

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.

8 _____/

9

10 VOLUME III

11 AUGUST 27, 2008

12 9:00 a.m. - 12:00 p.m.

13

14 The Capitol - 212 Knott Building

15 400 South Monroe Street

16 Tallahassee, Florida 32399

17

Reported by:

18

Lisa A. Babcock, Court Reporter

19

For the Record Reporting, Inc.

1500 Mahan Drive - Suite 140

20 Tallahassee, Florida, 32308

21

22

23

24

25

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 P R E S E N T

2 BARBARA PETERSON, Chairman
3 President of the First Amendment Foundation

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

6 PAULA DOCKERY
7 Senator, Lakeland

8 TALBOT "SANDY" D'ALEMBERTE
9 Florida State University, College of Law

10 JOANN CARRIN
11 Director, Office of Open Government

12 JEANNE GRINSTEAD
13 Deputy Managing Editor, St. Petersburg Times
14 President, Florida Society of Newspaper Editors

15 RENEE LEE
16 Attorney, Hillsborough County

17

18 * * *

19

20

21

22

23

20

21

22

23

24

25

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

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

2 MS. PETERSON: I'd like to thank you all for
3 coming again today. I'd like to remind you to turn
4 your cell phones off, and all the members of the
5 Commission, remember that cell phones interfere
6 with the microphones. And be sure, both members of
7 the Commission and those who are speaking to us
8 today, make sure that your microphone is turned on
9 when you're speaking.

10 We're going to start this morning -- we had
11 some questions yesterday when we were going through
12 some of the proposals and have asked some people to
13 come talk to us and give us a little bit more
14 information. And we're going to start this morning
15 with Louis Laubscher -- did I pronounce that
16 correctly -- from Enterprise Florida. He's going
17 to talk to us about the economic development
18 exemption.

19 MR. LAUBSCHER: Good morning. My name is

20 Louie Laubscher. I'm a senior administrative
21 officer with Enterprise Florida, and I thank you
22 for the opportunity to come and to present some
23 information to you about economic development and
24 about the importance of economic development
25 provisions that provide confidentiality when we

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 undertake our important projects for the State.

2 I want to start by letting you realize that I
3 understand your mission. Your mission is to look
4 at open records and those kind of things, and
5 determine if they can be made better and more
6 effective. That's a laudable mission and I
7 certainly support that. My viewpoint is that of an
8 economic developer, and I think that we feel very
9 strongly that the provisions that are in law are
10 there for a reason and are very necessary. And I
11 want you to realize that I realize that we may not
12 be on the same page. And I hope that you can see
13 our viewpoint, and when you do your final report
14 that you will respect the fact of the viewpoint
15 that economic development brings to this important
16 subject.

17 I thought it would be most helpful to you to
18 possibly understand how we do economic development
19 and why we do economic development. Enterprise

20 Florida is what's called a public-private
21 partnership. Our mission is to help existing
22 companies expand, to bring new companies into the
23 State, and help Florida companies sell their
24 products to the rest of the world. We think we do a
25 good job and a very efficient job with this

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 mission. Although we value every job, we do not
2 focus our efforts on jobs that are below the
3 average wage. We want to build jobs and build the
4 activity in the state that increases the average
5 wage. That's what's important. That raises the
6 economic standard of living and the wealth of our
7 citizenry. So we work hard on jobs that pay above
8 average.

9 It's a defined process in the sense that we
10 work from a strategic plan that comes from public
11 input, we develop an understanding of our
12 strengths, we develop a plan, and we work the plan.
13 The plan generally deals with what we call economic
14 clusters, areas of strengths, and the sections that
15 we want to build to help diversify the Florida
16 economy. Incentives are a part of that role and we
17 use incentives. And we do the analysis for
18 incentives and provide that information to state
19 government, which, in turn, makes the final

20 decisions on incentives. So we don't grant them.

21 We're a vehicle for providing and accumulating the

22 information and making recommendations to

23 government.

24 Economic development projects, particularly

25 the kind that pay above-average wages, frequently

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 have a long gestation period and extensive periods
2 of negotiation and our building the value case for
3 Florida. Now, this is not a business that's just
4 competitive among us and a couple of neighboring
5 states. We have to be internationally competitive.
6 Major projects have lots of options in multiple
7 states and in multiple countries. So the value
8 proposition is important, and business-decision
9 making wants a couple of simple things: they want
10 an understandable process, that they can understand
11 that I can get through it and make good decisions,
12 and they want some certainty about the environment
13 in which they're going to do business. So those
14 things, if they're absent, if there's not a process
15 that they can go through to -- for us to understand
16 that they have -- the process involves our
17 understanding that the company is capable of doing
18 what they say they can do, they have the
19 wherewithal to create the jobs, and the fundamental

20 philosophy underlying our economic development
21 incentives, are they performance based, and if you
22 fail to perform, then the incentive doesn't
23 necessarily materialize. It gets retracted. So
24 there are obligations on both parties to do that.
25 Now, we believe and we think it's important

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 that a company be able to control its confidential
2 information. It has a lot of stockholders, it has
3 other stakeholders, it has employees, and their
4 decisions to move and expand in different markets
5 has a very important affect on their business. It
6 might change work force. It might mean that some
7 people have to move. It can create a lot of
8 implications. And the company deserves the right
9 to make that kind of decision and release the
10 information on the basis that they think is
11 appropriate for their business. So we don't want
12 to get in the company's business and tell the world
13 that you've made a decision to move to some place
14 in Florida until the company is ready to disclose
15 that information.

16 Now, I also want to help you make a
17 distinction between what our traditional land use
18 problems that occur in communities versus economic
19 development. Economic development activity usually

20 has nothing to do with retail projects. And lots
21 of the land use issues on a local level are
22 shopping centers and things like that, and that's
23 sometimes called economic development, but it is
24 not what economic developers do. Those projects
25 need to be here because their customers are here,

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 their market is here. And they're not provided
2 incentives to do that. They're just people trying
3 to make a profit and get a return on their own
4 capital.

5 So it was cause for concern, and when I read
6 the draft of summary information that you've
7 prepared so far, there was the implication that
8 economic development exemptions or confidentiality
9 is being used to mask the abuse of land use
10 decisions on a local level. And I don't know of a
11 single circumstance where that's the case, that we
12 try to deal with companies that make their
13 obligations to come and do business here. But they
14 don't go and avoid the responsibility of getting a
15 land use permit or a site plan or zoning
16 regulation. That normal process is not abrogated
17 by economic development activity. And I think to
18 imply that is probably a disservice to economic
19 development, because we certainly don't do that.

20 Now, there are times when we help a company
21 navigate the approvals that are necessary. That
22 may involve getting people together in one room and
23 saying, Look, what are all the things we need to
24 get done and what is necessary for the approvals,
25 and help that company facility getting the things

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 done that needs to get done to do business, but
2 that's not hiding any process whatsoever or
3 exempting it from environmental studies or
4 whatever. That is a pure fiction in my point of
5 view.

6 Now, economic development has a very positive
7 return to the State of Florida. Each year we
8 present information in detail about what the
9 activities have done. We don't create jobs. We
10 don't have anybody that -- we don't create them.
11 We facility them. We help companies make the
12 decisions that allow jobs to be created. So the
13 value proposition for Florida is very important.
14 And the business climate for Florida is very
15 important. And we need decisions made where a
16 company can be confident that it's made a good
17 decision and one that will be honored and that they
18 can implement their business plans on an orderly
19 basis and on their timetable. And if you require a

20 disclosure of confidential information that a
21 company has, it runs havoc and you frequently get
22 eliminated.

23 I can give you one excellent example that
24 comes to mind.

25 JUDGE CARASSAS: Madam Chair, can I ask a

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 question?

2 MS. PETERSON: Yes.

3 JUDGE CARASSAS: Sir, I'm sorry. I apologize.

4 We've got a full agenda here today, and I do want

5 to hear what you've got to say, but there was a

6 question that came up yesterday that I'd like you

7 to address as soon as possible. And it was

8 regarding economic development issues in comparison

9 to other states.

10 The issue that came up yesterday was possibly

11 some changes to the current law in Florida, which

12 allows for that 1-year protection, maybe a second

13 year if required. And the issue that we discussed

14 in trying to decide what recommendation we were

15 going to make was, how does that compare to other

16 states? Is -- are we putting ourselves at a

17 disadvantage if we change the current law in

18 Florida? Can you address that at some point during

19 your speaking?

20 MR. LAUBSCHER: Yes, sir. I'll address it
21 right now. Unequivocally, you are making us less
22 competitive. We compete most particularly with the
23 states in the south around us. That would be
24 Texas, Georgia, the Carolinas, Alabama. We have
25 the most open process of any state. And we are

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 subject to a large amount of scrutiny and approval
2 after the fact that bothers some people, but we are
3 fully accountable.

4 The way the system works is there is a
5 criteria for incentives. And if you meet the
6 criteria and you are generally a company that is
7 capable of being in the target cluster that meets
8 the criteria, you can qualify for incentives
9 without abuse, and then that can be reviewed
10 entirely in our process. We have an incentives
11 report that comes out every year for all the
12 incentives, what happened, where they went, who got
13 benefit, what the return to Florida was, and that
14 information is not held private. It is fully
15 disclosed.

16 So my answer to your direction question is,
17 unequivocally, it would make us less competitive.

18 JUDGE CARASSAS: Okay. You mentioned Texas
19 and some others states, and I'm assuming are our

20 competitors in certain types of businesses we're
21 trying to attract. What are their laws like? What
22 do you know about their laws in comparison to ours?
23 MR. LAUBSCHER: I don't know about their laws
24 as much as I know about their processes. And their
25 process is when they're seeking approval, they're

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 very often dealing in the Governor's office, and
2 the decisions are made on a very closed basis and
3 then implemented. It does not have the degree of
4 criteria we have. There are people in control of
5 the checkbook, and they can write bigger checks, in
6 terms of, on a discretionary basis. Our process,
7 for every dollar comes from an appropriation, and
8 we go to the Legislative Budget Commission or other
9 incentive pot, that is, in fact, approved by the
10 Legislature each and every time.

