
258 are managed, administered, and funded in an actuarially sound
259 manner, as required by s. 14, Art. X of the State Constitution
260 and part VII of chapter 112, Florida Statutes. Therefore, the
261 Legislature determines and declares that this act fulfills an
262 important state interest.
263 Section 4. This act shall take effect July 1, 2006.

PCB GO 06-35

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GO 06-35 Custodial Requirements for Public Records
**SPONSOR(S):** Governmental Operations Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

## SUMMARY ANALYSIS


The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements cannot release such records, except as provided in statute or by court order. The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. These clarifications are the standard contained in case law. The bill makes it clear that the same standards apply to each record deemed confidential and exempt by expressly stating the standards in the Public Records Act.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

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 is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record.

Confidential and Exempt Records

There is a difference between records that the Legislature designates as exempt from public disclosure and those the Legislature deems confidential and exempt. Records classified exempt from public disclosure are permitted to be disclosed under certain circumstances.[1] If the Legislature designates certain records confidential and exempt from public disclosure, such records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption.[2]

Definition of "Agency"

It should be noted that the definition of "agency" provided in the Public Records Act includes the phrase ". . . and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency*."[3] [Emphasis added.] Agencies often are authorized, and in some instances are required, to "outsource" certain functions. Under the current case law standard, an agency is not required to have explicit statutory authority to release public records in its control to its agents. Its agents, however, are required to comply with the same public records custodial requirements with which the agency must comply.

Confidentiality Travels

In *Ragsdale v. State*,[4] 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 determining whether a document has lost its status as a public record must be on the

---

[1] *See WFTV, Inc. v. The School Board of Seminole,* 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).
[2] *See Attorney General Opinion 85-62*, August 1, 1985.
[3] Section 119.011, F.S.
[4] 720 So.2d 203 (Fla. 1998).

policy behind the exemption and not on the simple fact that the information has changed agency hands.[5]

In *City of Riviera Beach v. Barfield*,[6] 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."[7]

Effect of Bill

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements, as opposed to records only made exempt, cannot release such records except as provided in statute or by court order. This clarification is the standard contained in case law.

The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. This clarification also is the standard contained in case law; however, some confusion exists because some statutes explicitly state that the receiving agency or other governmental entity must maintain the confidential and exempt status of the record received while other statutes do not. The bill makes it clear that the same standard applies to each record that is confidential and exempt by expressly stating this standard in the Public Records Act.

The bill reiterates that the provisions do not limit access to any record by an agency or entity acting on behalf of a custodian of public records; the Legislature; or pursuant to court order.

Finally, the bill creates subheadings for s. 119.021, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.021, F.S., to clarify agency custodial requirements for records deemed confidential and exempt.

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 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:

---

[5] *Id.* at 206, 207.

[6] 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*.

[7] *Id.* at 1137.

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:

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 to 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 municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to custodial requirements for public
3 records; amending s. 119.021, F.S.; clarifying custodial
4 requirements for confidential and exempt records; creating
5 subheadings; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 119.021, Florida Statutes, is amended to
10 read:
11 119.021 Custodial requirements; maintenance, preservation,
12 and retention of public records.--
13 (1) MAINTENANCE AND PRESERVATION.--Public records shall be
14 maintained and preserved as follows:
15 (a) All public records should be kept in the buildings in
16 which they are ordinarily used.
17 (b) Insofar as practicable, a custodian of public records
18 of vital, permanent, or archival records shall keep them in
19 fireproof and waterproof safes, vaults, or rooms fitted with
20 noncombustible materials and in such arrangement as to be easily
21 accessible for convenient use.
22 (c)1. Record books should be copied or repaired, renovated,
23 or rebound if worn, mutilated, damaged, or difficult to read.
24 2. Whenever any state, county, or municipal records are in
25 need of repair, restoration, or rebinding, the head of the
26 concerned state agency, department, board, or commission; the
27 board of county commissioners of such county; or the governing
28 body of such municipality may authorize that such records be
29 removed from the building or office in which such records are

30 ordinarily kept for the length of time required to repair,
31 restore, or rebind them.
32 3. Any public official who causes a record book to be
33 copied shall attest and certify under oath that the copy is an
34 accurate copy of the original book. The copy shall then have the
35 force and effect of the original.
36 (2) RETENTION SCHEDULES.--
37 (a) The Division of Library and Information Services of the
38 Department of State shall adopt rules to establish retention
39 schedules and a disposal process for public records.
40 (b) Each agency shall comply with the rules establishing
41 retention schedules and disposal processes for public records
42 which are adopted by the records and information management
43 program of the division.
44 (c) Each public official shall systematically dispose of
45 records no longer needed, subject to the consent of the records
46 and information management program of the division in accordance
47 with s. 257.36.
48 (d) The division may ascertain the condition of public
49 records and shall give advice and assistance to public officials
50 to solve problems related to the preservation, creation, filing,
51 and public accessibility of public records in their custody.
52 Public officials shall assist the division by preparing an
53 inclusive inventory of categories of public records in their
54 custody. The division shall establish a time period for the
55 retention or disposal of each series of records. Upon the
56 completion of the inventory and schedule, the division shall,
57 subject to the availability of necessary space, staff, and other
58 facilities for such purposes, make space available in its records

59 center for the filing of semicurrent records so scheduled and in
60 its archives for noncurrent records of permanent value, and shall
61 render such other assistance as needed, including the
62 microfilming of records so scheduled.
63 (3) INDEX OF AGENCY ORDERS.-- Agency orders that comprise
64 final agency action and that must be indexed or listed pursuant
65 to s. 120.53 have continuing legal significance; therefore,
66 notwithstanding any other provision of this chapter or any
67 provision of chapter 257, each agency shall permanently maintain
68 records of such orders pursuant to the applicable rules of the
69 Department of State.
70 (4) TRANSFER OF CUSTODY.--~~(a)~~ Whoever has custody of any
71 public records shall deliver, at the expiration of his or her
72 term of office, to his or her successor or, if there be none, to
73 the records and information management program of the Division of
74 Library and Information Services of the Department of State, all
75 public records kept or received by him or her in the transaction
76 of official business.
77 (5) UNLAWFUL POSSESSION.--~~(b)~~ Whoever is entitled to
78 custody of public records shall demand them from any person
79 having illegal possession of them, who must forthwith deliver the
80 same to him or her. Any person unlawfully possessing public
81 records must within 10 days deliver such records to the lawful
82 custodian of public records unless just cause exists for failing
83 to deliver such records.
84 (6) CUSTODIAL REQUIREMENTS FOR CONFIDENTIAL AND EXEMPT
85 RECORDS.--
86 (a) A custodian of public records who holds a record that
87 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

88 of the State Constitution may not release such record except as
89 provided in statute or pursuant to court order.
90 (b) An agency or other governmental entity that is
91 authorized to receive a confidential and exempt record pursuant
92 to statute shall retain the confidential and exempt status of
93 such record, except as otherwise provided by law.
94 (c) A custodian of public records is authorized to require
95 the agency or other governmental entity that is authorized to
96 receive a confidential and exempt record pursuant to statute to
97 acknowledge in a written release that:
98 1. Such record is confidential and exempt; and
99 2. The receiving agency or other governmental entity is
100 required by law to retain the confidential and exempt status of
101 such record.
102 (d) This subsection does not limit access to any record by:
103 1. An agency or entity acting on behalf of a custodian of
104 public records;
105 2. The Legislature; or
106 3. Pursuant to court order.
107 Section 2. This act shall take effect July 1, 2006.

