

1 STATE OF FLORIDA
2 COMMISSION ON OPEN GOVERNMENT
3
4
5 IN RE: POTENTIAL REFORMS TO
6 FLORIDA'S PUBLIC RECORDS AND
7 SUNSHINE LAWS.

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11 AUGUST 26, 2008
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FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 P R E S E N T

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3 President of the First Amendment Foundation

4 JOHN CARASSAS, Vice Chair
5 Pinellas County, Sixth Judicial Circuit, County Judge

6 JASON DIMITRIS
7 Chief of Staff, Department of Children and Families

8 PAULA DOCKERY
9 Senator, Lakeland

10 TALBOT "SANDY" D'ALEMBERTE
11 Florida State University, College of Law

12 JOANN CARRIN
13 Director, Office of Open Government

14 JEANNE GRINSTEAD
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16 President, Florida Society of Newspaper Editors

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1 P R O C E E D I N G S

2 MS. PETERSON: Okay. I think we should
3 probably get started. We still have a lot to get
4 through today. I'll remind everybody to, again,
5 turn off their cell phones. For people up here, we
6 have to turn them off. If people in the audience
7 just want to turn off the sound. We made some
8 pretty significant progress this morning but we've
9 got a lot to do. Okay.

10 So we are now on number nine, correct, the Law
11 Enforcement exemptions. These are under Tab -- are
12 being handed out as we speak. If you remember, I
13 think it was at the Fort Lauderdale meeting, we had
14 a presentation, and there were four
15 recommendations. But as I understand it, two of
16 those have now been condensed into one. And so we
17 have three recommendations from FDLE. And I'm
18 going to start, I think, with number three, if
19 that's okay with you.

20 This is a recommendation that we expand the
21 exception to the exemption for autopsy photographs.
22 If you remember after Dale Earnhardt died, the
23 Legislature created an exemption for autopsy
24 photographs. The practical day-to-day problem is
25 that the exemption is so narrow that it does not

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1 allow the use or access to those photographs by
2 medical examiners for training and teaching
3 purposes, by law enforcement for training and
4 teaching purposes. So this is really just a slight
5 expansion of the exception, to allow access to the
6 autopsy photos for legitimate training purposes,
7 basically. And it does not change the public's
8 ability to access those photographs but simply
9 allows the use of autopsy photos for legitimate
10 training purposes, both law enforcement and medical
11 examiners. Any questions?

12 SENATOR DOCKERY: Would the materials identify
13 who the individual was? Or would they be more
14 generic as, you know, female, 39 years old, kind of
15 thing?

16 MS. PETERSON: I would presume, and we'll ask
17 Mike to elaborate, but we're just using the
18 photographs without any identifying information
19 about the individual. But, Mike, if you can sort

20 of confirm that. From the medical examiners I
21 talked to, they just use random photographs for the
22 purposes of training medical examiners and law
23 enforcement personnel, and they are not saying, you
24 know, it's Jane Doe.

25 MR. RAMAGE: Right. The materials that you

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1 have presented there, there is a short sheet, it's
2 just two pages long, and there is a conceptional
3 draft, which has not been vetted by any legislators
4 or anyone else. We just tried to put the concept
5 in writing so you could see what we were talking
6 about. But that includes masking faces, et cetera,
7 that would allow for identification of individuals,
8 other than perhaps there was a unique tattoo or
9 something that was of medical interest or of
10 training interest, that would have a legitimate
11 training purpose. So we have done our best in the
12 concept.

13 And this did arise from the medical examiners,
14 from some practical experience, to try to strike a
15 balance. We understand clearly what the original
16 intent of the exemption was. We agree with that.
17 But we do believe that when you're in the process
18 of trying to train homicide investigators, or if a
19 pathologist needs, or a medical examiner needs to

20 consult with a medical examiner or pathologist or
21 someone on a particular case, it would be helpful
22 to have autopsy photos, or videos, et cetera, for
23 training purposes. And if they're going to be
24 used, in the training context in particular, we
25 would mask over faces or just focus on that portion

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1 of the autopsy that would be of value as
2 investigators.

3 So, yes, we're trying to protect that personal
4 information and personal identity to the greatest
5 extent possible.

6 MS. PETERSON: Any other questions? Do we
7 have a motion to adopt the recommendation to amend
8 the autopsy photo exemption to allow limited
9 exception for the purposes of legitimate training?

10 MR. D'ALEMBERTE: So moved.

11 JUDGE CARASSAS: Second.

12 MS. PETERSON: Any more discussion?

13 MS. CARRIN: Carassas?

14 JUDGE CARASSAS: Yes.

15 MS. CARRIN: D'Alemberte?

16 MR. D'ALEMBERTE: Yes.

17 MS. CARRIN: Dockery?

18 SENATOR DOCKERY: Yes.

19 MS. CARRIN: Grinstead?

20 MS. GRINSTEAD: Yes.

21 MS. CARRIN: Lee?

22 MS. LEE: Yes.

23 MS. CARRIN: Peterson?

24 MS. PETERSON: Yes.

25 MR. D'ALEMBERTE: Let me ask a quick question

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1 about that. For medical education, do medical
2 schools use photographs also? I understand this is
3 limited to medical examiners' use. I probably
4 should have asked this question before moving yes.

5 MS. PETERSON: Well, with the language, we
6 could amend the language.

7 MR. RAMAGE: Remember this is only a concept,
8 nothing is etched in stone. But as I read this
9 language, it would allow medical examiners to share
10 for medical purposes, and we could probably clarify
11 that that would also include training purposes of
12 medical students, et cetera, where there is a
13 legitimate need for that.

14 MS. PETERSON: And know that I've had that
15 question, also, because of coroner's use that in
16 training medical students, also. So we might want
17 to incorporate that in the actual language.

18 MR. D'ALEMBERTE: As you develop that, it
19 might be good to make sure that that training

20 purpose also --

21 MR. RAMAGE: And what we're asking for,

22 obviously, today is just the endorsement of the

23 concept. We're a long way away from having

24 something to present for legislative consideration.

25 Thank you.

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1 MS. PETERSON: Actually, if we could have some
2 language maybe in October would be helpful for us.

3 MR. RAMAGE: We'll incorporate some language
4 about the medical student.

5 MS. PETERSON: Okay, next we have number two.
6 This is a proposed exemption -- remember it will
7 take two-thirds votes, basically unanimous of the
8 people here, two-thirds of the Commission -- to
9 create an exemption to information provided to the
10 Florida Department of Law Enforcement by people who
11 are sort of sign -- not sort of, but they're
12 signing up for the notification system, and this is
13 a notification system. To be -- so you can sign up
14 and be notified when a sexual predator moves into
15 your neighborhood. That information is currently
16 public record.

17 So if I'm signing up for the notification
18 system and I want to know when a sexual predator
19 moves into my neighborhood, my information that

20 I've provided FDLE is currently public record. And
21 what FDLE is recommending is a narrow exemption for
22 information about those people who are signing up
23 for the notification program. Any questions?

24 SENATOR DOCKERY: Madam Chair, are there other
25 examples of when citizens are calling in to sign up

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1 for notification of, maybe something noncriminal,
2 that their information is public as well?

3 MS. PETERSON: I'd have to look.

4 SENATOR DOCKERY: Like, let's say somebody was
5 calling in for information on solar rebates.

6 MS. PETERSON: And I would think -- I don't
7 believe there is; no.

8 SENATOR DOCKERY: Okay.

9 MS. PETERSON: There's not.

10 SENATOR DOCKERY: Because if we found this
11 strange circumstance, maybe there are others we
12 could address at the same time.

13 MS. PETERSON: Well, I think it's a question
14 of sensitivity, of when you're -- and maybe, again,
15 Mike can talk to the problem. It was my
16 understanding it was the sensitivity of this issue,
17 of calling in to be notified when a sexual
18 predator, or a specific sexual predator, moves.
19 And what -- it was my understanding that it was the

20 sensitivity of this particular situation.

21 SENATOR DOCKERY: What danger exists for them

22 to have that information public?

23 MS. PETERSON: Mike?

24 MR. RAMAGE: Senator, it's really in the

25 context of the predators and the offenders. Let's

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1 say there's a particular -- I'll give you just a
2 hypothetical -- but you've got a predator who went
3 out after a particular child in a neighborhood or
4 particular children in a school. And the parents
5 now register, and they want information about when
6 Joe Predator moves near this neighborhood or this
7 school or whatever. Those pieces of information,
8 in and of themselves, that's been reported on the
9 form might not tell Joe Predator as to the possible
10 location of another victim or the victim, but
11 teaming that information with Google and all the
12 various search engines -- you can take a phone
13 number, you can take a piece of isolated
14 information, and do a Google-type search, and most
15 likely, find the address and all sorts of
16 information.

17 So our concern was that we're dealing with a
18 particular dangerous group of individuals, and we
19 were concerned that, in order for citizens of the

20 state to be better protected, that they ought not
21 to have to worry that in seeking better protection
22 by notification, that they're accidentally
23 providing information that could very well be a key
24 to a predator finding an individual or stalking an
25 individual.

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1 As to your earlier question, I'll remind
2 everybody, the Legislature requires, for example,
3 when you register your email address, agencies have
4 to have a notification on the web page that says,
5 Your email address is public record under the
6 public records law. If you don't want to provide
7 your email address, contact the agency by phone or
8 whatever else. So I think that -- you know, we've
9 not done a survey of other areas this came up in
10 particular because this was a new system that was
11 being offered, and almost immediately after we
12 started offering the system, we started getting
13 concerned that maybe the very basic information
14 submitted to register with the system might be used
15 by a predator or offender.

16 SENATOR DOCKERY: Are most of the individuals
17 who are registering to be notified victims or
18 family of victims?

19 MR. RAMAGE: I have no real way of knowing

20 that. You know, they'll submit the information. I
21 think anybody that's aware of the system that has
22 children would probably be likely to want to
23 receive notification if a predator moved into his
24 or her neighborhood. But, particularly, if I were
25 the parent of a child who had been victimized or

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1 stalked or whatever, I'd be inclined to want to be
2 notified when that stalker or that predator moved
3 anywhere near my children.

4 MS. PETERSON: Judge?

5 JUDGE CARASSAS: Yeah. The issue is, if I
6 understand correctly, is a predator, somebody
7 making a public records request, and kind of
8 figuring out who's asking for his or her
9 information; right?

10 MR. RAMAGE: A predator could actually make a
11 public records request and say, I want a copy of
12 any information regarding anybody seeking
13 information about me.

14 JUDGE CARASSAS: This program is relatively
15 new; right?

16 MR. RAMAGE: Yes, sir.

17 JUDGE CARASSAS: Have you had any requests
18 from a predator to do that?

19 MR. RAMAGE: Again, we would not know unless

20 we ran all the requestors' names to see if they
21 were on the predator list or whatever. And that's
22 not really a function that we've been doing yet, to
23 my knowledge.

24 JUDGE CARASSAS: It's a voluntary program;
25 right? You don't have to submit your name to be on

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1 this list?

2 MR. RAMAGE: You have to subscribe to receive
3 the information.

4 JUDGE CARASSAS: I thought the last time that
5 you were here, or somebody else was here from the
6 department, that they said you stopped the program
7 because of this reason.

8 MR. RAMAGE: I'm not aware. I think the
9 program is still in effect. I think we had to
10 revisit some of the concerns there, but we've got
11 the program in effect.

12 JUDGE CARASSAS: Can a person making a public
13 records request get anything more than just an
14 email address?

15 MR. RAMAGE: The person making the public
16 records request would get a copy -- under existing
17 law, would get whatever information the parent or
18 the individual submitted in order to register. And
19 they have the option, for example, of saying, Let

20 me know if somebody moves within 1 mile of Hill 'n
21 Dale Elementary School. And that would be one of
22 the factors. Or, Let me know if somebody has moved
23 within three miles of a residential address, or
24 something to that effect. So those pieces of
25 information, Hill 'n Dale School, this

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1 neighborhood, over whatever else, are the types of
2 information that -- we're concerned that a predator
3 could take those bits and pieces of information,
4 couple them with other types of on-line searches,
5 Google or whatever else, and put the puzzle
6 together to figure out a specific location for a
7 particular requester.