11 MS. PETERSON: Renee?

12 MS. LEE: Thank you. You probably heard that
13 this Commission is interested in scaling back the
14 economic development privileges that your
15 department has. Have you thought about any
16 compromises or any way that you might be able to
17 address that?

18 MR. LAUBSCHER: I have not. It's my
19 understanding that this Commission is to look at

20 all the exemptions and whatever, and see if it can
21 remain a more open process, and that's your
22 objective. And what I'm telling you is that we
23 have the most open process that exists. I don't
24 think that reducing the ability of a company to
25 require confidentiality is in Florida's best

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 interests. And I do not have an alternative for
2 you that can ameliorate the existing law, which
3 was, in fact, reviewed just a few years or so ago
4 with a great coalition from 67 counties, with the
5 Chamber, with other business groups, with
6 government groups, with OTED, all of which
7 presented this information effectively and that it
8 was necessary.

9 And when I -- I chuckle when I read the
10 footnote that says it was barely approved, when
11 two-thirds majority is the highest legislative
12 standards that is. And you would expect it to
13 be -- I think the point was when we made the second
14 period optional, the optional 12-month extension,
15 then we removed the objections that existed on that
16 vote and it was almost unanimous vote. It was not
17 unanimous but it was certainly without significant
18 opposition. We think that Legislative consensus is
19 appropriate.

20 We made the case that we can't reinvent the
21 wheel and subject a company to the uncertainty of
22 not knowing how their information is going to be
23 dealt with when they deal with Florida. I think
24 that is a very serious business climate issue and
25 that we could do our job better and more

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 effectively. We're working right now with
2 companies on major projects that involve hundreds
3 of millions of dollars of investment. Those are
4 confidential projects. We cannot disclose that.

5 And if we do, we're going to lose those projects.

6 We'll be written off the list. And so it's that
7 important to Florida. And I would remind you that

8 last year, the activities of Enterprise Florida

9 generated about \$190 million tax revenue to the

10 state, \$2.2 billion in capital investment, and over

11 20,000 jobs that pay an above-average wage. So

12 putting that in jeopardy is unreasonable in the

13 economic developer's view. That's our viewpoint

14 and that's the view I'm coming to relate to you.

15 The best example I can give you is we were

16 involved in the largest -- one of the largest

17 headquarter projects we've ever had the opportunity

18 to deal with. It involved about 2,000 jobs, paying

19 an average wage approaching \$100,000. Premature

20 disclosure of that project, for which we had the
21 very, I think, among the best options, took us off
22 the list. The company was embarrassed and they
23 left the state. Now that's a very significant loss
24 from premature disclosure of important information.
25 So I don't have an alternative for you to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 ameliorate the existing provision. I think it is a
2 sound provision. I think it's been well thought
3 out, reviewed, and vetted in its last review, which
4 was very near term, and I think it should continue.

5 MS. PETERSON: Senator, did have a question?

6 SENATOR DOCKERY: I have a series of
7 questions. But was he finished with his
8 presentation? Because I can wait until the end.

9 MR. LAUBSCHER: No. My presentation was to
10 give you the information you want.

11 SENATOR DOCKERY: Okay. Wonderful. Well,
12 first of all, thank you for your presentation. And
13 just to set the tone, I'm very impressed with
14 Enterprise Florida. I've carried legislation for
15 Enterprise Florida, and I'm very supportive of
16 economic development.

17 My concern is -- and first, let me ask you
18 this, so that everybody kind of gets a feel. What
19 is the budget for Enterprise Florida, in terms of

20 state dollars? I know you have matching private

21 dollars, but on a yearly basis, what's your --

22 MR. LAUBSCHER: My budget this year is

23 \$11.6 million.

24 SENATOR DOCKERY: We all want great jobs in

25 the state and we -- I think you'd be hard pressed

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 to find somebody who's not supportive of economic
2 development. But it's my understanding that when
3 you offer an incentive package, you're offering a
4 little bit of money, compared to what the
5 investment of the company is or what they're
6 bringing in. And I have no problem whatsoever with
7 you having the ability to negotiate in private to
8 get that company here.

9 My concern is the major projects that are
10 being done now, that are hundreds of millions of
11 dollars of state taxpayer money, with very little
12 investment from the firm, which are more of a
13 project than an economic development, but they're
14 being sold as economic development so that they can
15 have that privacy surrounding it. And that's
16 really where my concern is. It's not with what
17 Enterprise Florida does. It's not with what
18 various regional or county economic development
19 departments are doing, because that's -- we're

20 trying to entice you to come to our area, and this
21 is what we have to offer, and then you negotiate
22 and then it becomes public, and then somebody, some
23 regulatory body or some legislative body then
24 approves the money or the project because of land
25 use.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 But when these projects -- and I'll give you
2 the perfect example that got me involved in this,
3 is the CSX project, which is really a
4 transportation project. But it's being sold as an
5 economic development project and negotiations went
6 on for several years -- four, five years -- and by
7 the time it was released, it was a done deal. And
8 there are massive implications and losers. Even
9 though there may be an economic development
10 component to it, there were cities who are about to
11 have 54 trains go through their downtown, and they
12 had no idea. So it is a land use issue, and that's
13 my concern, because the taxpayers in the State of
14 Florida are coming up with \$1.2 billion of our
15 \$66 billion budget and nobody had any say until it
16 was a done deal. And it was all done under the
17 economic development exemption. And those are the
18 types of things that are my concern.

19 And so can you help me think through how we

20 can keep you whole under the economic development

21 exemption, but have projects of this magnitude,

22 where I think the taxpayers of the State of Florida

23 should have a say in \$1.2 billion, with a company

24 really bringing nothing forward.

25 MR. LAUBSCHER: I don't believe that when you

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 deal with transportation infrastructure, that
2 normal economic incentives even come into play.
3 What we have is -- my recollection of the project
4 you describe was the purchase of track from CSX
5 that runs through Central Florida with the
6 designation that that would be a light rail thing,
7 which is basically government dollars. And then
8 the railroad would take its funds and find an
9 alternate route around the metro area to a new rail
10 yard and staging and intermodal facility somewhere
11 around the state.

12 SENATOR DOCKERY: That's true, except for the
13 second part. They're not using their funds for the
14 alternate route. The State is paying \$198 million
15 on an alternate route to make capacity improvements
16 so that they can use it, when they're saying that
17 they're not switching trains from one track to the
18 other. So it's -- that is a transportation project
19 but it is being sold as economic development.

20 MR. LAUBSCHER: Well, I think that when
21 government is involved with directly negotiating
22 those types of activities -- and in that case, I
23 think government is directly negotiating -- it's a
24 little different than we, as an economic developer.
25 We're negotiating incentives; they're negotiating

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 an out right advance from the State. And that's a
2 different ball game.

3 SENATOR DOCKERY: Well, how do we
4 differentiate between those in statute? Because
5 that's what I'm, and several others, are trying to
6 get at.

7 MR. LAUBSCHER: As I have described to you,
8 the incentive program, as I understand it,
9 ordinarily has provisions that go with the creation
10 of the pot. We have a lot of normal incentives for
11 targeted industries and so forth. When they came
12 up with an incentive fund, that has no funds in it
13 now, there were criteria for what was necessary for
14 it to come out of those funds. And we determined
15 that it meets that criteria, we present our
16 recommendations, the Legislative Budget Commission
17 has to pass on it. The project you're describing,
18 I don't believe, is coming from those kinds of
19 pots. It's a direct negotiation of the State to

20 deal with a transportation issue. And that's
21 normally outside of what I would call economic
22 development activity.

23 It doesn't mean that we're not a cheerleader
24 to improve transportation and getting goods from
25 point A to point B as a worthy, necessary part of

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 an effective business environment, but that's
2 not -- we don't go out and negotiate transportation
3 projects. Now, we would help a company get a short
4 rail line to serve its facility off a main rail
5 track and facility its approval and might use
6 some -- a small transportation fund if it met the
7 criteria. So what you're dealing with is something
8 that's not within the normal economic development
9 provisions that are set forth.

10 Now, the poster child for that, of course, was
11 the Scripps, where there was some money come down
12 from the federal government. The governor at the
13 time felt that we should invest those monies and
14 not pay, and so it, in that sense, bought a
15 research industry, which seated a tremendous amount
16 of life sciences activity in the state.

17 SENATOR DOCKERY: And what was different
18 there, and what was good there, is we had a special
19 session of the Legislature to vet that.

20 MR. LAUBSCHER: And I agree. And I think that
21 those were -- and when there's dollars spent for
22 those kind of projects, those happen. Or they come
23 out of the fund that are kind of set aside. Here's
24 the pot. If you meet the rules of the pot, the
25 Legislative Budget Commission may allow you to take

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 money out of it for that purpose. And that's, in
2 effect, a system that works. What you're
3 describing is outside the system, in my view.

4 MS. PETERSON: And perhaps if I can interject
5 here, we have two problems. You're talking about
6 the traditional economic development. And I think
7 what we're hearing from people who have testified
8 is abuse of the economic development exemption.
9 And that's what we have to deal with, I think. And
10 it may lie in the definition of "economic
11 development agency." And it may be something we
12 want to consider, that we want to split out OTED
13 and Enterprise Florida and the traditional economic
14 development agencies that are talking about
15 incentives, that have to get legislative approval
16 for their projects, where it becomes public before
17 the projects are approved versus other types of
18 development.