# Governmental Operations Committee

## Wednesday, March 22, 2006
## 2:15 – 4:00 PM
## Morris Hall

# Amendment Packet

Allan Bense
Speaker

David Rivera
Chairman

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) Ryan offered the following:
3
4 **Amendment**
5 Remove line(s) 175-179 and insert:
6 after January 1, 1995.
7 7. This paragraph does apply to an agency employee who was
8 employed on July 1, 2001 in a Career Service System position
9 that was transferred to the Selected Exempt Service System under
10 chapter 2001-43, Laws of Florida.

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) Ryan offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 216 and insert:
6 a period of 2 years after vacating that office. For purposes of
7 this subsection:
8 (a) The "government body or agency" of a member of a board
9 of county commissioners consists of the commission, the chief
10 administrative officer or employee of the county, and their
11 immediate support staff.
12 (b) The "government body or agency" of any other county
13 elected officer is the office or department headed by that
14 officer, including all subordinate employees.
15 (c) The "government body or agency" of an elected
16 municipal officer consists of the governing body of the
17 municipality, the chief administrative officer or employee of
18 the municipality, and their immediate support staff.
19 (d) The "government body or agency" of an elected special
20 district officer is the special district.

21 (e) The "government body or agency" of an elected school
22 district officer is the school district.
23
24 ========== T I T L E A M E N D M E N T ==========
25 Remove line(s) 20 and insert:
26 Commission on Ethics relating to a bid or submission; specifying
27 persons and entities that former local officers are prohibited
28 from lobbying;

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) Ryan offered the following:
3
4 **Amendment (with title amendment)**
5
6 Remove line(s) 586 - 596.
7
8
9
10 ========== T I T L E A M E N D M E N T ==========
11 Remove line(s) 47 - 48 and insert:
12
13 certain contractual activities; amending s.

Bill No. **0605**

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) Planas offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 147 - 252 and insert:
6
7 7. The home addresses, telephone numbers, and photographs
8 of current or former juvenile probation officers, juvenile
9 probation supervisors, detention superintendents, assistant
10 detention superintendents, senior juvenile detention officers,
11 juvenile detention officer supervisors, juvenile detention
12 officers, house parents I and II, house parent supervisors,
13 group treatment leaders, group treatment leader supervisors, and
14 rehabilitation therapists of the Department of Juvenile Justice,
15 the names, home addresses, telephone numbers, and places of
16 employment of spouses and children of such personnel, and the
17 names and locations of schools and day care facilities attended
18 by the children of such personnel are exempt from s. 119.07(1)
19 and s. 24(a), Art. I of the State Constitution, if the
20 Department of Juvenile Justice personnel member provides a
21 written statement that he or she has made reasonable efforts to

22 protect such information from being accessible through other
23 means available to the public. This subparagraph is subject to
24 the Open Government Sunset Review Act in accordance with s.
25 119.15 and shall stand repealed on October 2, 2011, unless
26 reviewed and saved from repeal through reenactment by the
27 Legislature.
28 8.~~7.~~ An agency that is the custodian of the personal
29 information specified in subparagraph 1., subparagraph 2.,
30 subparagraph 3., subparagraph 4., subparagraph 5., ~~or~~
31 subparagraph 6., or subparagraph 7. and that is not the employer
32 of the officer, employee, justice, judge, or other person
33 specified in subparagraph 1., subparagraph 2., subparagraph 3.,
34 subparagraph 4., subparagraph 5., ~~or~~ subparagraph 6., or
35 subparagraph 7. shall maintain the exempt status of the personal
36 information only if the officer, employee, justice, judge, other
37 person, or employing agency of the designated employee submits a
38 written request for maintenance of the exemption to the
39 custodial agency.
40 Section 2. For the purpose of incorporating the amendment
41 made by this act to section 119.071, Florida Statutes, in a
42 reference thereto, section 409.2577, Florida Statutes, is
43 reenacted to read:
44 409.2577 Parent locator service.--The department shall
45 establish a parent locator service to assist in locating parents
46 who have deserted their children and other persons liable for
47 support of dependent children. The department shall use all
48 sources of information available, including the Federal Parent
49 Locator Service, and may request and shall receive information
50 from the records of any person or the state or any of its
51 political subdivisions or any officer thereof. Any agency as

52 defined in s. 120.52, any political subdivision, and any other
53 person shall, upon request, provide the department any
54 information relating to location, salary, insurance, social
55 security, income tax, and employment history necessary to locate
56 parents who owe or potentially owe a duty of support pursuant to
57 Title IV-D of the Social Security Act. This provision shall
58 expressly take precedence over any other statutory nondisclosure
59 provision which limits the ability of an agency to disclose such
60 information, except that law enforcement information as provided
61 in s. 119.071(4)(d) is not required to be disclosed, and except
62 that confidential taxpayer information possessed by the
63 Department of Revenue shall be disclosed only to the extent
64 authorized in s. 213.053(15). Nothing in this section requires
65 the disclosure of information if such disclosure is prohibited
66 by federal law. Information gathered or used by the parent
67 locator service is confidential and exempt from the provisions
68 of s. 119.07(1). Additionally, the department is authorized to
69 collect any additional information directly bearing on the
70 identity and whereabouts of a person owing or asserted to be
71 owing an obligation of support for a dependent child. The
72 department shall, upon request, make information available only
73 to public officials and agencies of this state; political
74 subdivisions of this state, including any agency thereof
75 providing child support enforcement services to non-Title IV-D
76 clients; the custodial parent, legal guardian, attorney, or
77 agent of the child; and other states seeking to locate parents
78 who have deserted their children and other persons liable for
79 support of dependents, for the sole purpose of establishing,
80 modifying, or enforcing their liability for support, and shall
81 make such information available to the Department of Children

82 and Family Services for the purpose of diligent search
83 activities pursuant to chapter 39. If the department has
84 reasonable evidence of domestic violence or child abuse and the
85 disclosure of information could be harmful to the custodial
86 parent or the child of such parent, the child support program
87 director or designee shall notify the Department of Children and
88 Family Services and the Secretary of the United States
89 Department of Health and Human Services of this evidence. Such
90 evidence is sufficient grounds for the department to disapprove
91 an application for location services.
92 Section 3. The Legislature finds that it is a public
93 necessity that the home addresses, telephone numbers, and
94 photographs of current or former juvenile probation officers,
95 juvenile probation supervisors, detention superintendents,
96 assistant detention superintendents, senior juvenile detention
97 officers, juvenile detention officer supervisors, juvenile
98 detention officers, house parents I and II, house parent
99 supervisors, group treatment leaders, group treatment leader
100 supervisors, and rehabilitation therapists of the Department of
101 Juvenile Justice, the names, home addresses, telephone numbers,
102 and places of employment of spouses and children of such
103 personnel, and the names and locations of schools and day care
104 facilities attended by the children of such personnel be made
105 exempt from public records requirements if the Department of
106 Juvenile Justice personnel member seeking the exemption provides
107 a written statement that he or she has made reasonable efforts
108 to protect such information from being accessible through other
109 means available to the public. This exemption is justified
110 because, if such information were not made exempt from public
111 records requirements, a juvenile