8 JUDGE CARASSAS: I see.

9 MS. PETERSON: Can you tell me what
10 information you're required to provide to sign up
11 for the service?

12 MR. RAMAGE: I have not tried to sign up for
13 the service, so I can't give you all the different
14 fields. It's my understanding from discussions
15 that you can put in things like I just gave you.
16 You know, certain landmarks, certain neighborhoods
17 within five miles of such and such. And even if
18 you didn't want to provide your residence, you
19 could pick perhaps a school that's in the

20 neighborhood and say within five miles of that
21 school, and that would include your residential
22 neighborhood. So you have different options there.
23 But our concern is that in generating any personal
24 information like that whatsoever, it could be
25 utilized by somebody that's up to no good.

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1 MS. PETERSON: Jeanne?

2 MS. GRINSTEAD: Would it be possible to
3 request the information -- say you want Woodlawn
4 Elementary, the area around Woodlawn Elementary.
5 Couldn't you just give an email address or --

6 MR. RAMAGE: The question is, couldn't you
7 just give an email address. But remember, you can
8 search email addresses on Google and some of these
9 different sites, too. And many people, with their
10 email addresses, don't use fake names. They'll
11 actually use a portion of their name. You know, I
12 have an email that's my name at yahoo.com. And
13 they're not -- people requesting to be put on the
14 notification list may not be sophisticated in terms
15 of thinking about how this might be used by
16 somebody under the Public Records Law. So if they
17 typed in mikeramage@yahoo.com or whatever else,
18 they've inadvertently identified themselves as the
19 requester for the information. So, again, that's

20 our concern, is the bits and pieces of information
21 being submitted to be notified for public safety
22 purposes could jeopardize public safety in the
23 hands of the predators or the offenders.

24 MS. PETERSON: Any other questions?

25 SENATOR DOCKERY: Can I ask a lawyerly

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1 question, a question toward our lawyers? Is there
2 the ability, or do you get into constitutional
3 issues or fairness issues, to -- if a law were
4 passed, the statute was changed to say that even
5 though these are public records, if the requester
6 is somebody with a sexual predator offense in their
7 background, they're not entitled to receive the
8 information? In other words, we would be asking
9 FDLE not to release information to a requester who
10 has that offense in their background.

11 MS. PETERSON: You might be able to do that.

12 But you could not stop the person -- if, say, my
13 brother --

14 SENATOR DOCKERY: To get somebody else to do
15 it.

16 MS. PETERSON: If my brother was a sexual
17 predator, I would have a right to get access to the
18 information, and you could not prohibit me from,
19 then, giving it to my brother.

20 MR. RAMAGE: We would also have a workability
21 problem in that predators might have a common name.
22 So being able to distinguish this requester as
23 being the predator verses this requester with the
24 same name not being the predator would be of
25 terrific concern.

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1 SENATOR DOCKERY: Well, let me be clear where
2 I was coming from with that question, because I
3 understand the proposal in front of us is a good
4 one, and that those people don't need to have their
5 information shared. But it might be a good law
6 enforcement tool to know that predators are seeking
7 out that type of information. Because that might
8 lead law enforcement to believe that they're, you
9 know, trolling around and could be repeating their
10 past behaviors.

11 MS. PETERSON: Any other questions or
12 comments? Do we have a motion to accept?

13 SENATOR DOCKERY: So moved.

14 MS. PETERSON: A second.

15 JUDGE CARASSAS: Second.

16 MS. CARRIN: Carassas?

17 JUDGE CARASSAS: Yes.

18 MS. CARRIN: D'Alemberte?

19 MR. D'ALEMBERTE: No.

20 MS. CARRIN: Dockery?

21 SENATOR DOCKERY: Yes.

22 MS. CARRIN: Grinstead?

23 MS. GRINSTEAD: No.

24 MS. CARRIN: Lee?

25 MS. LEE: Yes.

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1 MS. CARRIN: Peterson?

2 MS. PETERSON: No.

3 MS. CARRIN: It does not pass; three to three.

4 MS. PETERSON: Next, we have a recommendation,

5 that's item number one. And this is the one that

6 basically combined two of them, if I'm correct.

7 One, if you remember, one was to -- one of the

8 recommendations was to protect information provided

9 by nongovernment sources to FDLE, or were

10 non-Florida -- other states, information provided

11 by another state, or by the federal government, or

12 by a private entity that was otherwise protected

13 under other laws -- that would become public record

14 in the State of Florida.

15 And then there was a second proposal to

16 protect or to create an exemption for information

17 used to perform background checks on -- let me see

18 how I worded it here. It was "Create an exemption

19 for information submitted to FDLE and the

20 Department of Business and Professional Regulation

21 with regard to slot machine operations at

22 pari-mutuels."

23 So they wanted to amend the current exemption

24 for non-Florida information, to promote this

25 sharing of information from non-Florida agencies

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1 and private entities, and then create an exemption
2 for information submitted to FDLE with regard to
3 background checks on slot machine operators. And
4 what they've done is combined those two into item
5 number one. And what this would do is provide an
6 exemption, basically, although it's not drafted in
7 the form of an exemption, but it basically creates
8 an exemption for information used to perform
9 background checks related to the granting of a
10 license by the State of Florida. So it's much
11 broader than just the pari-mutuels. Or information
12 relevant to promoting criminal intelligence,
13 criminal investigation, or domestic security
14 efforts. So it's information provided to FDLE that
15 would not otherwise be public except for the fact
16 that it's given to FDLE, including information
17 provided to FDLE for any state agency regarding the
18 background check on any licensed profession. Did I
19 explain that correctly, Mike?

20 Okay. Sandy?

21 MR. D'ALEMBERTE: I'd really love to consider

22 these by separating them, because it seems to me

23 they're very different policy considerations for

24 these two. I can understand why, economically,

25 it's nice to patch them together, but there's

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1 really a different argument between these two.

2 Mike, am I wrong about that? Is there some
3 overwhelming reason to keep them patched together,
4 other than just the ease of having the Legislature
5 adopt them?

6 MR. RAMAGE: Actually, I felt in reviewing it,
7 working with our staff, that the ultimate policy
8 determination is basically the same for both
9 issues, which is the material was not public in the
10 original hands of whoever submitting it or offering
11 it to FDLE. And we felt that the ultimate policy
12 determination is whether Florida should exact a
13 public records toll from contributing entities by
14 allowing a public entity in Florida to take the
15 record and, thereby, making it become public
16 because we've received or compiled the information.

17 With regard to the background checks, you'll
18 notice the draft that we're talking about here is
19 limited to providing it to a criminal justice

20 agency for purposes of doing a background check in
21 conjunction with licensing. The reason we stated
22 it that way, at least as a concept, is we believe
23 that -- our current experience is that more and
24 more, the Legislature is asking that criminal
25 history or criminal-related background checks be

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1 done in the context of licensing. And particularly
2 with racinos, we're finding that the individuals
3 may have gone through a licensing process in
4 another state wherein it's not public. And a lot
5 of the very important information is available at
6 that state, but they will not provide it to us
7 because they don't want their information to become
8 public through the back door. Similarly, the same
9 situation where it's information coming from
10 cooperative agencies in the context of domestic
11 security, et cetera. The original information may
12 not be public, they would be willing to provide it
13 to us, but, again, they don't want their
14 information to become public through the back door
15 because it's been provided to Florida. So we could
16 separate them, but the reason they're combined is
17 because, ultimately, you get back to the same basic
18 public policy issue, which is if information is not
19 public at the originator's point of view and it's

20 of value to a Florida agency, particularly FDLE, to
21 serve a function, should that information become
22 public because it's been provided to FDLE, when
23 it's not public at the original source?

24 And as was presented earlier, down in Fort
25 Lauderdale, the real problem we're having is that

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1 if we can't convince people that it won't become
2 public, we probably don't get the information given
3 to us. Some will, but most won't. And the
4 workability from the racino investigation is that
5 right now, our FDLE investigators have to go to the
6 site where the information is being held by a
7 private entity, view it there, can't copy it, can't
8 make notes, can't compile the information, then
9 they go back and do their licensing review. And if
10 a question comes up, they have to pack up and go
11 back to the lawyer's office or to the racino
12 corporation's office to review the information
13 again. So ultimately, the public policy question I
14 would submit to you and the members of the Council
15 is whether -- if it's originally not public at the
16 source, either because it's private information or
17 it's a state where the information is not public as
18 an agency information, when it's provided to FDLE
19 or a state agency such as FDLE, should that

20 information become public, or can we honor the

21 original status of the information?

22 MR. D'ALEMBERTE: That's pretty convincing to

23 me. But let me make sure I also understand what

24 we're dealing with. Let's take the pari-mutuel

25 situation. After that investigation is done and

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1 someone is denied, what information do we get about
2 reasons for denial?

3 MR. RAMAGE: And that's one of the issues
4 that -- earlier this morning, your discussions
5 about that in the context of your probable cause
6 hearings. That would be something that we would
7 need to address, that if the individual adversely
8 impacted with a non-licensing decision -- I would
9 submit to you nobody would have an objection to the
10 individual who's been adversely impacted being able
11 to see what information was there that impacted,
12 particularly in the situation we're talking about.

13 That same individual has gone through a licensing
14 process in another state or wherever and is
15 probably aware of the information but needs to
16 confirm it. So I see no problem with trying to
17 work an opportunity for anybody who is negatively
18 impacted to be able to see what the paperwork or
19 what was the information, that result of that. I

20 think that's where you're headed.

21 MR. D'ALEMBERTE: That's not here now?

22 MR. RAMAGE: That's not here now, because I

23 didn't even think about it until you had your

24 discussion this morning.

25 MR. D'ALEMBERTE: Okay. Again, with the idea

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1 of having some symmetry to our approach in these
2 things, it seems to me that this is another area
3 where we have symmetry. I find Mike's explanation
4 about public policy to be a compelling explanation.

5 MS. PETERSON: Jean?

6 MS. GRINSTEAD: Barbara, I just had a question
7 on the -- has the having a current exemption for
8 non-Florida information to promote the sharing of
9 information, has this ever come up before?

10 MS. PETERSON: This is an amendment to current
11 law. And right now what current law says is
12 whenever criminal intelligence information or
13 criminal investigative information held by a
14 non-Florida criminal justice agency is given to a
15 Florida criminal justice agency only on a
16 confidential basis, it will retain it's
17 confidential status. This is expanding it from a
18 non-Florida criminal justice agency to any entity.

19 And I do think that we are creating a new

20 exemption here, although it's not stated as an
21 exemption, because right now background information
22 on many people is subject to public disclosure.
23 And I have a concern about that. Because I do hear
24 from quite a number of mostly parents about
25 teachers and principals who have come to Florida,

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1 obtained a teaching license, and they have a
2 criminal record in another state. And the school
3 district has not done the proper investigation.
4 They find out six years later that the principal
5 they've hired is a sexual offender from Georgia.
6 This seems to me, the way it's worded now, would
7 exempt that background information from public
8 disclosure. And in that regard -- you know, I
9 don't have a problem with information, criminal
10 investigative information or intelligence
11 information or even adding the security-related
12 information that's provided to Florida from another
13 criminal justice agency, but this is much broader
14 than that.

15 MS. GRINSTEAD: Because this goes to Florida
16 public agencies, not just FDLE.

17 MS. PETERSON: Not just criminal justice
18 agencies; it's any person or entity. And it's also
19 background check information to the granting of any

20 license.

21 MR. RAMAGE: Madam Chair, let me explain to

22 you that this was just merely a concept we tried to

23 put on paper, because we wanted your comments with

24 regard to this. We knew there would be discussion

25 about this.

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1 With regard to your original question, I think
2 Donna Uzzell may have discussed this, but just to
3 make sure because I wasn't at Fort Lauderdale.
4 After 9/11, we found that information that's vital
5 to protecting Florida's domestic security would
6 often not fit the traditional criminal
7 investigative or criminal intelligence definition.
8 It would be additional information, but it might
9 not be information related to known individuals or
10 leading to the prosecution of a particular
11 individual, which was what prompted the original
12 desire with that regard, that we're getting
13 information maybe from another state's Department
14 of Health regarding the impact of a certain type of
15 biological outbreak, and whether or not there's an
16 adequate number of shots to protect people, et
17 cetera. So it did not clearly fit.