19 We had one woman testifying at Fort Lauderdale

20 about community redevelopment agencies that are
21 trying to fall under the economic development
22 agency exemption. So I think there has been some
23 fairly wide-spread abuse and it may be in -- we may
24 want to focus, as I said, on the definition of what
25 is an "economic development agency" to try to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 narrow that. Because right now, it's quite broad,
2 the definition.

3 SENATOR DOCKERY: Or maybe we should exempt
4 transportation projects from that exemption,
5 because the Department of Transportation is one of
6 the few departments in the State budget that really
7 doesn't need legislative approval, because they
8 have their 5-year work plan and they move monies
9 around. And when you can move \$1 billion around
10 without needing any kind of legislative approval,
11 once this is a done deal, there is no opportunity
12 to renegotiate, to stop it, to improve it, bless
13 it. So there's not that many departments that have
14 that ability. Water Management District, to some
15 extent, have it, and Department of Transportation
16 has it, but Environment Protection, and all that,
17 is line-itemed in the budget.

18 So maybe the answer here is not to intrude on
19 what you're doing, because we don't want unintended

20 negative consequences. And like I say, relatively
21 speaking, your dollars are relatively small, and
22 they're matched by the private-public partnership,
23 and the company, corporation, firm you're bringing
24 in is agreeing to create X amount of jobs or to put
25 in X amount of dollars for infrastructure. These

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 deals aren't like that. These deals are very top
2 heavy in terms of taxpayers' dollars going in, and
3 the taxpayers have no idea that the deal is even in
4 the works until it's over.

5 MR. LAUBSCHER: Well, I'm confident that our
6 type of activity would fall within whatever
7 definition that you develop. I would caution you,
8 though, that all of our incentives have a local
9 component. And the local component, in the sense
10 that each local community ought to handle part of
11 the cost. And that means that there's probably at
12 least 67 different methods of dealing with that on
13 the local level, and it would be that some economic
14 development activities are through the Chamber at
15 the local level, some are through a county
16 organization, some are with government. And so I
17 would want to make sure that whatever definition
18 you might address or develop does not exclude what
19 is a normal economic development that's just

20 handled differently in different parts of the

21 state.

22 MS. PETERSON: Sandy? Did you have something

23 to say?

24 MR. D'ALEMBERTE: I want to make sure that

25 Paula's inquiry was complete.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 SENATOR DOCKERY: I had some more, but go
2 ahead.

3 MR. D'ALEMBERTE: No. Please go ahead,
4 because I think you've got the main point here.

5 SENATOR DOCKERY: Okay. So the -- what is
6 also troublesome to me is that you all were blessed
7 with a mission. And you know what your mission is,
8 and we know what the mission is, and you have a pot
9 of money to go forward and do the mission. Monies
10 that a department moves around were not blessed for
11 a particular thing. They were moved around. So
12 I'm very concerned about that. In trying to get
13 answers as a legislator, I wasn't getting any
14 answers from the department and came to find out
15 that there was 70-something confidentiality
16 agreements signed by employees of the State who
17 work for that department, all under the exemption
18 for economic development. And that's what's so
19 troublesome to me is that the exemption is so broad

20 that that can happen.

21 So I don't want to hurt your efforts or

22 Central Florida Regional Economic Development

23 Council or South Florida or whatever. But I think

24 that State activity, with State taxpayers' dollars,

25 has to be treated differently. And that's from

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 trying to get to -- and I'd love your cooperation
2 in helping us come to some language that doesn't
3 have any negative impacts on you but that deals
4 with what we're dealing with.

5 And then here's a couple of quick questions.
6 Could you give us an example of what one of your
7 incentive packages would be? In addition to, you
8 know, well, in terms of how much money you might
9 put up towards how much will be coming in? And are
10 there other things, like tax incentives or --

11 MR. LAUBSCHER: Well, Senator, I just happen
12 to have a project here that was just announced in
13 Lakeland. And it's for a pharmacy that's going to
14 have a \$20 million expansion and bring 670 jobs.
15 Now, I would suspect that those jobs, the fact that
16 they're creating, would have created a targeted
17 industry tax credit, which is generally in the
18 neighborhood of \$1500 to \$2500 per job created,
19 providing the company creates the jobs. And so

20 sometimes those numbers are inflated if it's in an
21 enterprise zone. Where there's economic distress,
22 then the incentive might be a little larger.

23 What happens is they have a period of time to
24 create those jobs, and they get tax credits that
25 are good against a variety of taxes in the state if

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 they create the job and do what they say they're
2 going to do. That's a normal incentive that is
3 very effective. And it's a bedrock of our typical
4 dealing with projects. Because, one, what you're
5 doing is you're receiving the benefit of the
6 project's investment and its tax-paying ability,
7 and so you're giving away part of the benefits.
8 You're having -- you're not going into the existing
9 taxpayer's pocket to fund this. You're saying, If
10 you didn't come here, I wouldn't have these
11 benefits, and so I'm going to give you some of the
12 benefit that you're creating, really, in the form
13 of an incentive. And that's kind of the attitude
14 of the incentives; and, again, there will be a
15 local piece as well. Most local communities don't
16 abate school taxes if they've got a particular
17 school growth issue, and most employees recognize
18 that that's an important part of the community.
19 But then again, those decisions are made on a local

20 basis.

21 SENATOR DOCKERY: Those types of tax

22 incentives, are they for a specific period of time,

23 like five years, or are they in perpetuity?

24 MR. LAUBSCHER: No, ma'am. It's a finite

25 incentive that is granted and then when you consume

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 it, it is gone. If I earn the incentive and I
2 don't have profits one year, I can use that against
3 whatever taxes I might pay or other franchise taxes
4 will occur.

5 SENATOR DOCKERY: Okay. And do you
6 differentiate between bringing new business in the
7 state or expanding an existing business in your
8 legitimate role of economic development?

9 MR. LAUBSCHER: Yes. Expansion projects are
10 important, but they generally don't qualify for
11 incentives unless the business has an option of
12 expanding elsewhere. Generally, they do. You
13 know, it's Well, I've got an opportunity to expand
14 my plant that's in the Dominican Republic, or I can
15 do one here. You know, so why should I do that?
16 So generally. The jobs have to be at risk for them
17 to be counted as a job that we have either saved or
18 helped facilitate. But we do differentiate,
19 generally, between what's called "retention" and

20 "recruitment."

21 SENATOR DOCKERY: In the retention or

22 expansion, do you think that needs the same level

23 of expansion of bringing in new business?

24 MR. LAUBSCHER: I do. If I'm a business and

25 I'm deciding whether to expand here or I'm going to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 expand in some other state or community, it has
2 massive implications for my workforce, whether or
3 not -- Gee, what am I going to do there? Are they
4 going to transfer stuff away? What about my job?
5 Or whatever. And the company wants to control
6 those kind of decisions. And it needs to have --
7 when it releases the information, it needs to be on
8 its timetable. So, yes.

9 SENATOR DOCKERY: Okay. And lastly, you
10 mentioned that economic development projects
11 typically are not about land use but sometimes you
12 do help them with permitting and zoning. If there
13 was a corporation that you're trying to get here
14 and they did need a zoning change or permitting
15 help, at what point is the public made aware of
16 your assisting in those? Would --

17 MR. LAUBSCHER: Well, we at Enterprise Florida
18 would not assist on the local level. That would be
19 a local economic development organization that

20 would deal with that. And I think their process is
21 open and it requires advertisement. If you're
22 going to change zoning or I apply for a building
23 permit, I go -- the normal application process is
24 not thwarted. So I think when it comes down to
25 project specifics, that has the same transparency

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 that another site plan would have for somebody

2 building a Walgreens on the corner.

3 SENATOR DOCKERY: But if, for example, you

4 needed to change the zones from agriculture to

5 industrial, would that open process, where people

6 would be made informed that that zoning change was

7 happening, would that also include what the zoning

8 change was for? Or just the fact that it was

9 changing from agriculture to industrial?

10 MR. LAUBSCHER: It probably depends on the

11 individual community. I don't know because it is a

12 distinctly local process, and it can be different.

13 But, usually, the sign's posted on the property or

14 change in zoning. You go to the hearing and find

15 out who it is, and what it is, and what they're

16 trying to do. I don't think there's an obligation

17 to put an advertisement in the paper, but I

18 certainly think there is a normal requirement for a

19 public process.

20 SENATOR DOCKERY: Would you agree, from a
21 public-has-a-right-to-know perspective, that at the
22 point a zoning change is going on, that at that
23 point, the information about what company might be
24 coming there should be known to the public, should
25 be made known?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MR. LAUBSCHER: I would think so. Generally,
2 what happens is it is even earlier than that. The
3 Embry Air process was a -- recently resulted in a
4 very successful negotiation for a direct foreign
5 investment by a foreign airline manufacturer to
6 build major jets in the state of Florida. That
7 process went on for a couple of years before
8 anybody knew anything about what it was until it
9 was announced, and it was announced on the
10 company's schedule. But before, the local economic
11 development organization negotiated on behalf of
12 the local community and then had to go to the
13 county commission in public session, and explain
14 what it was and for their approval. So at that
15 point in time, the cat was out of the bag and that
16 kind of coincided with the announcement.

17 But, again, it's on the timetable that the
18 company feels is appropriate. But, generally, I
19 don't think that our kinds of projects have or seek

20 exemption from transparency on a land use

21 requirement in a given community.

22 SENATOR DOCKERY: And that, once again, is a

23 differentiation between what you do and what

24 happened in this particular project, because the

25 zoning change was done without anybody, other than

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 the city, who was happy to accommodate. But the
2 public really didn't know what the zoning change
3 was for. And there are residents nearby.