112 ========== T I T L E  A M E N D M E N T ==========
113 Remove line(s) 5 - 15 and insert:
114
115 and photographs of current or former juvenile probation
116 officers, juvenile probation supervisors, detention
117 superintendents, assistant detention superintendents, senior
118 juvenile detention officers, juvenile detention officer
119 supervisors, juvenile detention officers, house parents I and
120 II, house parent supervisors, group treatment leaders, group
121 treatment leader supervisors, and rehabilitation therapists of
122 the Department of Juvenile Justice, the names, home addresses,
123 telephone numbers, and places of employment of spouses

Bill No. **HB 1067 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) Grimsley offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 102 - 827 and insert:
6 (1) "Administrative assessment" means a review of
7 conditions in a long-term care facility that impact the rights,
8 health, safety and welfare of residents with the purpose of
9 noting needed improvement and making recommendations to enhance
10 the quality of life for residents.
11 (2) "Agency" means the Agency for Health Care
12 Administration.
13 (3) "Department" means the Department of Elderly Affairs.
14 (4) "Local council" means a local long-term care ombudsman
15 council designated by the ombudsman pursuant to s. 400.0069.
16 Local councils are also known as district long-term care
17 ombudsman councils or district councils.
18 (5) ~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing
19 home facility, ~~nursing facility,~~ assisted living facility, adult
20 family-care home, board and care facility, or any other similar
21 residential adult care facility ~~center~~.

22 (6)~~(3)~~ "Office" means the Office of State Long-Term Care
23 Ombudsman created by s. 400.0063.
24 (7)~~(4)~~ "Ombudsman" means the individual appointed by the
25 Secretary of Elderly Affairs ~~designated~~ to head the Office of
26 State Long-Term Care Ombudsman.
27 (8)~~(5)~~ "Resident" means an individual 60 years of age or
28 older who resides in a long-term care facility.
29 (9)~~(6)~~ "Secretary" means the Secretary of Elderly Affairs.
30 (10) "State council" means the State Long-Term Care
31 Ombudsman Council created by s. 400.0067.
32 Section 2. Section 400.0061, Florida Statutes, is amended
33 to read:
34 400.0061 Legislative findings and intent; long-term care
35 facilities.--
36 (1) The Legislature finds that conditions in long-term
37 care facilities in this state are such that the rights, health,
38 safety, and welfare of residents are not fully ensured by rules
39 of the Department of Elderly Affairs or the Agency for Health
40 Care Administration~~,~~ or by the good faith of owners or operators
41 of long-term care facilities. Furthermore, there is a need for a
42 formal mechanism whereby a long-term care facility resident, a
43 representative of a long-term care facility resident, or any
44 other concerned citizen ~~or his or her representative~~ may make a
45 complaint against the facility or its employees, or against
46 other persons who are in a position to restrict, interfere with,
47 or threaten the rights, health, safety, or welfare of a long-
48 term care facility ~~the~~ resident. The Legislature finds that
49 concerned citizens are often more effective advocates for ~~of~~ the
50 rights of others than governmental agencies. The Legislature
51 further finds that in order to be eligible to receive an

52 allotment of funds authorized and appropriated under the federal
53 Older Americans Act, the state must establish and operate an
54 Office of State Long-Term Care Ombudsman, to be headed by the
55 State Long-Term Care Ombudsman, and carry out a long-term care
56 ombudsman program.
57 (2) It is the intent of the Legislature, therefore, to
58 utilize voluntary citizen ombudsman councils under the
59 leadership of the ombudsman, and through them to operate an
60 ombudsman program which shall, without interference by any
61 executive agency, undertake to discover, investigate, and
62 determine the presence of conditions or individuals which
63 constitute a threat to the rights, health, safety, or welfare of
64 the residents of long-term care facilities. To ensure that the
65 effectiveness and efficiency of such investigations are not
66 impeded by advance notice or delay, the Legislature intends that
67 the ombudsman and ombudsman councils and their designated
68 representatives not be required to obtain warrants in order to
69 enter into or conduct investigations or onsite administrative
70 assessments ~~inspections~~ of long-term care facilities. It is the
71 further intent of the Legislature that the environment in long-
72 term care facilities ~~shall~~ be conducive to the dignity and
73 independence of residents and that investigations by ombudsman
74 councils shall further the enforcement of laws, rules, and
75 regulations that safeguard the health, safety, and welfare of
76 residents.
77 Section 3. Section 400.0063, Florida Statutes, is amended
78 to read:
79 400.0063 Establishment of Office of State Long-Term Care
80 Ombudsman; designation of ombudsman and legal advocate.--

81 (1) There is created an Office of State Long-Term Care
82 Ombudsman in the Department of Elderly Affairs.
83 (2)(a) The Office of State Long-Term Care Ombudsman shall
84 be headed by the State Long-Term Care Ombudsman, who shall ~~have~~
85 ~~expertise and experience in the fields of long-term care and~~
86 ~~advocacy, who shall~~ serve on a full-time basis and shall
87 personally, or through representatives of the office, carry out
88 the purposes and functions of the office ~~of State Long-Term Care~~
89 ~~Ombudsman~~ in accordance with state and federal law.
90 (b) The ~~State Long-Term Care~~ ombudsman shall be appointed
91 by and shall serve at the pleasure of the Secretary of Elderly
92 Affairs. The secretary shall appoint a person who has expertise
93 and experience in the fields of long-term care and advocacy to
94 serve as ombudsman. ~~No person who has a conflict of interest, or~~
95 ~~has an immediate family member who has a conflict of interest,~~
96 ~~may be involved in the designation of the ombudsman.~~
97 (3)(a) There is created in the office ~~of State Long-Term~~
98 ~~Care Ombudsman~~ the position of legal advocate, who shall be
99 selected by and serve at the pleasure of the ombudsman~~,~~ and ~~who~~
100 shall be a member in good standing of The Florida Bar.
101 (b) The duties of the legal advocate shall include, but
102 not be limited to:
103 1. Assisting the ombudsman in carrying out the duties of
104 the office with respect to the abuse, neglect, or violation of
105 rights of residents of long-term care facilities.
106 2. Assisting the state and local ~~ombudsman~~ councils in
107 carrying out their responsibilities under this part.
108 3. Pursuing administrative, ~~Initiating and prosecuting~~
109 legal, and other appropriate remedies on behalf of ~~equitable~~

110 ~~actions to enforce the rights of long-term care facility~~
111 residents ~~as defined in this chapter~~.
112 4. Serving as legal counsel to the state and local
113 ~~ombudsman~~ councils, or individual members thereof, against whom
114 any suit or other legal action is initiated in connection with
115 the performance of the official duties of the councils or an
116 individual member.
117 Section 4. Section 400.0065, Florida Statutes, is amended
118 to read:
119 400.0065 State Long-Term Care Ombudsman; duties and
120 responsibilities~~; conflict of interest~~.--
121 (1) The purpose of the Office of State Long-Term Care
122 Ombudsman shall be to:
123 (a) Identify, investigate, and resolve complaints made by
124 or on behalf of residents of long-term care facilities~~,~~ relating
125 to actions or omissions by providers or representatives of
126 providers of long-term care services, other public or private
127 agencies, guardians, or representative payees that may adversely
128 affect the health, safety, welfare, or rights of the residents.
129 (b) Provide services that ~~to~~ assist ~~residents~~ in
130 protecting the health, safety, welfare, and rights of ~~the~~
131 residents.
132 (c) Inform residents, their representatives, and other
133 citizens about obtaining the services of the ~~Office of~~ State
134 Long-Term Care Ombudsman Program and its representatives.
135 (d) Ensure that residents have regular and timely access
136 to the services provided through the office and that residents
137 and complainants receive timely responses from representatives
138 of the office to their complaints.