18 After 9/11, you remember, the walls broke
19 down. Part of the conclusion of all the various

20 people that looked at why 9/11 happened was that
21 there were side walls. You had criminal
22 intelligence, you had criminal investigative
23 information, and you had other relevant information
24 coming from other sources, but nobody was sharing
25 the information. So we've learned our lesson, or

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1 hopefully we've learned our lesson from 9/11, to
2 try to do that. So that was the motivation for
3 that. The existing statute has become somewhat
4 dated, because we're getting imported information
5 from other sources.

6 With regard to the licensing, we're focusing
7 primarily on the racino issue, because that's our
8 experience. We have a statutory requirement to go
9 and do the background reviews with regard to the
10 licensing of those individuals in the slot machine
11 industry. And, of course, that's an industry where
12 there's a lot of interest in determining background
13 of those that are going to be licensed or
14 sanctioned by the State to come and work and
15 operate in this state. We can certainly limit that
16 exemption, if that's the Committee's concern, to
17 solely that particular area if there's a concern
18 that it's too broad. But again, we placed a
19 concept of some language here to generate the

20 discussion, and we're certainly going to listen,
21 and we can certainly come back in October and limit
22 that to the casino scenario if that's your desire
23 to do so. We're here to listen and reflect your
24 input.

25 MS. PETERSON: Questions or comments?

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1 I would feel for comfortable taking out the
2 language about background check, myself. I still
3 think it's an exemption and would have to be
4 drafted as an exemption, including the public
5 necessity statement. But I understand the issue
6 about -- because I did work very carefully, very
7 closely on all of those domestic security issues
8 and Departments of Health to provide information
9 that they would not -- so I understand it.

10 I would feel more comfortable deleting the
11 phrase "information utilized to perform a
12 background check related to the granting of a
13 license by the State of Florida." So it would read
14 "whenever criminal intelligence information,
15 criminal investigative information, or information
16 relevant to promoting criminal intelligence,
17 criminal investigative, or domestic security
18 efforts is not a public record." I think, then, I
19 would be more comfortable with that as a

20 recommendation. I'm very concerned about creating
21 an exemption for background check information; even
22 personally concerned in the casino or pari-mutuel
23 industry as well. That's my opinion.

24 But I think it would be better served if we
25 split the two issues out as Sandy has suggested and

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1 consider them separately, because I think that they
2 do have -- I understand your point, but I think
3 that it might go better if they were separated out.
4 But I do think, again, that we have an exemption
5 here, and you would need to add a public necessity
6 statement.

7 Any other questions, comments?

8 MS. LEE: I agree with splitting them out.

9 SENATOR DOCKERY: Well, it seems like somebody
10 raised a very good point -- it may have been you,
11 Madam Chair -- about the teachers and background
12 checks, and that wasn't really answered. Can we
13 continue the conversation on that and how it
14 relates to what's in front of us?

15 MS. PETERSON: The way I read this is that
16 information utilized to perform a background check
17 related to the granting of a license by the State
18 of Florida would be exempt from public disclosure.
19 So, for example, when the State of Florida has to

20 provide a license to anyone who wants to teach in
21 the State of Florida, the background check
22 information performed on that teacher before the
23 granting of a license would not be subject to
24 disclosure, the way that I read this.

25 We had the argument made, you remember, a few

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1 years ago in the Legislature about licensing home
2 medical equipment suppliers, and the Legislature
3 wanted to create an exemption for background check
4 information on those people. And it was pointed
5 out that home medical equipment suppliers are going
6 into the homes of people not really able to protect
7 themselves, and there was no oversight to make sure
8 that we weren't giving criminals access to that
9 information. The mortgage broker story out of
10 Miami, where we were licensing mortgage brokers in
11 Florida who had really horrible criminal history
12 records and who shouldn't have been licensed. The
13 way I read this is that that background check
14 information would not be subject to disclosure if
15 it was exempt from the providing agency. So, for
16 example, it's exempt in Georgia, teaching
17 background information is exempt in Georgia. If
18 Georgia gives it to Florida, it would not be
19 subject to public disclosure in Florida.

20 SENATOR DOCKERY: So what you're basically
21 saying is any time a state agency in Florida has
22 background check information, it ought to be public
23 record?

24 MS. PETERSON: If we're talking about a
25 licensed professional, yes. I think it should be,

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1 in terms of public oversight, if that's the purpose
2 of public oversight. We want to make sure that the
3 Department of Health is not licensing doctors who
4 shouldn't be licensed, and the only way we have
5 that opportunity is by access to that background
6 check.

7 SENATOR DOCKERY: And then the second part of
8 what they were asking for, that you're talking
9 about splitting out, has more to do with the
10 pari-mutuels' trade secrets or methods of
11 operation.

12 MS. PETERSON: What I'm talking about
13 splitting out is the background check, which would
14 apply to any licensed professional, including the
15 pari-mutuel -- that is a new issue -- and then
16 separating out information that relates to criminal
17 investigations or security investigations. If that
18 is not -- right now under current law, if a
19 non-Florida agency, say the FBI, gives FDLE or some

20 other criminal justice agency information that the
21 FBI keeps secret, under current law, it remains
22 secret in Florida. This is expanding it slightly
23 to include domestic security issues and
24 non-criminal justice agencies. So if, say the CDC
25 gave Florida Department of Health information

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1 related to a bio-terrorist agent that is being
2 worked on, DOH would be able to keep that
3 information secret because the CDC keeps it secret.

4 Is that correct, Mike?

5 SENATOR DOCKERY: But Mike, even though that
6 was an accurate representation, do we risk Florida
7 not gaining federal information if we don't give
8 that protection from disclosing information?

9 MR. RAMAGE: The risk is not so much from
10 federal sources, because they have independent
11 protections for a lot of their material. But other
12 states, a lot of states -- you know, we live and
13 breathe public records because we're Florida. But
14 there are a lot of states where it's a matter of
15 policy, records are not public except where
16 specifically made public, versus records are public
17 except where specifically not made public, which is
18 the philosophy in Florida. So with the experience
19 after 9/11, we have a lot of information that is

20 flowing that is of relevance to domestic security
21 that could come from non-federal sources and
22 non-Florida sources. And that's -- our concern is
23 that that information may very well be nonpublic
24 under the policies and the procedures and the
25 operational standards of an originating state, for

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1 example, Utah, or some of the other states that are
2 fairly closed fist with their records. It's
3 relevant to protecting Florida. They'd be willing
4 to give us a copy of it, but they don't want,
5 through the back door, that which nobody in Utah
6 has access to, to be able to come under Florida's
7 Public Records Law and suddenly get access to it
8 because they've shared it with FDLE. That's the
9 concern that is raised is, We'd give you the
10 information, but you've got to promise us that it
11 won't become public, because it's not public in our
12 hands. And the existing law, which is the
13 modification before you there, relates to criminal
14 investigative and criminal intelligence information
15 from criminal justice agencies. And we're well
16 beyond those limitations in this post-9/11.

17 There are many other potential submitters out
18 there. So do you run a risk or are we running a
19 risk that Florida domestic security efforts are

20 handicapped or somehow disadvantaged by reason of
21 the existing public records? I would submit to you
22 yes. There is information out there, written
23 information, documentary information that could be
24 provided to Florida, that will not be provided to
25 Florida because it's not public at the originator's

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1 hand and they don't want it to become public in
2 Florida's hands. Does that answer your concern?

3 Could I make one other comment about the
4 background checks that you're talking about? The
5 way we drafted this, and, again, this was just a
6 concept, was that it was background checks being
7 conducted by a criminal agency, criminal justice
8 agency. There were not many that we're charged
9 with under the statute to do. Racinos is
10 specifically one. So if Department of Education
11 was running its own background check, et cetera,
12 what I intended from this wording was to limit it
13 to backgrounds being conducted by Florida criminal
14 justice agencies, which is the way it's set up in
15 the existing statutes.

16 But, again, I understand your concerns. Just
17 wanted to clarify that the original intent of the
18 draft before you was limited to background checks
19 by criminal justice agencies.

20 MS. GRINSTEAD: And any information, anything
21 considered criminal investigation, would not become
22 a public record to any law enforcement agency in
23 the State of Florida; correct?

24 MR. RAMAGE: Under the existing law, if a
25 non-Florida criminal justice agency provides

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1 criminal intelligence or criminal investigative
2 information on an eyes-only basis or a restricted
3 basis, we can maintain that restriction. But it's
4 limited to submission by criminal justice agencies,
5 non-Florida criminal justice agencies. And it's
6 also limited -- the type of information they can
7 provide has to fit into those categories of
8 criminal intelligence or criminal investigative
9 information.

10 MS. PETERSON: Renee, did you have a question?

11 MS. LEE: No, not at this time.

12 MS. PETERSON: Sandy?

13 MR. D'ALEMBERTE: I want Mike, since he's
14 still here, I'd like to get a sense about how you
15 come out on this pari-mutuel issue. Because it
16 seems to me that may be a special issue, one that's
17 very much in front of the agency now. It is a very
18 real problem they've got. Do you feel
19 comfortable -- and let me say I do feel comfortable

20 having them get information from other states and
21 keep it confidential where it's kept confidential
22 in that other state.

23 MS. PETERSON: I have a problem keeping
24 background check information confidential. And I
25 haven't yet been convinced that the pari-mutuel

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1 industry is not going to come to Florida if we do
2 background checks on their employees. I am
3 comfortable with the criminal intelligence,
4 criminal investigative, even if it's a non-criminal
5 justice, because I do know that -- for example, CDC
6 wants to share information with the Florida
7 Department of Health and I don't mind that. I
8 don't have a problem with that expansion. I do,
9 and maybe what I just need to see is a
10 justification for it that is a little bit more
11 convincing than what I've heard so far, but I do
12 have a problem with background checks.

13 MS. LEE: I do have a question.

14 MS. PETERSON: Yes, Renee?

15 MS. LEE: We recently had a situation in
16 Hillsborough County where several people were
17 arrested for participating in organized crime. How
18 would the department have gotten background on
19 those people? And does that fall into what we're

20 talking about here?

21 MR. RAMAGE: Any arrest in Florida would

22 generate criminal history information, and that

23 would fall under the more traditional criminal

24 intelligence or criminal investigative information

25 categories that I related earlier. And being in

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1 Florida, there would be a sharing of that
2 information. If I could take that example, if
3 you're in another state where -- actually, those
4 criminal history, criminal investigative, criminal
5 intelligence information, we'd already -- that's
6 already covered by existing law. So we would get
7 information that those people had been arrested or
8 had been charged with and that would be part of our
9 background check.

10 And Ms. Peterson, remember, as we do our
11 background checks, there will be portions of it
12 that are legitimately going to be a public record.
13 The only portion that we're trying to address is
14 where there is another entity out there, private
15 entity, another state entity, an entity from
16 another state or wherever, where they have
17 information that would assist in the evaluation of
18 whether this person ought to be licensed or not,
19 that is not public in their hands. Obviously,

20 private information is not public. And they would
21 be willing, you know, they are willing to share
22 that information.

23 We have agents that actually go and travel to
24 private locations now, lawyers' offices or places,
25 and look at files. They are not willing to let us

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1 make copies of those and compile the information
2 and, thereby, make it a public record, because it's
3 not public in their hands. They don't mind us
4 looking at it. They don't mind us taking the
5 information into account. They don't want it to
6 become a public record that anybody can look at,
7 anybody can take a view at, because of the
8 sensitivity of the private information.

9 With regard to other state licensing efforts,
10 if their state law doesn't make those records
11 available to the public under the originating
12 state, you can understand why they'd be reluctant
13 to turn it over to Florida and have it become a
14 public record. Because anybody from the
15 originating state can come under Florida's Public
16 Records Law and make a request for a copy of it.
17 So, again, they've gone through the back door to
18 get what they couldn't get through the front door.

19 So our experience is more of a practical

20 problem. We're not able to take copies and put
21 them in a file in our offices and have those copies
22 in front of us while we're looking at the state
23 information, other public information, et cetera,
24 and make a decision. We have the public
25 information that's available to us on this side,

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1 but if we have a question that comes up with regard
2 to what was it that was in that file that was at
3 the lawyer's office, we don't have a copy, and we
4 have to hop back in the car and go back and look at
5 the file again. So it's really a practical
6 workable situation where Florida's public records
7 policy has run into the interests of individuals,
8 either private or in states that are not public
9 records, to maintain the original status of the
10 records.