4 MR. LAUBSCHER: But the city probably went
5 through a public process. It's just that nobody
6 was paying attention.

7 SENATOR DOCKERY: Right.

8 MS. PETERSON: Sandy, did you have a question?

9 MR. D'ALEMBERTE: I was hoping that we could
10 get a copy of that incentive pamphlet and press
11 release to look at.

12 MR. LAUBSCHER: I'll be happy to get it to
13 you. As a matter of fact, I'll give you the one I
14 have right here. And then we'll be off the press
15 shortly for 2008 year. Here's the -- this is the
16 press release for the project in Lakeland, and
17 there is a copy of the incentives report. And if
18 the others would like it, I'll be sure that you
19 receive them.

20 MS. PETERSON: I think that would be helpful.

21 It is -- I think we get back to, perhaps, the

22 difference and the different ways Enterprise

23 Florida works from the local economic development

24 agencies and the Department of Transportation. And

25 I think the issue might be more that we have to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 focus on either the definition or I like your idea
2 of perhaps putting some exceptions to the
3 exemption: This would not apply to this type of
4 project or that type of project. The difficulty is
5 going to be in defining those projects, because any
6 exception to the exemption is going to have to be
7 pretty specific.

8 Because I do think everybody understands --
9 and that's what we were wrestling with yesterday --
10 the need for a level of protection. But we have to
11 balance that with the public's right of oversight
12 and some kind of public notice. And what we were
13 hearing was absolutely no notice provided to those
14 people who were going to be most affected by -- and
15 it may very well be an abuse of the process or an
16 abuse of the term "economic development," applying
17 that term to projects that are not technically
18 economic development projects. But I would greatly
19 appreciate some assistance in drafting this.

20 I'm not sure we're going to be able to come to
21 terms with this one at this meeting, because I
22 think it needs a whole lot more development. And I
23 know, for example, I'm fairly sure in Leon County,
24 when we have a land use zoning change, there's an
25 advertisement in the paper and there are maps. I

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 know because I bought a piece of property from the
2 City, and my little yard, and the map, and the
3 little piece of property I was purchasing from the
4 City was advertised in the paper.

5 MS. LEE: It depends on how big the zoning is,
6 the rezoning is, as to whether you get individual
7 notice or there is just a notice posted in the
8 paper.

9 MS. PETERSON: Well, then, yeah. All my
10 neighbors got letters saying we're taking this
11 piece of property and we're changing it from this
12 to that. So I think what we have to figure out --
13 and as I said, I would appreciate any assistance we
14 can get in trying to -- and Senator Dockery, I
15 would like to work with you very carefully on this
16 until the next meeting. And we'll try to get
17 something pulled together that we can get to you
18 for consideration before the meeting, and see if we
19 can't then figure out how to address the problem

20 we've heard so many complaints about.

21 SENATOR DOCKERY: Well, this was very, very

22 helpful, because I agree that while a

23 transportation project can have tremendous economic

24 development benefit, in and of itself, it is a

25 transportation project and not an economic

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 development project. And I think therein lies the
2 differentiation.

3 MR. LAUBSCHER: Madam Chair, the only other
4 thought I would give you, and it's not my place to
5 give you advice, but the Florida Department of
6 Transportation buys a lot of land, and the more you
7 telegraph, the higher that price goes, and they
8 have a few concerns there. So I would advise you
9 maybe getting some input from them if you're going
10 to deal with something that would affect them.

11 MS. PETERSON: Well, we will, but they have
12 exemptions for the purchase of land and that sort
13 of thing already in place.

14 MR. LAUBSCHER: Thank you.

15 MS. PETERSON: Thank you.

16 MR. LAUBSCHER: Have a good day.

17 MS. PETERSON: Senator Dockery, next we had
18 the Pre-sentencing Investigations and we were going
19 to hear from Connie Sealy, and I believe you talked

20 to her, and now we don't need to hear from her.

21 SENATOR DOCKERY: Yes. Sandy and I talked to

22 Senate committee staff yesterday on pre-sentencing,

23 post-sentencing. We tried to get some idea where

24 the idea came from and it's -- we don't feel like,

25 at this time, it's something that this Commission

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 should really go forward with, because it's really
2 a criminal justice policy decision, and there would
3 need to be a lot of educating of all of us before I
4 think that we could truly understand the
5 ramifications. So because it came to us late and
6 we don't really have it fully developed, I think
7 we'll just leave it up to the Legislature and
8 committee staff will look into it and see if it's
9 something we want to move forward with. If that's
10 okay with the rest of them.

11 MS. PETERSON: Okay. And we noticed -- we
12 checked on the statute yesterday. The criminal
13 defendant does have access to the pre-sentencing
14 report, as does the defendant's attorney. The
15 victim can see the report.

16 SENATOR DOCKERY: They can review it but not
17 take it home.

18 MS. PETERSON: Right. So there is some
19 opportunity for access by the criminal defendant,

20 which, I believe, addresses the concerns that were

21 raised at that meeting. So if it is -- do we need

22 a motion to -- we just don't take it up. Okay.

23 Next, we have -- Renee, you were going to talk

24 to us a little bit more about the litigation

25 exemption, about the work-product and the meetings

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 exemption, and we were going to have a break out of
2 the different issues involved in that exemption.

3 MS. LEE: Yes. Thank you, Madam Chair.

4 This is item 11 on your agenda from yesterday,
5 and we carried it over to this morning. And the
6 reason that I asked to have it moved to this
7 morning's agenda is so that we could look at the
8 details of the request of the Florida Bar and the
9 Florida Association of County Attorneys. These two
10 organizations have done independent studies of
11 these issues. And these issues -- their request is
12 to expand the litigation exemption under 286.0118
13 and to expand the attorney work-product exemption
14 under Chapter 119.

15 Although it's summarized in those two
16 statements, there are actually about seven items
17 that come under those headings, under the
18 litigation exemption as well as the attorney
19 work-product exemption. I have asked that the memo

20 from the Florida Bar, or this entire packet, be
21 redistributed to the members, and I think you have
22 it before you now. And you will note that on the
23 memo from the Florida Bar, dated January, 25th,
24 '08, at the bottom of that, they list seven items
25 that they believe are important for this Commission

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 to consider. The memo from the Florida Association
2 of Counties also lists approximately seven items
3 that they've asked this Commission to consider.

4 And I'd first like to recognize that the
5 president of the Florida Association of County
6 Attorneys, Herb Thiele, is here, also with Ginger
7 Delegal, who is the General Counsel for the Florida
8 Association of County Attorneys. And they've made
9 themselves available this morning to the Commission
10 to answer any questions or explain any of the
11 requests they've made through their correspondence.

12 I'd like to read these and maybe talk about these
13 individually. And then we talk about them and
14 discuss them as a Commission.

15 But number one says "Expand work-product
16 exemption to include fact-work product." I think
17 some of you nonlawyers may not understand that, but
18 what they're saying is to -- when the attorney
19 determines what happens in a case or how did this

20 happen, that that should be protected and exempt
21 information. Right now, under Florida law, it is
22 not.

23 Number two says "Eliminate the disclosure of
24 work-product at the conclusion of the litigation."

25 There are some exemptions for work-product, but all

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 of the public attorney's work-product is open when
2 litigation is finished. That certainly puts the
3 public attorney at a disadvantage, because not only
4 does opposing counsel get to understand the thought
5 processes but the process and procedures that the
6 public attorney has to go through. And that's
7 certainly, in future litigation or in litigation
8 that's refiled -- and sometimes attorneys will
9 terminate litigation and refile it so that they can
10 capture the attorney's work-product.

11 Number three says "Protect the public
12 attorney's work-product from discovery in the same
13 manner that an attorney's work product is
14 privileged in the civil discovery context." There
15 are memos that are written to staff members, to
16 county administrators, to board members, explaining
17 the case to the risk management. All of those
18 things are open to the public. They are able to be
19 obtained by opposing counsel or any party through a

20 public records request. That certainty puts the
21 public attorney and its agency at a disadvantage.
22 Number four talks about the Sunshine Law:
23 "Allow necessary persons to attend an
24 attorney-client session." As you are probably
25 aware, Florida statutes 286 allows for an

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 attorney-client session with the attorney, the
2 board, and the county administrator. That excludes
3 people who actually may know something about what
4 happened. It excludes consultants, expert
5 witnesses, and other staff members who may be
6 instrumental in educating the public body. That is
7 a very important exemption to me. Because I've
8 practiced as a public lawyer since 1979. I've had
9 many cases which have great financial impact to the
10 county, and it's very important to have someone in
11 the closed session who can understand the technical
12 aspects of the case and who can explain it to the
13 board so that they understand the risk.

14 I know that some of the Commission members
15 have heard this request over and over again, and I
16 think that speaks to the importance of the request.
17 There is a consensus among all public attorneys
18 that we don't know everything. We have admitted
19 that and there are some people that are smarter on

20 these major issues than we are. We need them in
21 the room to educate the Board of County
22 Commissioners in those closed sessions. It's very
23 important to have experts there.
24 You may even ask, Well, how do you do it now?
25 We do it on a one-on-one basis. We take the expert

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 around to each commissioner's office and have them
2 explain the case to each commissioner so they can't
3 come into closed session. Does that work? Yes.
4 To some extent, it does. But you probably know
5 that the individual dynamic with commission is
6 totally different than the group dynamic. When you
7 get people into a room talking to each other,
8 asking questions, understanding the full body of
9 the issues that are before them, it's totally
10 different than a one-on-one kind of thing. They
11 may not even have the knowledge or the basis to ask
12 the proper questions.

13 Number five says "Allow the substantive
14 discussions to include any matter raised in a claim
15 or lawsuit or anticipated lawsuit against a public
16 agency." In the closed sessions that we are
17 authorized to hold under law, we are limited to
18 talking about litigation expenses and settlement
19 strategies related to litigation expenditures or

20 settlement negotiations. We can't really talk
21 about everything that's happened in the case. That
22 is really constricting, in terms of informing the
23 public body, in terms of having all of the
24 information that they need.