139 (e) Represent the interests of residents before
140 governmental agencies and seek administrative, legal, and other
141 remedies to protect the health, safety, welfare, and rights of
142 the residents.
143 (f) Administer the ~~Provide administrative and technical~~
144 ~~assistance to~~ state and local ~~ombudsman~~ councils.
145 (g) Analyze, comment on, and monitor the development and
146 implementation of federal, state, and local laws, rules, and
147 regulations, and other governmental policies and actions, that
148 pertain to the health, safety, welfare, and rights of the
149 residents, with respect to the adequacy of long-term care
150 facilities and services in the state, and recommend any changes
151 in such laws, rules, regulations, policies, and actions as the
152 office determines to be appropriate and necessary.
153 (h) Provide technical support for the development of
154 resident and family councils to protect the well-being and
155 rights of residents.
156 (2) The State Long-Term Care Ombudsman shall have the duty
157 and authority to:
158 (a) Establish and coordinate ~~Assist and support the~~
159 ~~efforts of the State Long-Term Care Ombudsman Council in the~~
160 ~~establishment and coordination of~~ local ~~ombudsman~~ councils
161 throughout the state.
162 (b) Perform the duties specified in state and federal law,
163 rules, and regulations.
164 (c) Within the limits of appropriated federal and state
165 funding ~~authorized and appropriated~~, employ such personnel~~,~~
166 ~~including staff for local ombudsman councils,~~ as are necessary
167 to perform adequately the functions of the office and provide or
168 contract for legal services to assist the state and local

169 ~~ombudsman~~ councils in the performance of their duties. Staff
170 positions established for the purpose of coordinating the
171 activities of ~~for~~ each local ~~ombudsman~~ council and assisting its
172 members may be ~~established as career service positions, and~~
173 ~~shall be~~ filled by the ombudsman after approval by the
174 secretary. Notwithstanding any other provision of this part,
175 upon certification by the ombudsman that the staff member hired
176 to fill any such position has completed the initial training
177 required under s. 400.0091, such person shall be considered a
178 representative of the State Long-Term Care Ombudsman Program for
179 purposes of this part.
180 (d) Contract for services necessary to carry out the
181 activities of the office.
182 (e) Apply for, receive, and accept grants, gifts, or other
183 payments, including, but not limited to, real property, personal
184 property, and services from a governmental entity or other
185 public or private entity or person, and make arrangements for
186 the use of such grants, gifts, or payments.
187 (f) Coordinate, to the greatest extent possible, state and
188 local ombudsman services with the protection and advocacy
189 systems for individuals with developmental disabilities and
190 mental illnesses and with legal assistance programs for the poor
191 through adoption of memoranda of understanding and other means.
192 (g) Enter into a cooperative agreement with the Statewide
193 Advocacy Council ~~and district human rights advocacy committees~~
194 for the purpose of coordinating and avoiding duplication of
195 advocacy services provided to residents ~~of long-term care~~
196 ~~facilities~~.

197 (h) Enter into a cooperative agreement with the Medicaid
198 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older
199 Americans Act.
200 (i) Prepare an annual report describing the activities
201 carried out by the office, the state council, and the local
202 councils in the year for which the report is prepared. The
203 ombudsman shall submit the report to the secretary at least 30
204 days before the convening of the regular session of the
205 Legislature. The secretary shall in turn submit the report to
206 the United States Assistant Secretary for Aging, the Governor,
207 the President of the Senate, the Speaker of the House of
208 Representatives, the Secretary of Children and Family Services,
209 and the Secretary of Health Care Administration. The report
210 shall, at a minimum:
211 1. Contain and analyze data collected concerning
212 complaints about and conditions in long-term care facilities and
213 the disposition of such complaints.
214 2. Evaluate the problems experienced by residents.
215 3. Analyze the successes of the ombudsman program during
216 the preceding year, including an assessment of how successfully
217 the program has carried out its responsibilities under the Older
218 Americans Act.
219 4. Provide recommendations for policy, regulatory, and
220 statutory changes designed to solve identified problems; resolve
221 residents' complaints; improve residents' lives and quality of
222 care; protect residents' rights, health, safety, and welfare;
223 and remove any barriers to the optimal operation of the State
224 Long-Term Care Ombudsman Program.
225 5. Contain recommendations from the State Long-Term Care
226 Ombudsman Council regarding program functions and activities and

227 recommendations for policy, regulatory, and statutory changes
228 designed to protect residents' rights, health, safety, and
229 welfare.
230 6. Contain any relevant recommendations from the local
231 councils regarding program functions and activities.
232 ~~(3) The State Long-Term Care Ombudsman shall not:~~
233 ~~(a) Have a direct involvement in the licensing or~~
234 ~~certification of, or an ownership or investment interest in, a~~
235 ~~long-term care facility or a provider of a long-term care~~
236 ~~service.~~
237 ~~(b) Be employed by, or participate in the management of, a~~
238 ~~long-term care facility.~~
239 ~~(c) Receive, or have a right to receive, directly or~~
240 ~~indirectly, remuneration, in cash or in kind, under a~~
241 ~~compensation agreement with the owner or operator of a long-term~~
242 ~~care facility.~~
243
244 ~~The Department of Elderly Affairs shall adopt rules to establish~~
245 ~~procedures to identify and eliminate conflicts of interest as~~
246 ~~described in this subsection.~~
247 Section 5. Section 400.0066, Florida Statutes, is
248 repealed.
249 Section 6. Section 400.0067, Florida Statutes, is amended
250 to read:
251 400.0067 State Long-Term Care Ombudsman Council; duties;
252 membership.--
253 (1) There is created within the Office of State Long-Term
254 Care Ombudsman, the State Long-Term Care Ombudsman Council.
255 (2) The State Long-Term Care Ombudsman Council shall:

256 (a) Serve as an advisory body to assist the ombudsman in
257 reaching a consensus among local ~~ombudsman~~ councils on issues
258 affecting residents and impacting the optimal operation of the
259 program ~~of statewide concern~~.
260 (b) Serve as an appellate body in receiving from the local
261 ~~ombudsman~~ councils complaints not resolved at the local level.
262 Any individual member or members of the state ~~ombudsman~~ council
263 may enter any long-term care facility involved in an appeal,
264 pursuant to the conditions specified in s. 400.0074(2)
265 ~~400.0069(3)~~.
266 (c) Assist the ombudsman to discover, investigate, and
267 determine the existence of abuse or neglect in any long-term
268 care facility, and work with the adult protective services
269 program as required in ss. 415.101 - 413. ~~The Department of~~
270 ~~Elderly Affairs shall develop procedures relating to such~~
271 ~~investigations. Investigations may consist, in part, of one or~~
272 ~~more onsite administrative inspections.~~
273 (d) Assist the ombudsman in eliciting, receiving,
274 responding to, and resolving complaints made by or on behalf of
275 ~~long-term care facility~~ residents ~~and in developing procedures~~
276 ~~relating to the receipt and resolution of such complaints. The~~
277 ~~secretary shall approve all such procedures~~.
278 (e) Elicit and coordinate state, local, and voluntary
279 organizational assistance for the purpose of improving the care
280 received by residents ~~of a long-term care facility~~.
281 (f) Assist the ombudsman in preparing the annual report
282 described in s. 400.0065. ~~Prepare an annual report describing~~
283 ~~the activities carried out by the ombudsman and the State Long-~~
284 ~~Term Care Ombudsman Council in the year for which the report is~~
285 ~~prepared. The State Long-Term Care Ombudsman Council shall~~