11 MS. PETERSON: And as you pointed out, most
12 states are more restrictive than Florida. In some
13 states personnel records are not subject to public
14 disclosure. And that's, I guess, what causes me
15 some concern. Again, I would be -- I think feel
16 better if the two issues were separated back out,
17 and we could consider them independently of one
18 another. Because adding the background to the
19 domestic security and the criminal intelligence

20 does bother me. And maybe what we could do is

21 separate them out and bring it back tomorrow so

22 that we can actually look at language. Or do you

23 feel more comfortable just making a motion to

24 separate them out and voting on them separately?

25 MR. D'ALEMBERTE: I like -- I think we've had

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1 a very responsive conversation here with the
2 department, and it would be interesting, I think,
3 to come back and look at it again. Because we've
4 got several issues here, including what I consider
5 the due process issue of the person who is denied a
6 license. They ought to, at some point, be able to
7 find out why they were denied. And that, I think,
8 Barbara seems to be sympathetic to that, and I
9 gather there's some sympathy to not drafting this
10 in a way that takes in all other background checks.

11 But it would also be helpful if we could have
12 some illustrations on the pari-mutuel check,
13 because my understanding is we have people in
14 Florida seeking licenses in Florida who are denied
15 licenses in other states, and Florida would like to
16 have the information that's available in the other
17 states. And there may be a way to craft this quite
18 narrowly to get to that very specific information
19 from other states' pari-mutuel agencies. I don't

20 know enough about the details. But I do know it's
21 a big practical problem with people doing this kind
22 of background check.

23 MS. PETERSON: Judge?

24 JUDGE CARASSAS: I think it's too broadly
25 written. I would vote no if we were going to ask

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1 to vote on the proposal right now. My concern is
2 that we end up taking the Open Government laws in
3 Florida, which are one of the best in the country,
4 and dumbing them down -- I hate to say that; I
5 wasn't going to use that word -- but taking all
6 these other states' exemptions, which may be
7 well-founded -- they have their own reason, each
8 state makes it own decision on how to do something
9 like this -- and then we end up adopting all these
10 other exemptions, which our Legislature and our
11 government has said no, that should be open. I
12 know we talked about back door, and I respect
13 Mr. Ramage a lot, but it almost seems like -- our
14 point of view, from our Commission's point of view,
15 it almost seems like we're opening the door that
16 any exemption from any other state, in direct
17 contradiction to what we decide as a state to have.
18 So I think it's entirely too broadly written.

19 If the criminal protection was in there

20 already, criminal agency to criminal agency, I
21 think that is fair and reasonable. They have to be
22 able to communicate with one another. But when you
23 start going into other agencies, I can come up with
24 many examples that probably don't merit exemption.
25 MS. PETERSON: And I was going to suggest that

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1 if the two were separated out and we expand the
2 criminal justice to criminal justice for, say the
3 CDC to the Department of Health, there would be
4 some required statement from the CDC, that would be
5 public record, that we're only giving you this
6 information on the condition of. I mean, there's
7 going to have to be -- I understand your point
8 entirely, and it's as if we're changing that
9 presumption of openness unless it's closed in
10 another state. And Florida does have a
11 constitutional standard different from any state in
12 the country, and we have to respect that. And I
13 think that we need to -- if we're going to -- I
14 have the same -- the way this is written is much
15 too broad for my comfort level. And the background
16 check information is an issue for me, as well. So
17 Jeanne has the same --
18 So what's your pleasure here? Do we want to
19 revisit it, and give them an opportunity to,

20 perhaps, redraft and see if we can come up with
21 something that's a little bit tighter, separate
22 them out a little bit tighter for consideration,
23 maybe postpone this one until tomorrow, postpone it
24 until October? It might -- tomorrow might not
25 really give them enough time to work on it.

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1 SENATOR DOCKERY: Do they want until October?

2 MR. RAMAGE: I will try for tomorrow, but I
3 don't know that I can promise for tomorrow. You
4 know, once you try to get into trying to do this
5 stuff, it sometimes gets more difficult. You have
6 to reach out to people for information, but if we
7 can pull something together in a timely fashion,
8 knowing you have a fairly full agenda tomorrow,
9 I'll certainly contact you and let you know that we
10 have something and see, with the Chair's
11 permission, if you want to add it at the end of the
12 agenda. Otherwise, it would be October.

13 MS. PETERSON: So I think what we're going to
14 have to do, we -- actually, in our recommendations
15 here, we have them split out, but I think I'm going
16 to need a motion to split the two issues out, and
17 then direct FDLE to come back to us.

18 SENATOR DOCKERY: I believe Sandy made that
19 earlier.

20 MS. PETERSON: Okay.

21 MR. D'ALEMBERTE: Motion, but take away the

22 word "recommended."

23 MS. PETERSON: Ask, plead.

24 MS. LEE: Second.

25 MS. PETERSON: Okay. So it's seconded. We

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1 can do a voice vote on this one. All in favor?

2 (A chorus of Ayes.)

3 MS. PETERSON: Anybody opposed? Okay.

4 MS. CARRIN: Madam Chair, I would recommend

5 that we do put this at the end of the agenda for

6 tomorrow, because by the October meeting, we really

7 need final language on the recommendation the

8 Commission is going forward with.

9 MS. PETERSON: And we may have to wrangle it

10 up. It's a big issue. Do your best, please, to

11 get it to us tomorrow. But if you can't -- I mean,

12 we could look at your language. If you give it to

13 us in October, will have to be as specific as

14 possible.

15 MR. RAMAGE: I think the security aspect we

16 can certainly have by tomorrow. It's the licensing

17 and having to reach out to the racino folks and

18 trying to get that. I'll do my best.

19 MS. PETERSON: Okay. Thank you.

20 We have, also, if you look on number nine on
21 the list of recommendations, we do have a few other
22 recommendations related to law enforcement that
23 were not brought up by FDLE but were brought to us
24 through testimony. There was a recommendation that
25 we amend the exemptions for pre- and

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1 post-sentencing investigations, to allow access to
2 records, to the pre- and post-sentencing
3 investigative records, to allow access once the
4 investigation is complete or no longer active.
5 Currently those records are exempt from public
6 disclosure. And we have had a number -- we had a
7 recommendation, and I believe that this was an
8 issue brought before the Legislature five or six
9 years ago, but I don't think it went anywhere. I'd
10 have to go back and check, but I believe there was
11 information -- there wasn't legislation filed.

12 And the issue was, again, that the person
13 subject to the pre- and post-sentencing
14 investigative report doesn't have access to the
15 report and doesn't know what is in that report and
16 why. So --

17 SENATOR DOCKERY: Is the recommendation here
18 only for that individual, or for it to be open
19 to -- records to be open to anybody?

20 MS. PETERSON: The recommendation was that
21 they be open to anybody. I believe it was the ACLU
22 that brought this recommendation to us or one of
23 the civil rights groups.

24 Any questions? Discussion? Do we have a
25 motion to accept the recommendation?

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1 SENATOR DOCKERY: Madam Chair, could I hear
2 from the Judge, his opinions?

3 JUDGE CARASSAS: I don't think I have an
4 opinion on this one.

5 SENATOR DOCKERY: This one is a little out of
6 my --

7 MS. PETERSON: And we didn't get a lot of
8 information. It was one of those recommendations,
9 it was recommended and was -- I want to say it was
10 at the Kissimmee meeting, where we had all those
11 people testifying about clemency and restoring of
12 rights and all of that, that by keeping -- I mean,
13 it's certainty -- certain information, like victim
14 information and the identity of people who are
15 providing information, you'd want to keep that
16 exempt from public disclosure. We're not talking
17 about opening up everything. But releasing the
18 report, the findings of the investigation, while
19 keeping the identity of certain people exempt from

20 public disclosure, I think you would have to do

21 that.

22 SENATOR DOCKERY: So what agencies would we be

23 asking to release the information? Would it be the

24 court system or would it be the individual

25 sheriffs' offices, the individual Police

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1 Department?

2 MS. PETERSON: Mike, can you tell us anything
3 about the pre- and post-sentencing investigative
4 reports?

5 MR. RAMAGE: No, ma'am. I don't know what
6 prompted the request or where the issue is. I'm
7 sorry.

8 MS. GRINSTEAD: I just don't feel like I have
9 enough information to make an intelligent decision
10 on this one.

11 MS. PETERSON: Okay. And as I said, there
12 wasn't much more than just a suggestion.

13 MR. D'ALEMBERTE: Barbara?

14 MS. PETERSON: Yes?

15 MR. D'ALEMBERTE: Aren't we dealing with a
16 policy consideration that's virtually identical to
17 our decision on probation?

18 MS. PETERSON: On the clemency?

19 MR. D'ALEMBERTE: Yes.

20 MS. PETERSON: Yes. Basically, it came out of

21 that same discussion.

22 MR. D'ALEMBERTE: I mean, it seems to me that

23 there is no difference in the policy discussion.

24 And I'd at least go as far as the Judge's motion

25 and make the information available for the person

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1 who's impacted, but I also would like to keep on
2 the table the possibility to go beyond that. So
3 I'd go as far as the Governor has gone with
4 clemency now.

5 Keep in mind, or keep on the agenda, the
6 possibility that when we get back to clemency, that
7 we reexamine this pre-sentencing and
8 post-sentencing reports along with that. It's,
9 basically, I believe, the same kind of information.

10 MS. PETERSON: It's a fairness issue, yes.

11 MR. D'ALEMBERTE: So it seems to me there is a
12 certain consistency here, that we could go forward
13 now, at least, on a piece of this, that I feel
14 comfortable with, without further information. But
15 I'd really want to know, is that -- I want to know
16 with clemency about taking that other step without
17 making it fully available.

18 MS. PETERSON: Judge?

19 JUDGE CARASSAS: That's the difference. The

20 clemency issue was clear. We had a lot of
21 testimony on that. This, to me -- I agree with
22 Jeanne. This was not as clear to me. That's why I
23 didn't make a motion. That's why I didn't say
24 anything about it. In my opinion, we're going to
25 have to stand behind our final recommendation. And

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1 if we're not sure, we shouldn't recommend it, and
2 we shouldn't vote on it, especially if there's no
3 clear request. So that's where I am on this issue.
4 It might be a good idea, but we're running out of
5 time. I'm not ready to make a motion or vote on it
6 today. So that's it.

7 I think Sandy is right. If we want to discuss
8 it further, we can. But there's only so many
9 things we can take over to the October meeting. I
10 think we've got to decide now, either we're going
11 to vote on it or not, or move on.

12 MS. PETERSON: Well, the clemency we put on
13 the end of the agenda tomorrow, too, to decide
14 whether we're going to broaden it or not. We
15 adopted the recommendation, the Governor's
16 proposal, but we put it on the end of the agenda
17 tomorrow, whether we will allow access by anyone
18 other than the petitioner. So we could discuss it
19 at greater length, maybe the pre- and

20 post-sentencing investigations and we can think

21 about it.

22 It was brought to us in terms of a fairness

23 issue, again, that these investigative reports --

24 it was brought to us in terms of the fairness

25 issue, as Sandy said. It was with the same

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1 testimony we received on the clemency, if I'm
2 remembering correctly, that people representing or
3 wanting to represent some of these people need
4 access to that information to fully represent them,
5 and they're not getting that, is my recollection.

6 MS. LEE: And Madam Chair, let me just add my
7 voice to those that say they don't know enough,
8 because I don't either. And I certainly can see
9 the benefit of doing this. Certainly, a person can
10 identify any mistakes in their sentencing or some
11 other things that might have gone wrong, but I'm
12 not sure I understand the down side of this
13 information. And I'd like to be able to do that
14 before I vote as well.

15 MS. PETERSON: Well, let's see if we can
16 get -- it's difficult to do that much research in
17 such a very short period of time.

18 MS. LEE: Maybe somebody knows.

19 SENATOR DOCKERY: Madam Chair, did this come

20 up as a question of wrongful incarceration? Would

21 it -- do you know what the genesis is?

22 MS. PETERSON: No, I don't know the genesis.

23 So the consensus is we're going to put this

24 aside for now, maybe revisit it with the clemency,

25 and see if we can't get some more information about

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1 it? Okay.

2 MR. D'ALEMBERTE: And we ought to think about
3 who we want information from. John may be able to
4 identify local judges, or court administrators, or
5 others who could come in on short notice and give
6 us some background.

7 MS. PETERSON: Okay. Then the last one under,
8 I think it's the last one of the FDLE, excuse me,
9 law enforcement exemptions, this is one that was
10 not brought to us by FDLE, but it was brought to
11 us, I think, in written testimony by a citizen.