25 Six is "Eliminate the requirement that the

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 session be transcribed and made available at the
2 conclusion of the litigation." And I've talked a
3 little bit about what happens to the work-product
4 at the end of that. You get to hear an
5 attorney-client discussion. You get to hear the
6 discussions and the concerns of the public body
7 once that record is made available at the end of
8 litigation.

9 And it says "Require litigants" -- number
10 seven -- "Require litigants against a public agency
11 to obtain documents through the normal discovery
12 process during the pendency of the litigation." In
13 many instances, people, even in preparation of
14 suing the county, will ask for public records. And
15 even when litigation is filed, they will obtain
16 public records, rather than go through the normal
17 process of discovery. This is something that is
18 not available to private litigants or private
19 attorneys. They -- it really creates an uneven

20 playing field when the public agency has to not
21 only provide the records to the public during
22 litigation of a case, but they also have to prepare
23 the case using those same records. Not only is it
24 distracting and disorganizing for the public
25 attorney, but it also certainly provides more

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 information than private attorneys are entitled to
2 through the normal process.

3 There are two of these items that I've listed
4 that are more important to me, certainly as an
5 attorney and a public attorney, and those are
6 number four and five: to allow the necessary
7 persons to attend an attorney-client session. That
8 would be opening the session to an expert witness,
9 to someone who understands the technical aspects of
10 the case. We have huge environmental cases,
11 sometimes cases that really take a long time to
12 develop the facts and the issues related to it. I
13 think to deprive the public body of that knowledge
14 is to make them poor decision makers, frankly.

15 And the other one that's important to me is
16 number five, which is to allow the discussion to
17 include any matters raised under claim, or lawsuit,
18 or in anticipation of lawsuit against a public
19 agency, which brings me to an issue that wasn't

20 reflected in the Florida Bar's memo to this
21 Commission, but it was reflected in the memo from
22 the Florida Association of County Attorneys and
23 that is to allow a closed session when there is
24 threatened litigation.

25 Right now, there is -- you can go into a

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 closed session if litigation is pending, but there
2 are many times that the public attorney can avoid
3 litigation but discussing with the board the
4 liability and the problems before a lawsuit is
5 filed.

6 So I ask this Commission to consider those
7 issues that have been brought forward by these
8 organizations and certainly to hear from the
9 president this morning, if you think that's
10 appropriate.

11 MS. PETERSON: Renee, am I correct that this
12 is not yet been approved or adopted by the Board of
13 Governors?

14 MS. LEE: I'm uncertain about that. Maybe
15 Herb or Ginger could tell us more. I'm not sure
16 the status.

17 MS. PETERSON: I think my staff checked it
18 last week, and it has not yet been considered. Is
19 that correct?

20 MS. LEE: I don't know that for sure. I know

21 that this is the draft that is before the Chair.

22 But I don't know if it has been approved.

23 MS. PETERSON: Okay. Any comments or

24 questions? Sandy?

25 MR. D'ALEMBERTE: I wonder if it would be

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 productive to take these up one by one and have
2 Renee bring anybody up to the podium that she might
3 want to use, resource people, during this
4 discussion.

5 And let's begin the discussion, let me start
6 from the bottom. I'm most skeptical about six and
7 seven. So those are the ones that I have major
8 doubts on.

9 MS. PETERSON: Do you want to start there?

10 MR. D'ALEMBERTE: I'd almost start with --
11 from my perspective those are the ones that are
12 most iffy.

13 MS. LEE: And thank you for that. They're in
14 no order of importance here, but I would say that,
15 for me, I agree with Sandy. I think that I would
16 ask that Herb or Ginger maybe address those, but
17 these are restrictions that are currently in the
18 law, that the sessions be transcribed, and I would
19 like to see that remain if we allow expert

20 witnesses into the attorney-client session. And
21 this also requires litigants to obtain documents
22 through the normal discovery process. That's what
23 six and seven address, and I'd certainly --

24 MS. PETERSON: And I'd like to point out that
25 six not only says "Eliminate the requirement" for a

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 transcript, that the "session be transcribed and or
2 made available at the conclusion," so there would
3 be, if we adopted six, there would be no record of
4 the closed session, and there would be no public
5 oversight.

6 MR. D'ALEMBERTE: And that would concern me
7 some, particularly if we broaden the possibility of
8 conferences with experts. And it seems to me that
9 having that transcript is really a very good
10 protection for the public, and I would personally
11 want to broaden that. I really see Renee's point
12 of broadening that possibility, of conferring with
13 a client and other people there. I would want to
14 make sure that there's some protection, by way of
15 transcript and disclosure of the transcript.

16 That's just one person's point of view.

17 MS. PETERSON: Well, and I'd also like to
18 point out we've had considerable testimony on this
19 issue at previous meetings. And just for the sake

20 of kind of moving things forward, I mean, if we
21 have specific questions that Renee can't answer or
22 specific concerns that need -- my concern is that
23 this has not yet been approved with the Florida Bar
24 in addition to concerns I have, substantive
25 concerns I have, about expanding the work-product

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 exemption and the litigation, the meetings

2 exemption.

3 The idea of eliminating disclosure of anything

4 at the end of a litigation truly bothers me. And

5 I'm not sure if it's a little -- I just have

6 problems with it. And reading the materials over

7 the interim -- I've read very carefully, all of

8 them, that we're restoring the attorney-client

9 privilege. In fact, there was no attorney-client

10 privilege when the attorney represented a

11 government agency before creation of the

12 exemptions, because we had the presumption of

13 openness.

14 The meetings exemption has been controversial

15 since the day it was enacted. But, as Sandy points

16 out, eliminating the transcript, that's now become

17 the standard for most meetings' exemptions.

18 There's some record of the closed-door session that

19 will be made available so that we have some

20 opportunity for oversight and some opportunity to

21 reassure ourselves that the closed session was

22 limited to the discussions allowed to have in

23 secret. And so that one, I think, is most

24 problematic for me.

25 I'm not sure, and maybe you could, Renee, or

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 Sandy, or Judge Carassas, answer this one on number
2 three: "Protect the public attorney's work-product
3 from discovery in the same manner that an
4 attorney's work product is privileged." When you
5 say "an attorney," are you talking about a private
6 attorney?

7 MS. LEE: Yes, generally. And if you don't
8 mind, Madam Chair, I'd like Herb to address those
9 issues. The president of Florida Association of
10 County Attorneys is here. And let me just respond
11 to your statement that the Florida Bar hasn't
12 finalized this report. Let me tell you that we
13 work very closely with the attorneys who have
14 worked on this, and, setting aside that it hasn't
15 been formally approved, those issues are the same
16 and are reflected in the Florida Association of
17 County's letter to this Commission. And it has
18 been approved by the full body. So I would ask
19 that we consider this with all the rights of this

20 Commission.

21 MS. PETERSON: No, I just wanted to point out

22 that it had not yet been approved by the Bar.

23 MS. LEE: Okay. Thank you. But I would like

24 Herb -- he does more litigation than I, and he can

25 certainly address those issues for you.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: Okay.

2 Herb, if you could specifically answer my
3 question on number three, "Protect the public
4 attorney's work-product from discovery."

5 MR. THIELE: Certainly. And you certainly
6 have me at a disadvantage, because I don't have
7 those numbered items.

8 MS. PETERSON: Okay. It's "Protect the
9 public attorney's work-product from the discovery
10 in the same manner that an attorney's work-product
11 is privileged in the civil discovery process."

12 MR. THIELE: How it works for us is, and
13 again, my name is Herb Thiele. I'm with the County
14 Attorney's Office here in Leon County. I also have
15 the privilege of being the Florida Association of
16 County Attorney's president this year, again. And
17 when I do litigation for -- and I'm probably the
18 lead litigator in my office, which is a good thing
19 and a bad thing -- the disadvantage that we have in

20 protecting -- and in this case, it's not protecting
21 my office; it's not protecting the commissioners;
22 it's protecting the taxpayers and their investment
23 in the community -- is that I have a plaintiff's
24 lawyer. I cannot get from them materials that
25 reflect their work-product. I can not get from

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 them privileged material, communications between
2 them and their client. I only have the rules of
3 civil procedure available to me to make those
4 certain requests, and those are clearly
5 objectionable and they would not be produced.

6 Conversely, what happens is I don't get a
7 civil discovery request from the plaintiff's
8 counsel. I get a Chapter 119 public records
9 request from them, and the scope of my ability to
10 object to that is significantly more narrow than my
11 opponent has, and so the playing field is really
12 completely unlevel. I have to give them every
13 communication that I have with my commissioners or
14 my staff that relates to factual issues. I am only
15 allowed to not give them my only personal thought
16 process and analysis that I put to paper.

17 Most of the people that I deal with around the
18 state as local government lawyers have generally
19 tried to not put it in writing. That's a bad

20 thing. Not documenting your file is really not a
21 good idea, but it's come to that in some instances.
22 So that exemption, I think is, if you bring a
23 lawsuit against a local government entity, then the
24 document production and the information should be
25 pursuant to the Florida Rules of Civil Procedure

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 and all of the exemptions and all of the mandatory
2 publication of that information should be the same
3 for both litigants. That's the summation of that.

4 MS. PETERSON: Yes, Sandy?

5 MR. D'ALEMBERTE: You've got the document now.

6 Is number three different from number seven?

7 MR. THIELE: In my opinion, they're virtually
8 the same.

9 MS. PETERSON: And also, if number three,
10 "Protecting the work-product from discovery" is
11 virtually the same thing as number one, because
12 work-product exemption -- if we expanded
13 work-product to include fact-product, it would be
14 protected until the conclusion of the litigation.

15 MR. THIELE: Yes.

16 MS. PETERSON: So one, three and seven --

17 MR. THIELE: I think could all be merged into
18 saying, "When litigation is filed against a local
19 government, or by a local government, that the

20 rules of civil procedure shall apply to both
21 parties in the litigation, to the extent of
22 document or information requests."