286 ~~submit the report to the Secretary of Elderly Affairs. The~~
287 ~~secretary shall in turn submit the report to the Commissioner of~~
288 ~~the United States Administration on Aging, the Governor, the~~
289 ~~President of the Senate, the Speaker of the House of~~
290 ~~Representatives, the minority leaders of the House and Senate,~~
291 ~~the chairpersons of appropriate House and Senate committees, the~~
292 ~~Secretary of Children and Family Services, and the Secretary of~~
293 ~~Health Care Administration. The report shall be submitted by the~~
294 ~~Secretary of Elderly Affairs at least 30 days before the~~
295 ~~convening of the regular session of the Legislature and shall,~~
296 ~~at a minimum:~~
297 ~~1. Contain and analyze data collected concerning~~
298 ~~complaints about and conditions in long-term care facilities.~~
299 ~~2. Evaluate the problems experienced by residents of long-~~
300 ~~term care facilities.~~
301 ~~3. Contain recommendations for improving the quality of~~
302 ~~life of the residents and for protecting the health, safety,~~
303 ~~welfare, and rights of the residents.~~
304 ~~4. Analyze the success of the ombudsman program during the~~
305 ~~preceding year and identify the barriers that prevent the~~
306 ~~optimal operation of the program. The report of the program's~~
307 ~~successes shall also address the relationship between the state~~
308 ~~long-term care ombudsman program, the Department of Elderly~~
309 ~~Affairs, the Agency for Health Care Administration, and the~~
310 ~~Department of Children and Family Services, and an assessment of~~
311 ~~how successfully the state long-term care ombudsman program has~~
312 ~~carried out its responsibilities under the Older Americans Act.~~
313 ~~5. Provide policy and regulatory and legislative~~
314 ~~recommendations to solve identified problems; resolve residents'~~
315 ~~complaints; improve the quality of care and life of the~~

316 ~~residents; protect the health, safety, welfare, and rights of~~
317 ~~the residents; and remove the barriers to the optimal operation~~
318 ~~of the state long-term care ombudsman program.~~
319 ~~6. Contain recommendations from the local ombudsman~~
320 ~~councils regarding program functions and activities.~~
321 ~~7. Include a report on the activities of the legal~~
322 ~~advocate and other legal advocates acting on behalf of the local~~
323 ~~and state councils.~~
324 (3)~~(a)~~ The State Long-Term Care Ombudsman Council shall be
325 composed of one active local council member elected ~~designated~~
326 by each local council plus three at-large members ~~persons~~
327 appointed by the Governor.
328 (a) Each local council shall elect by majority vote a
329 representative from among the council members to represent the
330 interests of the local council on the state council. A local
331 council chair may not serve as the representative of the local
332 council on the state council.
333 (b)1. The secretary, after consulting ~~ombudsman, in~~
334 ~~consultation~~ with the ombudsman ~~secretary~~, shall submit to the
335 Governor a list of persons recommended for appointment to the
336 at-large positions on the state council. The list shall not
337 include the name of any person who is currently ~~at least eight~~
338 ~~names of persons who are not~~ serving on a local council.
339 2. The Governor shall appoint three at-large members
340 chosen from the list~~, at least one of whom must be over 60 years~~
341 ~~of age~~.
342 3. If the Governor does not appoint an at-large member to
343 fill a vacant position ~~Governor's appointments are not made~~
344 within 60 days after ~~the ombudsman submits~~ the list is
345 submitted, the secretary, after consulting with the ombudsman,

346 ~~in consultation with the secretary,~~ shall appoint an at-large
347 member to fill that vacant position ~~three members, one of whom~~
348 ~~must be over 60 years of age~~.
349 (c)1. All state council members shall ~~be appointed to~~
350 serve 3-year terms.
351 2. A member of the state ~~Long-Term Care Ombudsman~~ council
352 may not serve more than two consecutive terms.
353 3. A local council may recommend removal of its elected
354 representative from the state council by a majority vote. If the
355 council votes to remove its representative, the local council
356 chair shall immediately notify the ombudsman. The secretary
357 shall advise the Governor of the local council's vote upon
358 receiving notice from the ombudsman. ~~Any vacancy shall be filled~~
359 ~~in the same manner as the original appointment.~~
360 4. The position of any member missing three state council
361 meetings within a 1-year period ~~consecutive regular meetings~~
362 without cause may ~~shall~~ be declared vacant by the ombudsman. The
363 findings of the ombudsman regarding cause shall be final and
364 binding.
365 5. Any vacancy on the state council shall be filled in the
366 same manner as the original appointment.
367 (d)1. The state ~~ombudsman~~ council shall elect a chair to
368 serve for a term of 1 year. A chair may not serve more than two
369 consecutive terms ~~chairperson for a term of 1 year from among~~
370 ~~the members who have served for at least 1 year~~.
371 2. The chair ~~chairperson~~ shall select a vice chair
372 ~~chairperson~~ from among the members. The vice chair ~~chairperson~~
373 shall preside over the state council in the absence of the chair
374 ~~chairperson~~.

375 3. The chair may create additional executive positions as
376 necessary to carry out the duties of the state council. Any
377 person appointed to an executive position shall serve at the
378 pleasure of the chair, and his or her term shall expire on the
379 same day as the term of the chair.
380 4. A chair may be immediately removed from office prior to
381 the expiration of his or her term by a vote of two-thirds of all
382 state council members present at any meeting at which a quorum
383 is present. If a chair is removed from office prior to the
384 expiration of his or her term, a replacement chair shall be
385 chosen during the same meeting in the same manner as described
386 in this paragraph, and the term of the replacement chair shall
387 begin immediately. The replacement chair shall serve for the
388 remainder of the term and is eligible to serve two subsequent
389 consecutive terms.
390 (e)1. The state ~~ombudsman~~ council shall meet upon the call
391 of the chair or upon the call of the ombudsman. The council
392 shall meet ~~chairperson,~~ at least quarterly but may meet ~~or~~ more
393 frequently as needed.
394 2. A quorum shall be considered present if more than 50
395 percent of all active state council members are in attendance at
396 the same meeting.
397 3. The state council may not vote on or otherwise make any
398 decisions resulting in a recommendation that will directly
399 impact the state council or any local council, outside of a
400 publicly noticed meeting at which a quorum is present.
401 (f) Members shall receive no compensation but shall, with
402 approval from the ombudsman, be reimbursed for per diem and
403 travel expenses as provided in s. 112.061.