12 Under the exemptions for home addresses of various
13 employees -- law enforcement officers, judges,
14 state's attorneys, code enforcement officers -- the
15 home address of current or former employees in
16 those protected classes are exempt from public
17 disclosure. This woman wrote to us and asked us to
18 consider amending that exemption, to clarify that
19 the information -- address information, and another

20 issue was photographs -- is not exempt when the
21 employee -- and this case, it was a law enforcement
22 officer -- is a convicted sex offender. We have a
23 law enforcement officer who was a convicted sex
24 offender, and as you know, they have to register,
25 and he was claiming that his home address was

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1 exempt under current law, even though he's a sex
2 offender. And I believe it was one of the
3 newspaper editors who had the same complaint about
4 photographs, or a similar complaint about
5 photographs. Those photographs are exempt. But a
6 former employee is a convicted felon, and we don't
7 have access to the home address or the photograph.
8 So that was a second recommendation that was made.

9 So amend the address exemptions in Chapter 119
10 to clarify that the information is not exempt. The
11 recommendation was for a law enforcement officer,
12 but I think it would apply to any one of those
13 protected classes of employees when the person is a
14 convicted sex offender.

15 MS. LEE: Move approval.

16 MS. PETERSON: Do we have a second?

17 MR. D'ALEMBERTE: Second.

18 MS. PETERSON: Do we have any discussion?

19 JUDGE CARASSAS: Madam Chair, if you're a

20 convicted sex offender, you lose your exemption; is

21 that basically it?

22 MS. PETERSON: You lose the exemption for your

23 home address and your photo.

24 MS. GRINSTEAD: And are we going to be

25 specific that it's only sex offenders or other --

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1 MS. PETERSON: The recommendation was only sex

2 offenders and predators, sexual predators.

3 I think we had a second, didn't we?

4 MR. D'ALEMBERTE: Yes.

5 MS. CARRIN: Carassas?

6 JUDGE CARASSAS: Yes.

7 MS. CARRIN: D'Alemberte?

8 MR. D'ALEMBERTE: Yes.

9 MS. CARRIN: Dockery?

10 SENATOR DOCKERY: Yes.

11 MS. CARRIN: Grinstead?

12 MS. GRINSTEAD: Yes.

13 MS. CARRIN: Lee?

14 MS. LEE: Yes.

15 MS. CARRIN: Peterson?

16 MS. PETERSON: Yes.

17 MS. CARRIN: Pass.

18 MS. PETERSON: Okay. Barriers to Employment.

19 This is under number ten. Do we have -- we have

20 Senate Bill 2152 that was considered during the
21 2008 session, and the recommendation is to amend
22 the statute to allow greater protection of juvenile
23 criminal history records -- am I correct, Senator
24 Dockery -- in order to facility employment.

25 SENATOR DOCKERY: Yes.

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1 MS. PETERSON: You can see the bill -- if I
2 remember correctly, I think, Senator Dockery,
3 didn't you recommend this to us, Senate Bill 2152?

4 SENATOR DOCKERY: I don't think it was me. I
5 think it was some of the people that came to
6 testify.

7 MS. CARRIN: I believe you're correct. But I
8 do think you referenced this bill as something that
9 had come from your committee, and I think it deals
10 with adult offenders.

11 SENATOR DOCKERY: Yeah, you're throwing me off
12 with juveniles. Because, actually, we didn't even
13 talk about juveniles. We were talking about people
14 who have served their time were having barriers to
15 employment, and it's in our best interest to help
16 get people employed so they're not back in the
17 criminal justice system, so we were looking at what
18 those barriers were. And, in fact, our bill
19 originated from a Governor's commission or

20 committee that had wound up its work, led by -- and
21 her name is escaping me right now. But they
22 testified at our committee, and we kind of got a
23 little bold in our thinking, and it passed off the
24 Florida Senate with a pretty good number, but the
25 House didn't decide.

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1 MS. PETERSON: This does not actually create
2 an exemption, Senate Bill -- and I think JoAnn is
3 correct. Someone brought it to our attention and
4 you referenced the bill, Senator, and it is
5 different from some of the other bills that were
6 considered that would create exemptions. This does
7 not do that.

8 SENATOR DOCKERY: Ours had to do with filling
9 out applications and whether you have to admit to a
10 offense if there was -- if adjudication was
11 withheld. So it didn't have anything to do with an
12 exemption.

13 MS. PETERSON: And just look at section one
14 here -- it's Tab 19 -- The Legislature -- "It's the
15 role of the state to provide prospective employees
16 a clear statement of which crimes would disqualify
17 ex-offenders from which occupations." In other
18 words, if you've been convicted of theft, we're not
19 going to let you be a bookkeeper. And I think its

20 intent is to give people a clear idea of what
21 barriers there might be. And this does not create
22 an exemption to public records.

23 SENATOR DOCKERY: Correct. And the staff
24 director of the Criminal Justice Committee for the
25 Senate just walked in, so if you have a specific

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1 question --

2 We'll put you on the spot. We're talking
3 about the Barriers to Employment Bill that we had
4 up in committee last year. And it's my
5 understanding we did not create a new exemption.
6 Our issue dealt with filling out applications,
7 where adjudication was withheld, what they had to
8 disclose or not disclose.

9 MADAM DIRECTOR: I'd have to look at the bill.

10 SENATOR DOCKERY: We have a copy of the bill
11 here.

12 MADAM DIRECTOR: Which Tab is it?

13 MS. PETERSON: Tab 19.

14 Again, why don't we take a little 10-minute
15 break and let them review this, and then we'll come
16 back to it.

17 Jeanne, yes?

18 MS. GRINSTEAD: So if we were to do this, we
19 would amend statutes to allow greater protection of

20 criminal histories?

21 MS. PETERSON: No. Actually, this is wrong.

22 That recommendation ten is -- I misstated.

23 MS. GRINSTEAD: We'll restate it.

24 MS. PETERSON: We'll restate it when we come

25 back.

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1 So we'll take a 10-minute break. Come back at
2 3:00 o'clock.

3 (Whereupon, a recess was had in the
4 proceeding.)

5 MS. PETERSON: Let's get started again. JoAnn
6 just told me that we're going to have -- the Staff
7 Director from Senate Criminal Justice will talk to
8 us tomorrow, give us a little bit more information
9 about the pre-sentencing investigative reports, and
10 then we will have someone here tomorrow morning
11 from Enterprise Florida to talk to us about the
12 economic development agency.

13 And so we left on the confused note of number
14 ten, barriers to employment.

15 SENATOR DOCKERY: Madam Chair, I would make
16 the recommendation that this Commission does not
17 really need to take action on that. That's a bill
18 that we did last year that we're probably going to
19 refile and do this year. And so it would be nice

20 for you to know what's in it, but it's not

21 something that this Commission has to take action

22 on.

23 MS. PETERSON: That's very easy. Good. It

24 makes my report ten pages shorter. Okay.

25 Next, we go on to number 11, the Litigation

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1 and Attorney Work-Product exemption. Did you have

2 any --

3 We don't have a tab on that. Is that correct,

4 JoAnn?

5 MS. CARRIN: I believe that is correct. There

6 have been documents from previous meetings that

7 have been reviewed.

8 Commissioner Lee, did you have something that

9 you wanted to --

10 MS. LEE: Yes.

11 Madam Chair, these two items, while they look

12 very simple here under number 11, are very dense

13 and complex in terms of what the different

14 organizations have asked for. As you probably

15 remember, we've received requests from both the

16 Florida Bar and the Florida Association of County

17 Attorneys. Those requests number about seven or

18 more individual items under the litigation

19 exemption and under the work-product exemption.

20 What I'd like to see is for us to list those out,
21 as we've done in number 9, identify each of those
22 and maybe vote on them separately versus under
23 this -- under the way they are listed now. I just
24 don't think it gives us enough information to
25 understand the requests that have been made.

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1 MS. PETERSON: Okay. The problem that I have
2 is I left all of my materials in New Mexico.

3 MS. LEE: We have a great staff.

4 MS. PETERSON: So if we can defer this until
5 tomorrow and somebody can get that specific
6 information. One, if you see on the -- not on the
7 agenda, but on the list of recommendations -- one
8 is to expand the litigation exemption under the
9 Open Meetings Law. The second is to expand the
10 attorney work-product exemption under the Public
11 Records Law. So we will defer discussion of that
12 until tomorrow and somebody will get us specifics
13 on each item?

14 MS. LEE: I think we can do that. And I'll be
15 happy to work with you.

16 MS. PETERSON: Because as I said, I left all
17 of the background -- it is, I think, a huge amount
18 of material. You can't imagine the piles in my
19 office.

20 MS. LEE: Thank you for that.

21 MS. PETERSON: Okay. Number 12, the Names of

22 Retirees. It's -- Tab 20, is the current

23 exemption. If you remember Lucy Morgan's testimony

24 at Fort Lauderdale on this issue, she was doing a

25 story about the double and triple dippers and had a

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1 lot of problem getting information out of -- from
2 the government agency. And the exemption that is
3 at issue here are the names and addresses are
4 confidential, but only to the extent that they are
5 provided in aggregate or compiled or list form.

6 So if I go and say, I want John Smith's
7 retirement, the name and address. I have the name.
8 If I want the record, I can ask for it
9 specifically. But if you read this, you can't have
10 a list of it, but you can provide the names and
11 addresses to a bargaining agent, to a retiree
12 organization. So AARP can get them, but Lucy
13 Morgan, doing an investigative story, can't get
14 them. And her recommendation was that this be
15 amended to allow access in an aggregate or list
16 form. And you notice here that any person may view
17 or copy the record one at a time. So she's trying
18 to do a state-wide story on abuse of the system,
19 she can't.

20 SENATOR DOCKERY: She wants the raw data.

21 MS. PETERSON: She wants the raw data. And

22 this allows access to the records one at a time.

23 And you wonder why the name of the retiree --

24 I think, you know, perhaps, the address -- but I

25 don't even quite understand that. The exemption is

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1 just sort of odd to me, and I think Lucy pointed
2 that out much more succinctly and poignantly than
3 I.

4 Do we have any discussion?

5 JUDGE CARASSAS: What exactly would we be
6 voting on here?

7 MS. PETERSON: Well, she didn't give us any
8 specific thing but to amend the exemption to allow
9 for greater public access and oversight. And I
10 haven't -- because I haven't gotten to this one yet
11 in the report, I haven't really thought it through
12 completely as to what we should do with this. I
13 really don't understand why a list of retirees
14 would be so sensitive that it should be exempt from
15 public disclosure. I believe --

16 JoAnn?

17 MS. CARRIN: Thank you. As a long-term state
18 employee, and hopefully not too distant future
19 retiree, I believe the exemption was originally to

20 protect retirees from massive mailing lists and
21 solicitations from, you know, commercial entities,
22 scam artists, that sort of thing. It was really a
23 protection of the retirees.

24 MS. PETERSON: Like junk mail?

25 MS. LEE: I wonder, too, how much other

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1 information might be attached to that list, like

2 their social security number or --

3 MS. PETERSON: Remember social security
4 numbers are already exempt from public disclosure.

5 MS. LEE: Right. And what about former law
6 enforcement people or code enforcement officers
7 who --

8 MS. PETERSON: Their home address is exempt.

9 MS. LEE: Right. Would that appear on the
10 retirees list?

11 MS. PETERSON: It would be exempt from the
12 retiree's list if, say it's a law enforcement
13 officer, under the home address exemption. The law
14 enforcement officer, the judge, or the fire fighter
15 has to notify all nonemployee agencies that they
16 are, in fact, a law enforcement officer, and the
17 home address is exempt. So if we had an FDLE agent
18 retired, and they notified DMS that they were a
19 former FDLE agent, their home address would remain

20 exempt from public disclosure.

21 MS. LEE: But they'd have to actively put the

22 department on notice that they were former law --

23 MS. PETERSON: Right. Because the department

24 would not otherwise know that.

25 MS. LEE: Okay. I'm not inclined to support

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1 it.