23 MS. PETERSON: Sandy?

24 MR. D'ALEMBERTE: I have some real doubts that
25 that's practical. I mean, I'm an attorney, I file

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 a suit, I know I'll want some documents, they're
2 subject to 119. Why can't I have somebody in the
3 community follow 119 and request it? If the
4 document is subject to 119, the idea that somehow
5 you're going to deny smart plaintiff counsel from
6 getting access to them is, to me, an illusion. So
7 I have some doubts.

8 I started off on number seven, but I think
9 seven follows three. Renee, I haven't touched four
10 or five so far, but I'm now in substantial doubt on
11 six, seven, three, and maybe even one. I'm a
12 little bit on the fence about one still.

13 MS. PETERSON: I'm wondering what you mean by
14 "fact work-product." Is this the attorney's own --
15 in other words, you sit down and you're compiling
16 the facts, and you've got your own document you've
17 created? Or are these documents you're pulling in
18 from the various people in the city or the county,
19 who are somehow involved and, therefore, those

20 documents all of a sudden get protection of the
21 exemption, that document that would not otherwise
22 be exempt?

23 MR. THIELE: My answer to that is -- and by
24 the way, I'm not the author of this document. But
25 I clearly understand what the issue is. Let's make

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 it an easy example and probably will carry it
2 forward in a lot of things, because a zoning case
3 might be a little more difficult. If I am the
4 defense counsel in a personal injury action. And I
5 had a public works employee who hit another vehicle
6 with his truck and I'm defending it myself, then I
7 will clearly interview the driver of that truck and
8 ask that person what transpired. Or I could ask
9 that person to send me a memorandum describing what
10 transpired on the date of the accident. That's
11 fact-product in the litigation. So I have
12 concluded nothing over whether that constitutes my
13 ability or not, but it is clearly information which
14 I would not be able to get from the driver of the
15 vehicle we hit, because the counsel on that side is
16 not going to let me interview that witness.

17 MS. PETERSON: And so it would be, if I'm
18 understanding you correctly, it would be something
19 along the lines of, say, the exemption that's

20 currently in place for a law enforcement
21 investigation. Investigative records compiled by
22 the law enforcement agency are not subject to
23 disclosure until the conclusion of the litigation.
24 But any other document they might pull in is still
25 subject to public disclosure, absent specific

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 statutory exemption. In other words, the records
2 you create pursuant to your interview records,
3 your -- you know, you go to the scene, you make
4 notes about the truck, all of that is what you're
5 expecting to be work-product, not the -- you take
6 the personnel file of the driver involved. That's
7 not work-product. That's still subject to public
8 disclosure.

9 MR. THIELE: Absolutely. It's essentially my
10 product that I create or a product which is created
11 at my request, specifically related to the
12 litigation.

13 MS. PETERSON: And so I think, Sandy, if I'm
14 understanding this correctly then, what they're
15 saying is if we did, one, expanded the work-product
16 exemption to include fact-product, then your
17 example of being the wily attorney going and
18 getting a private citizen to make a public records
19 request, it would be exempt and no one would be

20 able to get it until the conclusion of the

21 litigation.

22 MR. D'ALEMBERTE: You know, it's been so long

23 since I did personal injury litigation that I may

24 need to get brought up-to-date, but it was my

25 understanding that in most circuits, there's an

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 automatic exchange of documents, in terms of
2 witness statements and basic documents. So if
3 you've got, it in the example given -- unless I'm
4 so far out of touch, I simply don't understand
5 what's going on in the courts these days -- it
6 seems to me that this is automatically turned over
7 from both sides. Am I wrong about that?

8 MR. THIELE: It is not. It could be
9 compelled. I mean, there are certain things,
10 though, that -- my interview of that truck driver,
11 if I was in private practice, that's absolutely
12 privileged. You can take his deposition if you
13 like, but my notations of what he says to me and my
14 exchange would be absolutely privileged.

15 MR. D'ALEMBERTE: Yeah. I see what you're
16 saying. You're notations. Okay. But now his
17 witness statement?

18 MR. THIELE: Is fair game.

19 MR. D'ALEMBERTE: Okay. Okay. I

20 misunderstood. It seems to me he makes a very good

21 point about the work-product.

22 MS. PETERSON: Any other questions or

23 comments? Do we want to vote on these individually

24 then?

25 MR. D'ALEMBERTE: Renee really set us up

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 nicely by allowing us to separate them out. And
2 this works out quite well.

3 MS. PETERSON: Okay. Does anybody else have
4 any other questions for Herb?

5 JUDGE CARASSAS: About the experts. A quick
6 question about the experts. When you go into one
7 of the shade meetings, you're not prohibited by
8 telling the commissioners what an expert has to say
9 about a matter; correct?

10 MR. THIELE: That's correct.

11 JUDGE CARASSAS: Can you bring in a report, an
12 engineer's report, and say this is what our
13 engineer, the person that we hired, recommends, or
14 says about something like this? Can you tell them
15 about expert testimony?

16 MR. THIELE: Yes, I can verbally. If I give
17 them a document, unless you vote for number one,
18 I'm going to be giving it away right after the
19 meeting is over.

20 MS. LEE: And you have to --

21 JUDGE CARASSAS: Hold on a second. At the
22 conclusion of litigation. Why did you just say at
23 the end of the meeting?

24 MR. THIELE: Once I start to share my
25 work-product with others, then I think I might be

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 subject to a 119 request for production, unless you
2 expand the work-product exemption.

3 MS. PETERSON: But I think what the Judge is
4 saying, that if you had an engineer, for example,
5 issue a report, that report is not your
6 work-product. It is a public record.

7 MR. THIELE: Yes. In general, yes.

8 MS. PETERSON: So yes, we could have the
9 engineer provide the Commission with a report, but
10 that report is subject to the Public Records Law.
11 And even if we adopted number one, it would still
12 be a public record. It would not fall under
13 work-product.

14 JUDGE CARASSAS: Yes. Let's call it like an
15 accident reconstruction report, just to go on your
16 example. You're presuming that somebody would
17 produce that and deliver it to the government in
18 some way.

19 MR. THIELE: Yes.

20 JUDGE CARASSAS: Then that is a 119. That's
21 clearly under that. What I'm saying is, are you
22 prevented from conveying that information, assuming
23 there's no -- you talked to an accident
24 reconstructionist and you say, You know what?
25 Based on that intersection and the parties, we

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 might have some liability here. Can you say that
2 in that session?

3 MR. THIELE: Yes. And it's completely exempt
4 until the conclusion of the litigation.

5 JUDGE CARASSAS: That was my question.

6 MR. THIELE: Let me just tell you, from my
7 perspective on that issue, and this is contrary to
8 what the Florida Bar memo is, I'm not as worried
9 about the transcription issue, to ease your mind,
10 from my personal perspective. If you were to
11 expand the number of people, if I could bring my
12 expert witness to the attorney-client, closed-door
13 session, I have no qualms about it being
14 transcribed and held until the conclusion of the
15 litigation. I don't believe that those two are
16 tied, from my perspective. I just want my planning
17 director to come to the meeting when it's a zoning
18 issue.

19 MS. LEE: Madam Chair?

20 MS. PETERSON: Yes, ma'am?

21 MS. LEE: What I would like to do -- we had a
22 lot of discussion on expanding the attorney
23 work-product exemption, and I would just like to
24 make a motion on one, two, three, six, and seven,
25 and place that on the table for --

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: One, two, three, six, and
2 seven. You do not want to take them separately?

3 MS. LEE: Yes. I can motion each one.

4 MS. PETERSON: Okay. I would suggest you take
5 them -- my suggestion would be that we just go down
6 the list and vote on them each individually.

7 MS. LEE: Well, I don't know if we've really
8 fleshed out the discussion on four and five, which
9 is opening or allowing additional people to attend
10 the shade meetings. I'm not sure if the Commission
11 has had the full discussion, if you feel like we
12 have.

13 MS. PETERSON: Well, why don't we talk about
14 it a little bit more now and then go on down?
15 Allowing necessary persons -- right now, the
16 exemption only allows the chief executive officer,
17 the members of the commission or the board, and the
18 attorney, whether in-house or outside counsel.
19 Those are the only people who are allowed to attend

20 the closed-door session: the chief executive
21 officer, the members of the board or the
22 commission, and the attorney representing, whether
23 in-house or outside counsel. And as Renee said,
24 there are only two matters: litigation strategies
25 and settlement negotiations. Should we settle? If

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 we settle, how much should we settle for? So the
2 discussion they can have is limited to those
3 issues. No substantive issues and no other issues.
4 So those are the two limitations in the exemption
5 right now.

6 Sandy?

7 MR. D'ALEMBERTE: Yes, Madam Chair, one of the
8 reasons I was suggesting we start from the bottom
9 and go up is if we're going to keep the requirement
10 that the session be transcribed and disclosed
11 later, I feel pretty comfortable. If we're not
12 going to keep that, I feel uncomfortable. Also,
13 let me suggest that we add a number eight. Because
14 Renee has reminded us there's also a recommendation
15 on threatened litigation. So just keeping our
16 minds around everything that ought to be before us.

17 Again, I would be comfortable expanding to
18 allow discussions with a board over threatened
19 litigation, so long as a transcript is kept and is

20 disclosed at the end of the proceedings. So

21 that's -- that changes my mind about a number of

22 these.

23 MS. PETERSON: Okay. So let's -- maybe we

24 start with --

25 MR. D'ALEMBERTE: Six is the lynchpin, I

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 think.

2 MS. PETERSON: Six. Okay. And we'll insert
3 the threatened litigation there under four and
4 five. So maybe we could amend "Allow the
5 substantive discussion" to include "any matter
6 raised in a claim, or lawsuit, or anticipated
7 lawsuit." That gets to the threat of litigation.