404 ~~(4) No officer, employee, or representative of the Office~~
405 ~~of State Long-Term Care Ombudsman or of the State Long-Term Care~~
406 ~~Ombudsman Council, nor any member of the immediate family of~~
407 ~~such officer, employee, or representative, may have a conflict~~
408 ~~of interest. The ombudsman shall adopt rules to identify and~~
409 ~~remove conflicts of interest.~~
410 ~~(5) The Department of Elderly Affairs shall make a~~
411 ~~separate and distinct request for an appropriation for all~~
412 ~~expenses for the state and local ombudsman councils.~~
413 Section 7. Section 400.0069, Florida Statutes, is amended
414 to read:
415 400.0069 Local long-term care ombudsman councils; duties;
416 membership.--
417 (1)(a) The ombudsman shall designate local long-term care
418 ombudsman councils to carry out the duties of the State Long-
419 Term Care Ombudsman Program within local communities. Each local
420 council shall function under the direction of the ombudsman.
421 (b) The ombudsman shall ensure that there is ~~There shall~~
422 ~~be~~ at least one local ~~long-term care ombudsman~~ council operating
423 in each of the department's planning and service areas ~~of the~~
424 ~~Department of Elderly Affairs, which shall function under the~~
425 ~~direction of the ombudsman and the state ombudsman council~~. The
426 ombudsman may create additional local councils as necessary to
427 ensure that residents throughout the state have adequate access
428 to State Long-Term Care Ombudsman Program services. The
429 ombudsman, after approval from the secretary, shall designate
430 the jurisdictional boundaries of each local council.
431 (2) The duties of the local councils ~~ombudsman council~~ are
432 to:

433 (a) ~~To~~ Serve as a third-party mechanism for protecting the
434 health, safety, welfare, and civil and human rights of residents
435 ~~of a long-term care facility~~.
436 (b) ~~To~~ Discover, investigate, and determine the existence
437 of abuse or neglect in any long-term care facility and to use
438 the procedures provided for in ss. 415.101-415.113 when
439 applicable. ~~Investigations may consist, in part, of one or more~~
440 ~~onsite administrative inspections.~~
441 (c) ~~To~~ Elicit, receive, investigate, respond to, and
442 resolve complaints made by~~,~~ or on behalf of~~, long-term care~~
443 ~~facility~~ residents.
444 (d) ~~To~~ Review and, if necessary, ~~to~~ comment on~~, for their~~
445 ~~effect on the rights of long-term care facility residents,~~ all
446 existing or proposed rules, regulations, and other governmental
447 policies and actions relating to long-term care facilities that
448 may potentially have an effect on the rights, health, safety,
449 and welfare of residents.
450 (e) ~~To~~ Review personal property and money accounts of
451 ~~Medicaid~~ residents who are receiving assistance under the
452 Medicaid program pursuant to an investigation to obtain
453 information regarding a specific complaint or problem.
454 (f) Recommend that the ombudsman and the legal advocate ~~To~~
455 ~~represent the interests of residents before government agencies~~
456 ~~and to~~ seek administrative, legal, and other remedies to protect
457 the health, safety, welfare, and rights of the residents.
458 (g) ~~To~~ Carry out other activities that the ombudsman
459 determines to be appropriate.
460 (3) In order to carry out the duties specified in
461 subsection (2), a member of a ~~the~~ local ~~ombudsman~~ council is
462 authorized~~, pursuant to ss. 400.19(1) and 400.434,~~ to enter any

463 long-term care facility without notice or first obtaining a
464 warrant, subject to the provisions of s. 400.0074(2)
465 ~~400.0073(5)~~.
466 (4) Each local ~~ombudsman~~ council shall be composed of
467 members whose primary residence is located within the boundaries
468 of the local council's jurisdiction.
469 (a) The ombudsman shall strive to ensure that each local
470 council ~~no less than 15 members and no more than 40 members from~~
471 ~~the local planning and service area, to~~ include the following
472 persons as members:
473 1. At least one medical or osteopathic physician whose
474 practice includes or has included a substantial number of
475 geriatric patients and who may ~~have limited~~ practice in a long-
476 term care facility;
477 2. At least one registered nurse who has geriatric
478 experience~~, if possible~~;
479 3. At least one licensed pharmacist;
480 4. At least one registered dietitian;
481 5. At least six nursing home residents or representative
482 consumer advocates for nursing home residents;
483 6. At least three residents of assisted living facilities
484 or adult family-care homes or three representative consumer
485 advocates for alternative long-term care facility residents;
486 7. At least one attorney; and
487 8. At least one professional social worker.
488 (b) In no case shall the medical director of a long-term
489 care facility or an employee of the agency ~~for Health Care~~
490 ~~Administration~~, the department, the Department of Children and
491 Family Services, or the Agency for Persons with Disabilities
492 ~~Department of Elderly Affairs~~ serve as a member or as an ex

493 officio member of a council. ~~Each member of the council shall~~
494 ~~certify that neither the council member nor any member of the~~
495 ~~council member's immediate family has any conflict of interest~~
496 ~~pursuant to subsection (10). Local ombudsman councils are~~
497 ~~encouraged to recruit council members who are 60 years of age or~~
498 ~~older.~~
499 (5)(a) Individuals wishing to join a local council shall
500 submit an application to the ombudsman. The ombudsman shall
501 review the individual's application and advise the secretary of
502 his or her recommendation for approval or disapproval of the
503 candidate's membership on the local council. If the secretary
504 approves of the individual's membership, the individual shall be
505 appointed as a member of the local council.
506 (b) The secretary may rescind the ombudsman's approval of
507 a member on a local council at any time. If the secretary
508 rescinds the approval of a member on a local council, the
509 ombudsman shall ensure that the individual is immediately
510 removed from the local council on which he or she serves and the
511 individual may no longer represent the State Long-Term Care
512 Ombudsman Program until the secretary provides his or her
513 approval.
514 (c) A local council may recommend the removal of one or
515 more of its members by submitting to the ombudsman a resolution
516 adopted by a two-thirds vote of the members of the council
517 stating the name of the member or members recommended for
518 removal and the reasons for the recommendation. If such a
519 recommendation is adopted by a local council, the local council
520 chair or district coordinator shall immediately report the
521 council's recommendation to the ombudsman. The ombudsman shall
522 review the recommendation of the local council and advise the

523 secretary of his or her recommendation regarding removal of the
524 council member or members. ~~All members shall be appointed to~~
525 ~~serve 3-year terms. Upon expiration of a term and in case of any~~
526 ~~other vacancy, the council shall select a replacement by~~
527 ~~majority vote. The ombudsman shall review the selection of the~~
528 ~~council and recommend approval or disapproval to the Governor.~~
529 ~~If no action is taken by the Governor to approve or disapprove~~
530 ~~the replacement of a member within 30 days after the ombudsman~~
531 ~~has notified the Governor of his or her recommendation, the~~
532 ~~replacement shall be considered disapproved and the process for~~
533 ~~selection of a replacement shall be repeated.~~
534 (6)(a) Each ~~The~~ local ~~ombudsman~~ council shall elect a
535 chair for a term of 1 year. There shall be no limitation on the
536 number of terms that an approved member of a local council may
537 serve as chair ~~from members who have served at least 1 year~~.
538 (b) The chair shall select a vice chair from among the
539 members of the council. The vice chair shall preside over the
540 council in the absence of the chair.
541 (c) The chair may create additional executive positions as
542 necessary to carry out the duties of the local council. Any
543 person appointed to an executive position shall serve at the
544 pleasure of the chair, and his or her term shall expire on the
545 same day as the term of the chair.
546 (d) A chair may be immediately removed from office prior
547 to the expiration of his or her term by a vote of two-thirds of
548 the members of the local council. If any chair is removed from
549 office prior to the expiration of his or her term, a replacement
550 chair shall be elected during the same meeting, and the term of
551 the replacement chair shall begin immediately. The replacement