2 MS. PETERSON: Jean?

3 MS. GRINSTEAD: It's just odd to me, too,
4 reading it, that the agency can provide the name to
5 a retiree organization or a bargaining entity but
6 not to the public. I guess I just don't understand
7 the --

8 MS. PETERSON: Exactly. Because if you're
9 going to get information, mass mailings, it's going
10 to be AARP. I mean, as soon as you turn 50, you
11 start getting mass mailings from AARP. So the -- I
12 think what Lucy was specifically talking about was
13 allowing some opportunity for oversight. We can
14 look at the records one by one, but we can't get a
15 list. And this is not -- this is the names and
16 addresses. We're not getting access to information
17 about their individual retirement accounts. That
18 is exempt from public disclosure. So their amount
19 of retirement, the individual retirement

20 information, isn't. These are simply the names and
21 addresses of people who have -- a list of the names
22 and addresses of people who are in the retirement
23 system is exempt from public disclosure.

24 MS. LEE: Does that kind of go against the
25 whole idea that we don't have to create public

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1 records? By putting it in a list, we are creating

2 a public record that does not exist.

3 MS. GRINSTEAD: Although, according to this,

4 you can get it one at a time.

5 MS. LEE: Yes.

6 MS. GRINSTEAD: But you just can't get a list.

7 MS. LEE: But you've got to know what you're

8 looking for.

9 MS. PETERSON: Well, you can get it one at a

10 time, and, as I said, the bargaining agency and the

11 AARP can get it in list form. I don't know if

12 Department of Management Services keeps a list, the

13 database would be public record and then there

14 would be information in that that would be exempt

15 from public disclosure. The names and addresses

16 are, generally. So what they're saying is, if I

17 wanted the database of retirees, I can't get the

18 names and address in a list or aggregate form. So

19 if I ask for the database, they're going to redact

20 the names and addresses. It's a very confusing

21 exemption.

22 SENATOR DOCKERY: Does anybody know what

23 current law is now on the names and addresses of

24 government employees?

25 MS. PETERSON: Names and addresses of

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1 government employees, as a rule, are subject to
2 public disclosure. So, for example, if Department
3 of Management Services has a list of all of its
4 employees, the names and addresses of those
5 employees, that list, is a public record. There
6 may be some employees who used to be a law
7 enforcement agent and their home address -- they
8 told DMS that they used to be a law enforcement
9 agent so their home address might be exempt from
10 public disclosure. But as a rule, if they created
11 a record that has all of the employees, a list of
12 all employees, their names and addresses, those
13 names and addresses are subject to public
14 disclosure.

15 SENATOR DOCKERY: Well, if that's not exempt
16 from public disclosure and those are current laws,
17 what would be the sensitive nature of having an
18 exemption for retirees?

19 MS. PETERSON: If I remember correctly, the

20 justification was that these people are retired and

21 need more protection because they're retired.

22 SENATOR DOCKERY: I would make the opposite

23 argument, that if you're in a government job who

24 denies licenses or where you might be creating some

25 enemies, you might need, for security purposes, a

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1 little bit more protection than the person who

2 retired ten years ago.

3 MS. PETERSON: Sandy, did you have a comment?

4 MR. D'ALEMBERTE: I actually had a motion. I

5 was going to propose that we recommend that this

6 exemption be repealed. But that Lucy, in all of

7 her future reports, admits she's double dipping.

8 Will the St. Pete Times agree to that stipulation?

9 MS. PETERSON: Jeanne says she already has.

10 MS. GRINSTEAD: She already wrote that story.

11 MS. CARRIN: Second? Is there a second?

12 SENATOR DOCKERY: Second.

13 MS. CARRIN: Carassas?

14 JUDGE CARASSAS: Hold on a second. I'm sorry.

15 Is that a real motion?

16 MR. D'ALEMBERTE: Yeah. And the last part was

17 facetious, about Lucy, but --

18 JUDGE CARASSAS: You want to repeal this

19 chapter completely?

20 MR. D'ALEMBERTE: As a -- with this section,
21 as a retired person who's double dipping, I want to
22 have that repealed.

23 MS. PETERSON: Is there more discussion?

24 JUDGE CARASSAS: Are we voting?

25 MS. PETERSON: We're voting, unless we have

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1 more discussion.

2 JUDGE CARASSAS: I really don't want a
3 discussion. With Lucy Morgan, I'm not sure
4 repealing it is what she was asking for. I'm going
5 to vote no on that particular motion.

6 MS. CARRIN: D'Alemberte?

7 MR. D'ALEMBERTE: Yes.

8 MS. CARRIN: Dockery?

9 SENATOR DOCKERY: Yes.

10 MS. CARRIN: Grinstead?

11 MS. GRINSTEAD: Yes.

12 MS. CARRIN: Lee?

13 MS. LEE: No.

14 MS. CARRIN: Peterson?

15 MS. PETERSON: Yes.

16 JUDGE CARASSAS: That was yes to repeal?

17 MS. CARRIN: Yes to repeal. This was a 4-2
18 vote. To repeal the exemption, it does not require
19 two-thirds vote. Passes.

20 MS. PETERSON: Okay. Number 13, this is a
21 recommendation that -- if you remember, in your
22 previous packet, I don't believe it's in this one,
23 we had a database of all of the exemptions to the
24 Public Records Law and the Sunshine Law where we
25 separated out that information that was exempt from

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1 public disclosure, that information that was
2 confidential and exempt, and we even had some
3 archaic exemptions where the information is
4 confidential. That term doesn't really fit in
5 today's law. And so this is a recommendation --
6 and, of course, we want this by the October meeting
7 for our legislative staffers who are here --
8 recommend that the Legislature conduct a thorough
9 review of all of the exemptions for consistency and
10 modernity of language and bringing all of the
11 exemptions within the current constitutional
12 standard.

13 Obviously, this is not something that can be
14 done easily or quickly, but it would be a
15 recommendation that the Legislature look at all of
16 the exemptions and bring them all up to the current
17 constitutional standard, and we would seek
18 consistency of language.

19 MS. LEE: Move for approval.

20 MS. PETERSON: We have a motion.

21 Sandy, did you have a question?

22 MR. D'ALEMBERTE: Yeah. I had a question. Is

23 the Legislation doing anything in this area

24 already, any sort of comprehensive review?

25 MS. PETERSON: In my experience, when we've

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1 been under the Open Government Sunset Review Act,
2 when those exemptions are reviewed five years
3 later, they are generally tweaked to some extent.
4 But the very old exemptions are not generally
5 reviewed unless they're reenacted for some purpose.

6 MR. D'ALEMBERTE: On my earlier recommendation
7 that they get 5-year review and 10-year review,
8 will that --

9 MS. PETERSON: That would only relate to new
10 exemptions. So if we had an exemption, for
11 example, that's been in place since 1971, it would
12 stay the same.

13 MR. D'ALEMBERTE: Okay.

14 MS. PETERSON: And this recommendation -- some
15 of the earlier meetings, we were talking about how
16 there is an inconsistency, frequently, in
17 application. What happens is, for example, we
18 have, say an organization, some sort of
19 public-private partnership that was created in

20 1980, and they have an exemption that under today's
21 standard is extremely broad. The Legislature wants
22 to create a similar entity in 2008 and they simply
23 copy that language, and then we get into the
24 struggle. So it's a different standard. And at
25 least to conduct the review, I think -- and even if

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1 we just worked on the difference between "exempt,"
2 "confidential," and "exempt and confidential," we
3 would go along way to cleaning up the law and
4 having a more consistent approach.

5 SENATOR DOCKERY: So we had talked about in an
6 earlier meeting that you were going to try to
7 consolidate some things. Are we still going to try
8 and do that by October? Or are we kind of kicking
9 it to the Legislature to have them do the review?

10 MS. PETERSON: What we have agreed to do is
11 the redundant exemptions, and this would recommend
12 that the Legislature conduct a thorough review of
13 all exemptions for consistency of language more
14 than anything else.

15 SENATOR DOCKERY: So specifically, would we be
16 asking every legislative committee to review the
17 ones under their purview? Would we be asking the
18 Governmental Operations Committees in House and
19 Senate to review all of them? Or are we looking

20 for maybe an OPPAGA report on them?

21 MS. PETERSON: What's your pleasure? Does

22 anybody have any suggestions as to how --

23 JUDGE CARASSAS: I have a question. If we

24 pass along the previous issue, which is every ten

25 years, would that capture the very old exemptions

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1 that you're talking about?

2 MS. PETERSON: Not unless they are reviewed
3 and reenacted.

4 JUDGE CARASSAS: So you have exemptions that
5 may never be reviewed. This is what would force
6 the Legislature to look at --

7 MS. PETERSON: It would, yes, in a sense. I
8 mean, although that was not -- the intent was not
9 necessarily to bring them under the Sunset Review,
10 but when we have an exemption for information that
11 is confidential under an exemption that was created
12 back in the 70s, we don't use that terminology any
13 more. So what does it mean when it's confidential?
14 We know what it means when it's confidential and
15 exempt. We know what it means when it's exempt.
16 What does it mean when it's confidential? So yes,
17 it would have the effect of creating, perhaps, a
18 review process if the Legislature decided to
19 subject themselves to the Open Government Sunset

20 Review Act. But what it would do, and how they'd
21 do it, I don't know. I mean, and that's -- we can
22 recommend a specific thing; we can just recommend
23 that they do it, and let the Legislature decide how
24 they're going to do it.

25 SENATOR DOCKERY: Thinking about it a little

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1 further, I really think an OPPAGA report on it
2 might be the best way to do that. Because then you
3 don't have the House and Senate doing two different
4 things. You have OPPAGA, who works for the entire
5 Legislature, doing the overall review. And it's my
6 understanding that they generally go to the
7 committees that are impacted to get their input.
8 So you kind of have the umbrella organization but
9 including everybody to give the input.

10 MS. PETERSON: So would you like to modify,
11 recommend that OPPAGA conduct a thorough review,
12 rather than the Legislature?

13 SENATOR DOCKERY: I think so.

14 MS. LEE: I'll amend the motion to reflect
15 that.

16 MS. PETERSON: Okay. Any other discussion?

17 SENATOR DOCKERY: I also like the concept of
18 bringing those exemptions under review that aren't
19 under the Sunset Review, not necessarily to force

20 them all to be reviewed every ten years, but to see
21 if some of them might be outdated, kind of a mute
22 point. Or if our goal is to streamline to make the
23 exemptions more readable and understandable, they
24 might easily be combined with something else rather
25 than to stick out there on their own. So if that's

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1 not part of what you already have, I liked Judge
2 Carassas' conversation or discussion on bringing
3 them into the mix.

4 MS. PETERSON: So recommend that OPPAGA
5 conduct a thorough review of all Open Government
6 exemptions for consistency and modernity of
7 language, bringing all exemptions within the
8 current constitutional standard and under the Open
9 Government Sunset Review Act? Or --

10 SENATOR DOCKERY: I think we leave it open
11 for -- include it in the review, and then have
12 OPPAGA make a recommendation.

13 JUDGE CARASSAS: Make a recommendation, yeah.
14 I wouldn't bring it under the Sunset Review. I
15 don't think that's what you're talking about.

16 SENATOR DOCKERY: No.

17 JUDGE CARASSAS: That means they're going to
18 expire.

19 SENATOR DOCKERY: Right.

20 MS. PETERSON: Okay. So recommend that OPPAGA
21 conduct a thorough review of all Open Government
22 exemptions. So, basically, substitute OPPAGA for
23 the Legislature and then Renee's motion stands.

24 Do we have a second?

25 JUDGE CARASSAS: I'll second.

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1 MS. CARRIN: Carassas?

2 JUDGE CARASSAS: Yes.

3 MS. CARRIN: D'Alemberte?

4 MR. D'ALEMBERTE: Yes.

5 MS. CARRIN: Dockery?

6 SENATOR DOCKERY: Yes.

7 MS. CARRIN: Grinstead?

8 MS. GRINSTEAD: Yes.

9 MS. CARRIN: Lee?

10 MS. LEE: Yes.

11 MS. CARRIN: Peterson?

12 MS. PETERSON: Yes.

13 Now the last thing we have on the agenda for

14 today is fairly complicated, now that we're nice

15 and tired. Do we have the third --

16 MS. CARRIN: Jessica's passing them out.

17 MS. PETERSON: Okay. If you remember at the

18 Fort Lauderdale meeting, we discussed this very

19 briefly. We had a lot of testimony from a lot of

20 people about problems with the current fee
21 provision. Under current law, an agency can charge
22 either the 15 cents a page for paper copies or the
23 actually cost of duplication, plus an extensive use
24 fee if there is an extensive use of agency
25 resources. The problem lies in that "extensive

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1 use" fee provision, because every agency defines
2 for itself what is an extensive use of agency
3 resources.