8 MR. D'ALEMBERTE: Yeah. Okay.

9 MS. PETERSON: Now, I'd like a little bit of
10 clarification here. If I remember, there was
11 legislation that was filed last year. It didn't
12 move for very unfortunate reasons. If I remember
13 correctly, if I wanted to sue a government entity
14 in Florida, I have to file notice of my intent to
15 sue.

16 MS. LEE: For tort cases; that's correct.

17 MS. PETERSON: For tort cases. So if I walk
18 out of this building today and I trip on the
19 sidewalk and say, I'm going to sue the Legislature,

20 that is not what you mean in terms of "threatened

21 litigation."

22 MS. LEE: No.

23 MS. PETERSON: What you mean is, once that

24 notice of intent to sue has been filed, and then I

25 have X number of days in which to actually file the

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 lawsuit?

2 MS. LEE: Yes. You have -- I think the
3 governmental body has a period of time after
4 they've received notice, to investigate the claim
5 and then try to settle the claim. And it's during
6 that period of time that I think we could mitigate
7 the damages related to that if, in fact, we could
8 discuss it with the board, the governing board.

9 MS. PETERSON: Does everybody -- I know you
10 guys understand it, but I want to make sure that
11 it's clear that we're not talking about an idle
12 threat. We're talking about the fact that I have
13 filed my notice of intent to sue.

14 MS. LEE: Yes.

15 MS. PETERSON: And then you have the
16 opportunity then to settle, or attempt to settle
17 with me, before we ever go to court, before I ever
18 file my lawsuit?

19 MS. LEE: And let me just tell you that

20 they're also cases -- could be contractual cases,
21 for example -- where we've gone through mediation,
22 we've gone through arbitration, and it's not
23 resolved, and we get a notice that a party is going
24 to sue the county as well. So as long as there is
25 some concrete designation that that party is going

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 to sue, I think it's at that point that we be
2 allowed to go into executive session with the
3 board.

4 MS. PETERSON: Okay. And I have another
5 question here. When you say "include any matter,"
6 what other issues might you want to discuss with
7 your commission, other than the settlement or your
8 litigation strategies?

9 MS. LEE: I think that could be tightened up a
10 little and said "any matter" -- well it does say
11 "raised in a claim or lawsuit." But there are many
12 times you need to talk about what the witness might
13 say, how it happened, some other issues that might
14 be related to that. Not just any other matter. We
15 wouldn't talk about labor negotiations in that
16 session, but something related to the case.

17 MS. PETERSON: That would not be included in
18 your work-product record that you could provide to
19 the members of the board or commission? That would

20 be exempt until the conclusion of the litigation?

21 MS. LEE: Possibly, but not always. And I

22 would certainly lean on the litigator to maybe give

23 you a better response to this. But I think in many

24 instances in executive session, there are questions

25 that come up that the Board of County Commissioners

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 want to know and are related to how it happened,
2 what happened, who's involved, that we're not able
3 to discuss right now, but that they should
4 certainly know about.

5 MS. PETERSON: Does anybody else have any
6 questions?

7 MS. GRINSTEAD: Madam Chair?

8 MS. PETERSON: Yes, Jeanne?

9 MS. GRINSTEAD: I just have a question about
10 number four. And I think the broadness of this
11 bothers me a little bit. And I'm concerned that
12 the revision benefits the attorney and the
13 government body a little bit more than the public,
14 in that it allows "necessary persons." That seems
15 very broad.

16 MS. LEE: Subjective, as to who the necessary
17 person is. And we can get more specific if that
18 suits the Commission. But I think when we talk
19 about "necessary persons," we're talking about

20 people with knowledge of the incident or the case.

21 We're talking about expert witnesses. We're

22 talking about department heads. Those are people

23 who are not able to come into the executive

24 sessions now. They can't even sit outside of the

25 executive session and you go outside and talk to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 them; that's prohibitive. So the Board is sitting
2 there trying to make a decision without knowledge,
3 without full knowledge of an issue or a technical
4 aspect of a case. So I would say, you know, the
5 "necessary persons" would be expert witnesses,
6 could be a department head, could be a detective
7 even, but it would not be open to everyone.

8 MS. PETERSON: So it will have to be -- you're
9 anticipating that it would be -- "necessary" might
10 be more specific.

11 MS. LEE: Someone with knowledge of the case.

12 MS. PETERSON: Okay. So, Sandy has suggested
13 we start with number seven and move our way up the
14 list and vote on these independently. I will
15 remind you that it requires two-thirds, that's all
16 six of us to approve, because we are talking about
17 creation of or the expansion of an exemption.

18 So do I have a motion to adopt recommendation
19 number six -- excuse me, number seven, "Requiring

20 litigants against public agency to obtain documents

21 through the normal discovery process."

22 MS. LEE: Move approval.

23 MS. PETERSON: Do I have a second? It fails

24 for lack of a second.

25 Number six, "Eliminate the requirement that

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 the session be transcribed and made available at
2 the conclusion of the litigation." Do I have a
3 motion?

4 MS. LEE: Move approval.

5 MS. PETERSON: Do I have a second? It fails
6 for lack of a second.

7 Number five, "Allow the substantive discussion
8 to include any matter raised in a claim, or
9 lawsuit, or anticipated lawsuit against a public
10 agency." Do I have a motion?

11 MS. LEE: Move approval.

12 MS. PETERSON: Do I have a second?

13 MR. D'ALEMBERTE: Second. With a question.

14 MS. PETERSON: Okay.

15 MR. D'ALEMBERTE: The reason I suggested an
16 eight earlier was --

17 MS. PETERSON: To take that out.

18 MR. D'ALEMBERTE: It seemed "threatened" is
19 better than "anticipated." Because as you pointed

20 out, Madam Chair, that the "threatened," you've
21 actually got a trigger point. "Anticipated"
22 strikes me to be anything that may occur to you
23 that might bring litigation some time in the
24 future. So making "anticipated" into "threatened,"
25 if Renee would accept that.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: Well, and I have a second
2 suggestion. Why don't we separate those two issues
3 out? Would that be all right if we say -- okay,
4 number six, "Allow -- " Excuse me, number five.
5 "Allow the -- " We'll do it 5A. "Allow the
6 substantive discussion on threatened lawsuits
7 against -- " Expand the exemption to allow
8 inclusion of "threatened lawsuits against a public
9 agency."

10 MS. LEE: Move approval.

11 MS. PETERSON: That would be 5A. And do you
12 second that? We're talking about threatened.

13 MR. D'ALEMBERTE: Second.

14 MS. PETERSON: Okay. Sandy was second.

15 MS. CARRIN: Carassas?

16 JUDGE CARASSAS: No.

17 MS. CARRIN: D'Alemberte?

18 MR. D'ALEMBERTE: Yes.

19 MS. CARRIN: Dockery?

20 SENATOR DOCKERY: Yes.

21 MS. CARRIN: Grinstead?

22 MS. GRINSTEAD: No.

23 MS. CARRIN: Lee?

24 MS. LEE: Yes.

25 MS. CARRIN: Peterson?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: No.

2 MS. CARRIN: Motion fails.

3 MS. PETERSON: Okay, 5B, "Allow the
4 substantive discussion to include any matter raised
5 in claim or lawsuit against a public agency."

6 MS. LEE: Move approval.

7 MS. PETERSON: Do we have a second?

8 MR. D'ALEMBERTE: Second.

9 MS. CARRIN: Carassas?

10 JUDGE CARASSAS: No.

11 MS. CARRIN: D'Alemberte?

12 MR. D'ALEMBERTE: Yes.

13 MS. CARRIN: Dockery?

14 SENATOR DOCKERY: Yes.

15 MS. CARRIN: Grinstead?

16 MS. GRINSTEAD: No.

17 MS. CARRIN: Lee?

18 MS. LEE: Yes.

19 MS. CARRIN: Peterson?

20 MS. PETERSON: No.

21 MS. CARRIN: Fails.

22 MS. PETERSON: And, Renee, did you want to

23 amend four, "Allow necessary persons related to or

24 with knowledge of -- "

25 MS. LEE: Yes. That would be certainly

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 appropriate.

2 MS. PETERSON: So "Allow necessary persons
3 with knowledge -- " How about "direct knowledge
4 of?" Or we can just say "with knowledge of to
5 attend an attorney-client session." So --

6 MS. LEE: I will accept that. I move
7 approval.

8 MS. PETERSON: Do I have a second?

9 MR. D'ALEMBERTE: Second.

10 MS. CARRIN: Carassas?

11 JUDGE CARASSAS: No.

12 MS. CARRIN: D'Alemberte?

13 MR. D'ALEMBERTE: Yes.

14 MS. CARRIN: Dockery?

15 SENATOR DOCKERY: Yes.

16 MS. CARRIN: Grinstead?

17 MS. GRINSTEAD: No.

18 MS. CARRIN: Lee?

19 MS. LEE: Yes.

20 MS. CARRIN: Peterson?

21 MS. PETERSON: No.

22 MS. CARRIN: Motion fails.

23 MS. PETERSON: Three, "Protect the attorney's

24 work-product from discovery in the same manner that

25 an attorney's work-product is privileged in the

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 civil discovery context."

2 MS. LEE: Move approval.

3 MS. PETERSON: Do I have a second?

4 MR. D'ALEMBERTE: I'll second.

5 MS. CARRIN: Carassas?

6 JUDGE CARASSAS: No.

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: No.

13 MS. CARRIN: Lee?

14 MS. LEE: Yes.

15 MS. CARRIN: Peterson?

16 MS. PETERSON: No.

17 MS. CARRIN: Motion fails.

18 MS. PETERSON: Number two, "Eliminate the

19 disclosure of the work-product at the conclusion of

20 the litigation." Do I have a motion?