552 chair shall serve for the remainder of the term of the person he
553 or she replaced.
554 (7) Each ~~The~~ local ~~ombudsman~~ council shall meet upon the
555 call of its ~~the~~ chair or upon the call of the ombudsman. Each
556 local council shall meet~~,~~ at least once a month but may meet ~~or~~
557 more frequently if necessary ~~as needed to handle emergency~~
558 ~~situations~~.
559 (8) A member of a local ~~ombudsman~~ council shall receive no
560 compensation but shall, with approval from the ombudsman, be
561 reimbursed for travel expenses both within and outside the
562 jurisdiction of the local council ~~county of residence~~ in
563 accordance with the provisions of s. 112.061.
564 (9) The local ~~ombudsman~~ councils are authorized to call
565 upon appropriate agencies of state government for such
566 professional assistance as may be needed in the discharge of
567 their duties. All state agencies shall cooperate with the local
568 ~~ombudsman~~ councils in providing requested information and agency
569 representation ~~representatives~~ at council meetings.
570 ~~(10) No officer, employee, or representative of a local~~
571 ~~long-term care ombudsman council, nor any member of the~~
572 ~~immediate family of such officer, employee, or representative,~~
573 ~~may have a conflict of interest. The ombudsman shall adopt rules~~
574 ~~to identify and remove conflicts of interest.~~
575 Section 8. Section 400.0070, Florida Statutes, is created
576 to read:
577 400.0070 Conflicts of interest.--
578 (1) The ombudsman shall not:
579 (a) Have a direct involvement in the licensing or
580 certification of, or an ownership or investment interest in, a

581 long-term care facility or a provider of a long-term care
582 service.
583 (b) Be employed by, or participate in the management of, a
584 long-term care facility.
585 (c) Receive, or have a right to receive, directly or
586 indirectly, remuneration, in cash or in kind, under a
587 compensation agreement with the owner or operator of a long-term
588 care facility.
589 (2) Each employee of the office, each state council
590 member, and each local council member shall certify that he or
591 she has no conflict of interest.
592 (3) The department shall define by rule:
593 (a) Situations that constitute a person having a conflict
594 of interest that could materially affect the objectivity or
595 capacity of a person to serve on an ombudsman council, or as an
596 employee of the office, while carrying out the purposes of the
597 State Long-Term Care Ombudsman Program as specified in this
598 part.
599 (b) The procedure by which a person listed in subsection
600 (2) shall certify that he or she has no conflict of interest.
601 Section 9. Section 400.0071, Florida Statutes, is amended
602 to read:
603 400.0071 State Long-Term Care Ombudsman Program complaint
604 procedures.--
605 ~~(1)~~ The department ~~state~~ ~~ombudsman council~~ shall adopt
606 rules implementing ~~recommend to the ombudsman and the secretary~~
607 state and local compliant procedures. The rules shall include
608 procedures for:

609 (1) Receiving complaints against a ~~nursing home or~~ long-
610 term care facility or an ~~its~~ employee of a long-term care
611 facility.
612 (2) Conducting investigations of a long-term care facility
613 or an employee of a long-term care facility subsequent to
614 receiving a complaint.
615 (3) Conducting onsite administrative assessments of long-
616 term care facilities. ~~The procedures shall be implemented after~~
617 ~~the approval of the ombudsman and the secretary.~~
618 ~~(2) These procedures shall be posted in full view in every~~
619 ~~nursing home or long-term care facility. Every resident or~~
620 ~~representative of a resident shall receive, upon admission to a~~
621 ~~nursing home or long-term care facility, a printed copy of the~~
622 ~~procedures of the state and the local ombudsman councils.~~
623 Section 10. Section 400.0073, Florida Statutes, is amended
624 to read:
625 400.0073 State and local ombudsman council
626 investigations.--
627 (1) A local ~~ombudsman~~ council shall investigate, within a
628 reasonable time after a complaint is made, any complaint of a
629 resident, a ~~or~~ representative of a resident, or any other
630 credible source based on an action or omission by an
631 administrator, an ~~or~~ employee, or a representative of a ~~nursing~~
632 ~~home or~~ long-term care facility which might be:
633 (a) Contrary to law;~~.~~
634 (b) Unreasonable, unfair, oppressive, or unnecessarily
635 discriminatory, even though in accordance with law;~~.~~
636 (c) Based on a mistake of fact;~~.~~
637 (d) Based on improper or irrelevant grounds;~~.~~
638 (e) Unaccompanied by an adequate statement of reasons;~~.~~

639 (f) Performed in an inefficient manner; or~~.~~
640 (g) Otherwise adversely affecting the health, safety,
641 welfare, or rights of a resident ~~erroneous~~.
642 (2) In an investigation, both the state and local
643 ~~ombudsman~~ councils have the authority to hold public hearings.
644 (3) Subsequent to an appeal from a local ~~ombudsman~~
645 council, the state ~~ombudsman~~ council may investigate any
646 complaint received by the local council involving a ~~nursing home~~
647 ~~or~~ long-term care facility or a resident.
648 (4) If the ombudsman or any state or local council member
649 is not allowed to enter a long-term care facility, the
650 administrator of the facility shall be considered to have
651 interfered with a representative of the office, the state
652 council, or the local council in the performance of official
653 duties as described in s. 400.0083(1) and to have committed a
654 violation of this part. The ombudsman shall report a facility's
655 refusal to allow entry to the agency, and the agency shall
656 record the report and take it into consideration when
657 determining actions allowable under s. 400.102, s. 400.121, s.
658 400.414, s. 400.419, s. 400.6194, or s. 400.6196. ~~In addition to~~
659 ~~any specific investigation made pursuant to a complaint, the~~
660 ~~local ombudsman council shall conduct, at least annually, an~~
661 ~~investigation, which shall consist, in part, of an onsite~~
662 ~~administrative inspection, of each nursing home or long-term~~
663 ~~care facility within its jurisdiction. This inspection shall~~
664 ~~focus on the rights, health, safety, and welfare of the~~
665 ~~residents.~~
666 ~~(5) Any onsite administrative inspection conducted by an~~
667 ~~ombudsman council shall be subject to the following:~~

668 ~~(a) All inspections shall be at times and for durations~~
669 ~~necessary to produce the information required to carry out the~~
670 ~~duties of the council.~~
671 ~~(b) No advance notice of an inspection shall be provided~~
672 ~~to any nursing home or long-term care facility, except that~~
673 ~~notice of followup inspections on specific problems may be~~
674 ~~provided.~~
675 ~~(c) Inspections shall be conducted in a manner which will~~
676 ~~impose no unreasonable burden on nursing homes or long-term care~~
677 ~~facilities, consistent with the underlying purposes of this~~
678 ~~part. Unnecessary duplication of efforts among council members~~
679 ~~or the councils shall be reduced to the extent possible.~~
680 ~~(d) Any ombudsman council member physically present for~~
681 ~~the inspection shall identify himself or herself and the~~
682 ~~statutory authority for his or her inspection of the facility.~~
683 ~~(e) Inspections may not unreasonably interfere with the~~
684 ~~programs and activities of clients within the facility.~~
685 ~~Ombudsman council members shall respect the rights of residents.~~
686 ~~(f) All inspections shall be limited to compliance with~~
687 ~~parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a)~~
688 ~~et seq., and any rules or regulations promulgated pursuant to~~
689 ~~such laws.~~
690 ~~(g) No ombudsman council member shall enter a single-~~
691 ~~family residential unit within a long-term care facility without~~
692 ~~the permission of the resident or the representative of the~~
693 ~~resident.~~
694 ~~(h) Any inspection resulting from a specific complaint~~
695 ~~made to an ombudsman council concerning a facility shall be~~
696 ~~conducted within a reasonable time after the complaint is made.~~