4 The proposed fee amendment, the first one,
5 that isn't numbered, is what I handed out in May.

6 Then we have a slight variation under proposed fee
7 amendment two. Proposed fee amendment three just
8 tightens up two. So two tightens up the first one;
9 three tightens up two. And basically what this
10 does it amends the current fee provision. It keeps
11 the 15 cents a page or the actual cost of
12 duplication, it repeals the extensive use fee
13 provision, and says "For a copy of a public record
14 in any electronic medium maintained or utilized by
15 an agency, the actual cost of duplication." So if
16 I want a data dump, it's the actual cost of
17 duplication.

18 But then it adds a definition for "specialized
19 electronic service or product." It means "the

20 copying of public records in an electronic medium
21 not used or maintained by an agency, providing
22 periodic updates in an electronic file or database,
23 or providing information from a public report that
24 cannot be retrieved or generated by the existing
25 computer programs of the public agency." So, for

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1 example, when we had that testimony about Sarasota
2 Herald tribune. The Sarasota Herald Tribune asked
3 the Department of Education to merge two databases
4 for the Sarasota Herald Tribune. That, under this
5 law or this proposal, would be a specialized
6 service or product. We had two separate databases,
7 they want them merged. And it adds a fee provision
8 that says if the nature or volume of the public
9 records to be inspected or copied is such as to
10 require a specialized service or product, then we
11 charge a special fee, based on the actual cost of
12 providing the product plus the reasonable portion
13 of actual cost associated with the use of the
14 agency's information technology. So if I wanted
15 a -- if Sarasota Herald Tribune said, Give me this
16 database and this database, it would be the actual
17 cost of the data dump. If they said, We want to
18 merge it, the agency would have the option of
19 merging it and then charging them a fee for the

20 specialized service or product, based on the cost,

21 reasonable costs, associated with that. Does

22 everybody understand that?

23 SENATOR DOCKERY: So if there is an agency who

24 gets numerous requests for the same kind of merging

25 of files -- let's say Sandy and I don't know each

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1 other and we both make a similar request. I'm the
2 first one to make that request. They had to have
3 their IT people come up with a program to do that.
4 I'm going to pay for that cost, because it's the
5 first time they've done it. And then Sandy comes
6 along. Are they able to charge him all over again
7 for creating that even though that's already been
8 done?

9 MS. PETERSON: If it's not in a form
10 maintained by the agency. Let me see, the
11 actual -- "maintained or utilized by the agency."
12 Then yes, they would be able to charge him again,
13 because it's not something that they maintain or
14 utilize. And that's true today, I believe, under
15 the law also. If the Sarasota Herald Tribune made
16 a public records request for the merged database,
17 and then the St. Pete Times came in and made the
18 same public records request, would they charge them
19 twice? It's --

20 MS. LEE: Madam Chair, can I make one comment?

21 MS. PETERSON: Yes.

22 SENATOR DOCKERY: I would assume they could

23 charge them for the time it takes to merge it

24 again. I'm just saying do they charge for that

25 computer software?

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1 MS. CARRIN: The current practice is that if
2 they already have the software that's created and
3 they don't have to re-create it, they don't charge
4 for that piece of it again. They may have to
5 charge for the actual electronic work that the
6 computer does, but if it's a request they get
7 routinely, they typically save those programs that
8 have been written.

9 Now, that's not always the case. And if it's
10 something they don't get very often or if it's just
11 a little different, then it might require a new
12 program. But, typically speaking, if it's already
13 written, they don't charge for it again.

14 MS. PETERSON: And the problem has been, I
15 think, currently -- say the Sarasota Herald Tribune
16 makes its public records request, and the
17 department goes in and deletes, redacts all of the
18 home addresses. Under the extensive use provision
19 right now, they can pass on those costs for

20 redaction if it requires an extensive use. They've
21 redacted the database. St. Pete Times comes in,
22 makes a public records request. They've already
23 redacted it, so they might have to -- they might
24 charge St. Pete Times less than they charged the
25 Sarasota Harold Tribune because the Sarasota Harold

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1 Tribune was first.

2 You'll notice that in this, on all three, that
3 the cost of redaction -- redaction is not
4 considered a specialized electronic service or
5 product. We talked in Fort Lauderdale about the
6 incentive. I mean, agencies are required to redact
7 exempt information. There's no incentive even
8 though the law would seem to say they're supposed
9 to be creating these databases and electronic
10 recordkeeping systems so as to facility public
11 access. There's no incentive for them to build
12 redaction capability into a system if they can
13 charge for the cost of redaction every time someone
14 makes a public records request. So this would take
15 redaction out of it and that's where we get, I
16 think, most of the fees. I think, if you remember
17 from Sarasota, and I think, Fort Lauderdale, some
18 of the fees were \$260-some thousand for a public
19 records request. This would take that out of the

20 equation and basically says if you want a public
21 record in any form or format maintained by the
22 agency for the actual cost of duplication. If you
23 want it massaged, basically negotiate the best
24 deal.

25 SENATOR DOCKERY: And what I recall hearing

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1 was that in most of the cases, if it was the press
2 asking for the information, they didn't really want
3 the information in a particular form. They wanted
4 the data that they could manipulate into the form
5 that they needed.

6 MS. PETERSON: Right. And that was the
7 testimony from Sarasota, that what they were trying
8 to do was to get this information so that they can
9 take all of this disparate information and figure
10 out if there was a correlation between teachers,
11 the quality of their education, and FCAT results.
12 I mean, that was -- and it turned into this huge,
13 very extensive, couple-year's-long project. And I
14 think we had the same thing with the Miami Herald
15 doing a similar kind of investigative piece, and
16 that was the testimony we received in Fort
17 Lauderdale.

18 SENATOR DOCKERY: And are we doing anything in
19 our recommendations, or anything else that's to

20 come, to help facilitate the release of that raw

21 data?

22 MS. PETERSON: I believe we're talking about

23 electronic access tomorrow.

24 Any other questions? My preference would

25 be -- actually, I think draft number three is the

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1 tightest. And we might want to tweak it some more,
2 but it is the cleanest and tightest in terms of
3 tying the fee for a specialized service or product
4 to actual costs. Because we do have Attorney
5 Generals' opinions from years and years and years,
6 saying that the provision of public records should
7 not be a revenue-generating operation, but an
8 agency should be able to recoup its costs.

9 Any more discussion? Yes, sandy?

10 MR. D'ALEMBERTE: On that issue, is this 15
11 cents for one-sided copy and 20 cents per page, is
12 that realistic today as an actual cost for an
13 agency?

14 MS. PETERSON: Probably not. I think it's
15 probably cheaper.

16 MR. D'ALEMBERTE: You think it's cheaper than
17 that?

18 MS. PETERSON: I think it's cheaper now.

19 JUDGE CARASSAS: Let me make a comment on

20 that.

21 MR. D'ALEMBERTE: Please, yeah.

22 JUDGE CARASSAS: Let's talk about that for a

23 moment. Part of the reason you put a group like us

24 together is to come up with some new ideas and I've

25 got -- can I have a minute just to tell a story?

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1 My wife -- I'm married and I have two young girls.
2 We went on a family trip this summer. It was just
3 about the time the airlines started charging for
4 extra bags, so I made a decision, a family
5 decision. I said, Everybody gets one bag. Because
6 dad carries around all four bags, by the way. I
7 said, I don't want to carry around five or six or
8 seven bags and I don't want to pay an extra \$25 per
9 bag for that second bag. Believe it or not, my
10 wife, and my two girls, and me, managed to get all
11 our stuff for a week vacation into four bags. And
12 dad had to carry around only four bags and didn't
13 pay an extra dollar.

14 The reason I bring that up is not to tell you
15 a personal story, but to say that I think sometimes
16 incentive is good. And what I would recommend --
17 and this might be a little bit outside the box, and
18 I don't mind if you shoot me down on this one -- I
19 would like to make the first few pages free. It'll

20 accomplish a couple of things. I agree the costs
21 have gone down. I understand the costs of copy
22 paper are what they are. But I think it might
23 force the requester, instead of saying, I want
24 everything for the month of August, which will be
25 20 or 30 pages, and they come up with some bill for

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1 some amount of money, I think if we say, Look. If
2 you can narrow your request down to five pages, if
3 possible, we're going to give that to you for free,
4 and make the copy. You know, we're talking about
5 75 cents. So if you say five copies at 15 cents a
6 page, that's what I was going to recommend. Make
7 the first five pages free. It'll force the
8 requesters to really narrow down their request and
9 get to the point of what they're asking for.

10 It's a nominal amount of money that -- I
11 agree, if you spread it out over the government and
12 everybody makes a request, it does add up to a lot
13 of money. I don't think that's what would happen.
14 I think you'd have people narrowing their requests
15 down, trying to get it under the 5-page limit and
16 making it easier for the government and for the
17 citizen to get the information.

18 What are your thoughts about that? I know
19 Renee works in local government. What do you think

20 about a trade off like that?

21 MS. LEE: How many times do they get to make a

22 request? And that said, you know, we have people

23 who will make a request, Well, that was just for

24 that name. Now I want a request for this name.

25 Now I want a request for this issue. So, you know,

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1 they'll play a game with you. You know, I've
2 always thought, where it's convenient, public
3 records -- or not convenient -- I think public
4 records ought to be free. There is a cost to
5 burdensome requests. Generally, if I can retrieve
6 something from the file and give it to someone, you
7 know, it's not a problem. I think charges are
8 necessary when you try to discourage people from
9 doing that so often.

10 MS. PETERSON: And I think as a practical
11 matter, when we're talking about just a few pages,
12 most agencies don't charge.

13 JUDGE CARASSAS: I agree.

14 MS. PETERSON: Because it's harder to, and
15 it's more burdensome to, account for the 75 cents,
16 what you have to enter as, you know, as your
17 accounts receivable. So as a general rule, I think
18 we're not -- most agencies don't charge if it's
19 under 10 or 15 or even 20 dollars. Because it's

20 much more of an administrative burden to charge

21 them than to give it to them for free.

22 MS. GRINSTEAD: Can I ask something? Media

23 aside, do you know the average number of pages

24 requested by citizens?

25 MS. PETERSON: No, I don't. It depends on the

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1 citizen, I think. No, I don't. And I don't know

2 what the average citizen is asking for.

3 MS. GRINSTEAD: I'm just thinking members of

4 the public -- and I could be wrong. I was thinking

5 members of the public probably request fewer pages

6 that newspapers do.

7 MS. CARRIN: May I comment?

8 MS. PETERSON: Go ahead.

9 MS. CARRIN: Our office pulls those public

10 records requests on behalf of the Governor, and I

11 would say that members of the general public

12 request far more documents and far more breadth of

13 issues than the media. I think the media has a

14 specific issue, know what they're looking for, and

15 with members of the public, sometimes it takes a

16 little, you know, working with them to help them

17 really pinpoint what they're looking for. But we

18 send out hundreds and thousands of pages on a

19 routine basis.

20 We are doing more scanning. We did that with
21 the Supreme Court applications. There were
22 thousands of pieces of paper. We scanned them and
23 we were able to give them out electronically at no
24 charge. But the general public, I believe,
25 requests far more than the media.

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1 MS. GRINSTEAD: Thanks. That helps.

2 MS. PETERSON: My own personal experience,
3 when I've made public records requests for my own
4 use, I've never been charged. They've always been,
5 you know, four, five, six pages and never been
6 charged.

7 SENATOR DOCKERY: That's because they're
8 scared of you.

9 MS. PETERSON: That's why I make them under my
10 husband's name.

11 MR. D'ALEMBERTE: Let me ask this: is there
12 clear agency authority not to charge? And are
13 agencies under any threat of bad audit results if
14 they fail to charge?

15 MS. PETERSON: The general fee provision in
16 Chapter 119, it says "the following fees are
17 authorized." There are nine or ten agencies that
18 have specific statutory fee authority, and those
19 may or may not be required. The general fee

20 provision, which is all we're tackling here because
21 that's all we got testimony on, was they're not
22 required. And in fact, in the language, we've
23 added "the special service charge may be reduced or
24 waived." And it says they're authorized, but
25 they're not required. And we could change that to

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1 say "if the fee is not prescribed by law, an agency
2 may charge."