697 ~~(6) An inspection may not be accomplished by forcible~~
698 ~~entry. Refusal of a long-term care facility to allow entry of~~
699 ~~any ombudsman council member constitutes a violation of part II,~~
700 ~~part III, or part VII of this chapter.~~
701 Section 11. Section 400.0074, Florida Statutes, is created
702 to read:
703 400.0074 Local ombudsman council onsite administrative
704 assessments.--
705 (1) In addition to any specific investigation conducted
706 pursuant to a complaint, the local council shall conduct, at
707 least annually, an onsite administrative assessment of each
708 nursing home, assisted living facility, and adult family-care
709 home within its jurisdiction. This administrative assessment
710 shall focus on factors affecting the rights, health, safety, and
711 welfare of the residents. Each local council is encouraged to
712 conduct a similar onsite administrative assessment of each
713 additional long-term care facility within its jurisdiction.
714 (2) An onsite administrative assessment conducted by a
715 local council shall be subject to the following conditions:
716 (a) To the extent possible and reasonable, the
717 administrative assessments shall not duplicate the efforts of
718 the agency surveys and inspections conducted under parts II,
719 III, and VII of this chapter.
720 (b) An administrative assessment shall be conducted at a
721 time and for a duration necessary to produce the information
722 required to carry out the duties of the local council.
723 (c) Advance notice of an administrative assessment may not
724 be provided to a long-term care facility, except that notice of
725 followup assessments on specific problems may be provided.

726 (d) A local council member physically present for the
727 administrative assessment shall identify himself or herself and
728 cite the specific statutory authority for his or her assessment
729 of the facility.
730 (e) An administrative assessment may not unreasonably
731 interfere with the programs and activities of residents.
732 (f) A local council member may not enter a single-family
733 residential unit within a long-term care facility during an
734 administrative assessment without the permission of the resident
735 or the representative of the resident.
736 (g) An administrative assessment shall be conducted in a
737 manner which will impose no unreasonable burden on long-term
738 care facilities.
739
740
741 ========== T I T L E A M E N D M E N T ==========
742 Remove line(s) and insert:
743

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES
Amendment No. 1

Bill No. **HB 1123**

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) Sansom offered the following:
3
4 **Amendment**
5 Remove lines 410-412 and insert:
6 (2) In order to carry out its functions under this
7 chapter, the committee and its designated staff members are
8 empowered with the right and authority to inspect, copy, and
9 investigate the books, records, papers, documents, data,
10 operation, and physical plant of any public agency or advisory
11 committee in this state, including any confidential or exempt
12 information.
13

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES
Amendment No. 2

Bill No. **HB 1123**

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) Sansom offered the following:
3
4 **Amendment**
5 Remove lines 437-441 and insert:
6 (3) For any bill to be considered during the regular
7 session of the Legislature, the committee shall review the bill
8 within three weeks after the regular session convenes and shall
9 forward written comments from the review of the legislation
10 required under subsection (2) to the sponsor of the bill and to
11 the chair of the substantive committee to which the bill is
12 referred.
13 (4) For any bill to be considered during a special session
14 of the Legislature, the committee shall review the bill during
15 the special session and forward written comments from the review
16 of the legislation required under subsection (2) to the sponsor
17 of the bill and to the chair of the substantive committee to
18 which the bill is referred.

Bill No. **HB 1125**

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) Sansom offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 21.0195 Committee records; exemption from public
7 disclosure.--
8 (1) The following records are exempt from s. 119.07(1) and
9 s. 24(a), Art. I of the State Constitution:
10 (a) The agency report submitted under s. 21.006;
11 (b) All records, including working papers and drafts,
12 prepared or maintained by the committee in order to present the
13 report required under s. 21.009;
14 (2) The exemption in subsection (1) shall cease to
15 operate:
16 (a) Six months after the report is presented as required
17 under s. 21.009;
18 (b) If the agency report or records in subsection (1) are
19 provided, by a member or staff member of the committee, to any
20 person other than a member of the committee, an employee of the
21 Legislature, a member of the Legislature who is a supervisor of

22 the legislative employee, a contract employee, or consultant
23 retained by the Legislature, or an officer of the Legislature.
24 (3) A record held by another entity that is confidential
25 or exempt by law and that the committee receives in connection
26 with the performance of its duties under this chapter remains
27 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
28 the State Constitution.
29 (4) This section is subject to the Open Government Sunset
30 Review Act in accordance with s. 119.15 and shall stand repealed
31 on October 2, 2011, unless reviewed and saved from repeal
32 through reenactment by the Legislature.
33 Section 2. The Legislature finds that it is a public
34 necessity that the agency report submitted under s. 21.006,
35 F.S., and the records, including working papers and drafts,
36 prepared or maintained by the Legislative Sunset Advisory
37 Committee in presenting the report required under s. 21.009,
38 F.S., be made exempt from public records requirements. The
39 Legislature finds that the release of such information would
40 hinder the ability of the committee to conduct its evaluation
41 and prepare its report on whether to abolish a state agency and
42 its advisory committees because the agency, employees, and other
43 interested persons might be reluctant to provide information
44 knowing that the information would immediately be public and
45 could potentially affect operation, employment or other dealings
46 at the agency under review. Protecting such information would
47 help the committee complete a more thorough and reliable
48 evaluation and therefore make a better recommendation as to
49 whether or not to terminate a state agency and its advisory
50 committees.

51 Section 3. This act shall take effect July 1, 2006, if
52 House Bill 1123 or similar legislation is adopted in the same
53 legislative session or an extension thereof and becomes law.
54
55 ========== T I T L E A M E N D M E N T ==========
56 Remove the entire title and insert:
57 An act relating to public records; creating s. 21.0195, F.S.;
58 exempting from public records requirements agency reports
59 submitted under s. 21.006; exempting from public records
60 requirements records, working papers, and drafts prepared or
61 maintained in preparing the report required under s. 21.009;
62 providing limitations on the operation of the exemptions;
63 specifying that information received by the committee in
64 performing its duties under ch. 21, F.S. that is confidential
65 and exempt shall remain confidential and exempt; providing for
66 future legislative review and repeal; providing a statement of
67 public necessity; providing a contingent effective date.
68

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB GO 06-14**

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) 95-96 and insert:
6 available to that agency, provided that the confidentiality
7 specified by this subparagraph for such records is maintained.
8

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# Governmental Operations Committee

## Wednesday March 22, 2006
## 2:15 – 4:00 PM
## Morris Hall

# Addendum A

Allan Bense
Speaker

David Rivera
Chairman

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1067 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) Mealor offered the following:
3
4 **Amendment to Amendment 1 by Representative Grimsley**
5 Remove line(s) 607 and insert:
6
7 state and local complaint procedures. The rules shall include
8

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB GO 06-07a**

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) Mealor offered the following:
3
4 **Amendment**
5 Remove line(s) 280 and 281 and insert:
6 duties, which information may not be redisclosed by the Agency
7 for Workforce Innovation.
8

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB GO 06-14**

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:

2 Representative(s) Attkisson offered the following:

3

4 **Amendment (with directory and title amendments)**

5 Remove line(s) 95-96 and insert:

6 ~~available to that agency,~~ provided that the confidentiality

7 specified by this subparagraph for such records is maintained.

8

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