3 MR. D'ALEMBERTE: I think it would help
4 encourage people to move down the line, as John
5 suggested to us. Because when you begin to think
6 about accounting costs, you'd probably have to get
7 the cost up to \$20 dollars or so before you're
8 really justifying just going through the
9 transaction of collecting the money and doing all
10 the bookkeeping connected with it. So I'm not sure
11 where the line is, but at some point, it's costing
12 the State money to enter into the transaction. And
13 so, it seems to me John's idea is a very good idea.
14 If we could at least make sure that agencies are
15 authorized to do what he's suggesting.

16 MS. PETERSON: We could say -- so in
17 119.07(4), "The custodian of public records shall
18 furnish a copy or certified copy of the report,
19 upon payment of the fee prescribed by law. If a

20 fee is not prescribed by law, the following fees
21 may be charged." And that would give them -- that
22 would make it clear that the fees are -- you don't
23 have to charge them. Right now, it says "are
24 authorized," but we could make it "permissive."
25 And we could also add language in here that those

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1 fees would be waived as well, you know.

2 MR. D'ALEMBERTE: Say what?

3 MS. PETERSON: Right now, we have language
4 that says the fee for specialized electronic
5 service or product may be waived. We could also
6 add that to the general fee provision in Chapter
7 119, saying any fee may be waived.

8 MR. D'ALEMBERTE: And the thought that John's
9 comments triggered in me was agencies ought to
10 figure out how much it costs them to collect the
11 fee, and at some point, its costs the State
12 spending more State money collecting than there is
13 profit from it. So each agency may have a
14 different breaking point, but you might want even
15 to put in a rationale. So where an agency makes a
16 determination that the cost of collection is --
17 makes a determination that the cost of collection
18 has been established, that there be no fee charged
19 that would not net the State some funds from the

20 charge. The whole idea is the State is better

21 after charging than before.

22 MS. PETERSON: Right. Any other comments?

23 Questions?

24 So do we have a motion to adopt, in principle,

25 this approach in proposed fee amendment number

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1 three with some possible future tweaking about

2 waiving fees and determining the cost?

3 JUDGE CARASSAS: Yeah. I think also that

4 would address the citizen who -- I know it's not a

5 lot of money, but the citizen who may want some

6 information and just can't afford it. I know

7 that's hard for us to understand, it's pocket

8 change, but there's going to be somebody that asks

9 for something and really doesn't have that extra

10 money to do that. They should not be blocked from

11 access to that information.

12 MS. PETERSON: And that actually happens more

13 frequently that you might imagine.

14 JUDGE CARASSAS: Really?

15 MS. PETERSON: Yes, that the fee is so

16 prohibitive or that they're indigent and they don't

17 have the money. I've had that and it's a horrible

18 problem. Because under Chapter 28, clerks of court

19 have statutory fee authority to charge \$1 a page

20 for court records. And you have someone whose
21 indigent who needs their court records in order to
22 prove something, and they don't have the money to
23 pay \$1 a page. And it happens more frequently than
24 --
25 SENATOR DOCKERY: What's the current fee?

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1 MS. PETERSON: Current fee for?

2 SENATOR DOCKERY: Copies.

3 MS. PETERSON: For public records, under
4 Chapter 119, 15 cents a page.

5 SENATOR DOCKERY: So we're not changing it?

6 MS. PETERSON: We're not changing 15 cents a
7 page. What we're changing is we're deleting the
8 extensive use provision, which is what everybody
9 complained about, because there's no consistency.

10 The Legislature, a number of years ago -- two
11 or three years ago -- sat down and tried to define
12 it, but it's virtually impossible to define because
13 Hillsborough County is different from Lee County is
14 different from Metro-Dade County. And what was
15 happening was everybody had a definition, and it's
16 the hourly rate of the lowest paid person capable
17 of doing the job. And we have people say, Well,
18 I'm the only person capable of doing the job, and
19 I'm the county commissioner, and my time is worth X

20 number of dollars an hour. So there was no
21 consistency among even offices within an agency.
22 And that was that sort of perpetual complaint we
23 got about fee provisions at all four public
24 hearings. So this does away with extensive use.
25 It says if you want a copy in the form contained by

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1 the agency, it's the actual cost of duplication.
2 If you want it massaged in any way, like some
3 people want periodic updates, they want quarterly
4 reports, then they could enter into an agreement
5 with the agency. The agency could charge a fee
6 under the specialized service requirement.

7 SENATOR DOCKERY: Do we think that 15 cents
8 will be a good figure going forward for several
9 years? Because the thing that's always frustrating
10 to Legislature is to have a fee set in statute,
11 because you're going to constantly have to update
12 it or figure in a --

13 MS. PETERSON: That 15 cents a page has been
14 in the law for a very long time, and it seems to
15 be --

16 SENATOR DOCKERY: And probably will continue
17 to be.

18 MS. PETERSON: Probably will continue to be.
19 And I know from negotiating my own recent contract

20 with the copier, we make copies for just a few
21 cents a page. And now, the paper -- that includes
22 the cost of the copier and the toner. The paper is
23 a little extra, but it's still relatively cheap.
24 And I think 15 cents a page is a pretty good -- I
25 mean, Kinko's makes money charging 5 cents a page.

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1 Any other questions? Do we have a motion,
2 then, to approve proposed fee amendment number
3 three with some tweaking to the actual language to
4 be considered at the October meeting?

5 JUDGE CARASSAS: Allowing for a waiver?

6 MS. PETERSON: Allowing for a waiver, uh-huh.

7 JUDGE CARASSAS: And the -- motion for
8 discussion. The other thought I had is if we --
9 I've been in government. I guess that's why I come
10 up with these goofy questions. I mean, counting
11 the number of pages -- I mean, I just the thought
12 of somebody going through and counting the pages
13 and then producing a bill. I always thought a flat
14 fee would be reasonable, also. Does anybody have
15 any thoughts on that, charging a minimum of \$1
16 dollar; if it's more than a certain number of pages
17 or time, \$10 dollars? We've never thought about
18 that, have we? Yeah, that might be a little more
19 complicated. Forget about it. Strike that.

20 Motion to approve with a recommendation.

21 MR. D'ALEMBERTE: Second.

22 MS. CARRIN: Carassas?

23 JUDGE CARASSAS: Yes.

24 MS. CARRIN: D'Alemberte?

25 MR. D'ALEMBERTE: Yes.

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1 MS. CARRIN: Dockery?

2 SENATOR DOCKERY: Yes.

3 MS. CARRIN: Grinstead?

4 MS. GRINSTEAD: Yes.

5 MS. CARRIN: Lee?

6 MS. LEE: Yes.

7 MS. CARRIN: Peterson?

8 MS. PETERSON: Yes.

9 Okay. We have gotten through -- okay. JoAnn
10 wants to do one more thing.

11 Let's skip down, let's do on the agenda,
12 number D, Financial Transparency. That's in Tab
13 24. This was language that was actually considered
14 by the House and Senate in 2008 session, and it's
15 my understanding it got hung up towards the end and
16 it did not pass. And we had, if you remember, a
17 lot of testimony about the need for financial
18 transparency, and, specifically, requiring
19 government agencies to put certain contracts

20 on-line and certain financial information on-line.

21 And this is an issue that is gaining a lot of

22 ground around the country. The State of Missouri,

23 for example, requires every contract by every

24 agency to be placed on-line and allow access,

25 on-line access, to financial information. And so

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1 this is -- this applies to both local governments
2 and state agencies and requires government agencies
3 to put information concerning contracts over \$5,000
4 on-line, make them available, certain information
5 available, about each contract: the name of the
6 local government or the officers who were party to
7 the contract, the name of the contract, who is
8 party to the contract, the date, the amount, the
9 purpose of the contract, and basic expenditure
10 requirements. This doesn't go as far as some of
11 the people suggested, like putting all the budget
12 information on-line, but I think it is a good step,
13 a good first step, to start providing financial
14 transparency.

15 We did not endorse this -- we did endorse it
16 last year. So what we would be recommending is
17 that we would, again, endorse legislation,
18 recommend legislation, that would require all
19 agencies to provide internet access to all

20 contracts over a certain dollar amount and to
21 provide on-line access to certain information
22 related to those contracts; basically, the
23 legislation that was considered in the 2008
24 session.

25 MS. LEE: Madam Chair, I guess my concern with

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1 this is that it seems like an unfunded mandate to
2 some small counties who may not have internet
3 access, who don't have the people to even -- they
4 don't have an IT department. I mean, this could be
5 an additional expense to small government agencies
6 that they can't afford.

7 MS. PETERSON: It actually -- it says "each
8 local government that has a website." So if they
9 have a website, they have to provide access to
10 information. And a lot of this contract
11 information is now being prepared electronically
12 anyway. So it's only if -- it doesn't require any
13 government agency that doesn't have a website to
14 create a website and put the information on-line.
15 It applies only to those agencies that currently
16 have websites. And I believe it requires the
17 Department of Financial Services to create a portal
18 to which access to this information will be
19 provided.

20 MS. CARRIN: That's correct. And Department
21 of Financial Services has said that they can do the
22 work necessary under their current budget. It
23 wouldn't require any additional funding on their
24 part. And we're starting a pilot program with them
25 now, on a state agency basis, to do exactly this.

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1 So this takes it further to the local level.

2 MS. PETERSON: Any questions? Do we have a
3 motion to adopt a recommendation?

4 MS. LEE: Madam Chair, before we get to that,
5 I'm trying to find the full text of D. Is that
6 reflected somewhere?

7 MS. PETERSON: It's Tab 24.

8 JUDGE CARASSAS: My only question, is \$5,000 a
9 reasonable number going forward?

10 MS. PETERSON: That was the number that the
11 Legislature came up with during the 2008 session.
12 I'm not sure what the --

13 SENATOR DOCKERY: This is Senator Storm's
14 bill; correct?

15 MS. PETERSON: Yes.

16 JUDGE CARASSAS: Is \$5,000 a reasonable number
17 going forward? I know you mentioned numbers
18 before.

19 SENATOR DOCKERY: Well, I really can't talk as

20 much to county expenditures. On a state level, I
21 would probably have made it a little bit higher,
22 but you've got some small counties, small cities.
23 So unless you wanted to have two different numbers
24 for local governments and -- but I think this goes
25 to the crux of the fact that we're spending

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1 taxpayers' money and they ought to be able to see
2 what it's being spent on. I love the concept I
3 haven't read it through every word of the language,
4 but I absolutely love the concept.

5 MS. PETERSON: And there are limitations and
6 date requirements in here, depending on the size of
7 the county, the size of the city. What they've
8 tried to do is make it as comfortable as possible
9 and ease people into it where necessary, also. So
10 it's not really, You have to have it by this date.
11 It's a process by which they have to conform.

12 JUDGE CARASSAS: Do we have a motion?

13 MS. PETERSON: We have not had a motion.

14 JUDGE CARASSAS: I move approval of the
15 financial transparency request, to track the
16 statute that's proposed in our packet.

17 SENATOR DOCKERY: Second.

18 MS. CARRIN: Carassas?

19 JUDGE CARASSAS: Yes.

20 MS. CARRIN: D'Alemberte?

21 MR. D'ALEMBERTE: Yes.

22 MS. CARRIN: Dockery?

23 SENATOR DOCKERY: Yes.

24 MS. CARRIN: Grinstead?

25 MS. GRINSTEAD: Yes.

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1 MS. CARRIN: Lee?

2 MS. LEE: Yes.

3 MS. CARRIN: Peterson?

4 MS. PETERSON: Yes.

5 MS. CARRIN: Pass.

6 MS. PETERSON: Okay. JoAnn is happy now.

7 Do we have a motion to adjourn until tomorrow?

8 That's it for today. We got through quite a bit.

9 JUDGE CARASSAS: Move to rise.

10 MS. PETERSON: Okay. We'll see you all here

11 at 9:00 o'clock tomorrow morning.

12 (Whereupon, the proceedings were concluded at

13 4:00 p.m.)

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1 **CERTIFICATE OF REPORTER**

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5 I, LISA A. BABCOCK, do hereby certify that I

6 was authorized to and did report the foregoing

7 proceedings, and that the transcript, pages 147 through

8 245, is a true and correct record of my stenographic

9 notes.

10

11 Dated this 11th day of September, 2008, at

12 Tallahassee, Leon County, Florida.

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LISA A. BABCOCK

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Court Reporter

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