21 MS. LEE: Move approval.

22 MS. PETERSON: Do I have a second?

23 MR. D'ALEMBERTE: Given my great success, I

24 second.

25 MS. CARRIN: Carassas?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 JUDGE CARASSAS: Yes.

2 MS. CARRIN: D'Alemberte?

3 MR. D'ALEMBERTE: Yes.

4 MS. CARRIN: Dockery?

5 SENATOR DOCKERY: Yes.

6 MS. CARRIN: Grinstead?

7 MS. GRINSTEAD: No.

8 MS. CARRIN: Lee?

9 MS. LEE: Yes.

10 MS. CARRIN: Peterson?

11 MS. PETERSON: No.

12 MS. CARRIN: Motion fails.

13 MS. PETERSON: Number one, "Expand the

14 work-product exemption to include fact

15 work-product."

16 MS. LEE: Move approval.

17 MR. D'ALEMBERTE: I'd like to make the motion

18 this time.

19 MS. CARRIN: Is there a second?

20 MS. LEE: Oh, second. Of course.

21 MS. CARRIN: Carassas?

22 JUDGE CARASSAS: No.

23 MS. CARRIN: D'Alemberte?

24 MR. D'ALEMBERTE: Yes.

25 MS. CARRIN: Dockery?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 SENATOR DOCKERY: Yes.

2 MS. CARRIN: Grinstead?

3 MS. GRINSTEAD: No.

4 MS. CARRIN: Lee?

5 MS. LEE: Yes.

6 MS. CARRIN: Peterson?

7 MS. PETERSON: Yes.

8 MS. CARRIN: Fails for lack of two-thirds.

9 MS. PETERSON: Okay.

10 MS. LEE: Madam Chair, may I make this

11 statement please?

12 MS. PETERSON: Yes.

13 MS. LEE: We've done some really hard work on

14 these issues, and we've taken a lot of testimony,

15 and I want to thank this Commission for your

16 indulgence. I know we've tried to wrestle down

17 those issues and we took a lot of time doing it, so

18 thank you very much.

19 MS. PETERSON: And I will promise you that it

20 will take a lot of space in the report, as well. I
21 took quite a bit of time trying to understand the
22 issues and reading through the materials, all the
23 materials, that had been provided to the
24 Commission. I reread the testimony many, many
25 times and when I get to that section, I promise you

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 it will be treated thoroughly and fairly.

2 MS. LEE: And I'd also like to say thank you
3 to the Florida Association of County Attorneys and
4 the local government section of the Florida Bar,
5 who really had a lot of input of these issues as
6 well.

7 MS. PETERSON: Thank you.

8 Next, we did hold over the FDLE exemption, but
9 I will say that we have gotten a revised -- which
10 we will hand out now. But we're going to hold off
11 on considering this until after lunch, because
12 Senator Dockery has to leave. We are talking about
13 creation of exemptions.

14 SENATOR DOCKERY: I have 20 minutes, if you
15 think that's adequate.

16 MS. PETERSON: You think we have 20 minutes?

17 Okay. Then we'll go ahead.

18 We had asked, if you remember, we had asked
19 Mr. Ramage to parse out the racino background

20 information from the domestic security language.
21 And he is asking us to reconsider the sexual
22 predator alert exemption. He's tried to narrow it
23 some. We don't have to do item number three, which
24 is included. He did show us that he has taken our
25 suggestion to include training medical students

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 within the exception to the autopsy exemption and
2 we had already asked him to do that. So I don't
3 think we need to take action on item number three.

4 So we have to take action on item number 1A,
5 1B, and item number 2. And I will remind you we're
6 talking about expansion of exemptions in each of
7 these three, so it does require a unanimous vote of
8 those present in order for us to go forward as
9 recommendation.

10 So Mike, if you want to come up and tell us
11 what you did. You can start, I guess, maybe with
12 1A.

13 MR. RAMAGE: Okay. Madam Chair, this is
14 basically based on yesterday's discussion. We've
15 pulled out all the reference to the racinos and the
16 regulatory aspect, and that leaves a pure domestic
17 security expansion, which we discussed in great
18 detail yesterday. There is information that is
19 becoming available from noncriminal justice

20 agencies that's not necessarily criminal
21 intelligence or criminal investigative information,
22 but it's, yet, information that's restricted at the
23 source, and this would allow us to take that
24 information and honor that originator's
25 restrictions on the information.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 I can give one quick example. I know there
2 were questions about some examples. The federal
3 government will make available, out of the criminal
4 justice parameters, information, and they may
5 designate that information classified. And that
6 allows disclosure to one individual at the state
7 level, but that individual cannot relate that
8 information to the other regional or domestic
9 security task force or other entities within the
10 state because of the nature of the restriction
11 being at the federal level, that if it goes beyond
12 one person that received it as a classified piece
13 of information and it can't retain its
14 non-disclosable status, then that person is
15 prevented from disclosing it to other people. So
16 this is really a workability issue and a domestic
17 security of public safety issue, as we discussed
18 yesterday.

19 We're getting information from more than just

20 criminal justice sources. And that information
21 frequently comes from sources that it's not public
22 at the originator's perspective. I know Judge had
23 mentioned that you don't want Florida to go to a
24 lower common denominator, that the practical result
25 on this particular issue is that we can be denied

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 access to the information and the use of that
2 information throughout the state. So I recognize
3 your concern about trying to go to a lower common
4 denominator. This is one area, though, that I
5 think that the public safety concerns are such that
6 we need to be able to try to get as much
7 information as we can from other sources. And if
8 they stick to a restriction that they don't want it
9 to become a public record, that doesn't mean that
10 the information is not important or relevant to
11 public safety or to domestic security. And we'd
12 like to be able to obtain that information and
13 share it with our Florida partners, with
14 restrictions that's imposed by the originator.

15 So we discussed it in great detail yesterday,
16 but that's -- basically, 1A has pulled out the
17 racino language and leaves you with the pure
18 domestic security proposed expansion.

19 MS. PETERSON: Can you give us an example

20 of -- I mean, I used the example yesterday of the
21 CDC providing, perhaps, information to the Florida
22 Department of Health, but that seems to me that
23 that would fall under the criminal intelligence
24 information language already in law.

25 MR. RAMAGE: Not necessarily. And you're

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 familiar with the definition of "criminal
2 intelligence" that's in 119. And that's fairly --
3 I mean, it was crafted at a time when we were
4 focusing solely on criminal investigations and
5 criminal issues. And that's been part of our
6 frustration is the definition of "criminal
7 intelligence" and "criminal investigative
8 information" will apply to many of these items.
9 But sometimes we don't have an identifiable group.
10 We don't have an identifiable person. But we have
11 a credible threat.

12 MS. PETERSON: And "criminal intelligence
13 information," the definition is specific to
14 information collected by the criminal justice
15 agency. So it would not be something like the CDC.

16 MR. RAMAGE: That's correct.

17 MS. PETERSON: Any questions?

18 JUDGE CARASSAS: I just want to make sure I
19 understand something. Thank you for bringing up

20 that point. A federal agency like the FBI,
21 Department of Homeland Security, they have access
22 to all the state's information, and they can
23 certainly review anything they wish if they're
24 investigating something.

25 MR. RAMAGE: If a particular state submits it

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 or the FBI has access to it, certainly, they can.
2 But Florida, particularly the Florida Department of
3 Law Enforcement, was statutorily charged after 9/11
4 with being the primary entity in the State of
5 Florida for preserving and ensuring Florida's
6 domestic security. We don't work in conjunction
7 with the FBI on everything that we do. We have a
8 substantial amount of state-related domestic
9 security efforts that may or may not involve
10 federal authorities, may or may not involve the
11 FBI.

12 JUDGE CARASSAS: I guess my point is this:
13 And you can see where I'm going with it. If there
14 is a threat that is real, and you have another
15 state that's not going to provide you that
16 information because of our Public Records Law,
17 there's nothing to stop the FBI or the Department
18 of Homeland Security, if it's that type of threat,
19 to allow them to go get that information and then

20 act accordingly.

21 MR. RAMAGE: That's true. But the reality is

22 that there is more than enough business going

23 around for the federal and the state, and there

24 will still be levels of state information that

25 might not rise to an interest at the federal level

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 but still is a domestic security concern at the
2 state level.

3 MS. PETERSON: Anyone else?

4 I have a couple of, at this point, drafting
5 issues. I don't know that Florida law -- you
6 changed it to say only on the "confidential or
7 similarly restricted -- " Excuse me.

8 "Confidential, nonpublic, or similarly restricted
9 basis." I don't know that we recognize the term
10 under law, "nonpublic." We recognize
11 "confidential" or "similarly restricted basis."

12 You know, that would be, confidential could be
13 proprietary information. "Nonpublic" is a term
14 that is -- I don't know we have any definition of
15 it. And my suggestion would be to strike
16 "nonpublic" and -- because if it's confidential or
17 similarly restricted, if you're getting it from a
18 private entity, you would be asserting some sort of
19 proprietary or trade secret protection.

20 MR. RAMAGE: I think in retrospect,
21 "confidential" and "similarly restricted" would be
22 broad enough to cover the concept of "nonpublic."

23 MS. PETERSON: And then you're talking here,
24 you're wanting to expand it to promote domestic
25 security so any -- you're saying "Information

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 relevant to promoting security efforts is not a
2 public record as originally held by a non-Florida
3 agency and is made available to -- " So we're
4 still restricting it only to criminal justice
5 agencies and not any Florida agency?

6 MR. RAMAGE: Right.

7 MS. PETERSON: Just that information provided
8 to a Florida criminal justice agency on a
9 confidential or similarly restricted basis will be
10 exempt? And you're asking that it remain exempt,
11 if it is shared, say with the Department of Health?

12 MR. RAMAGE: That's correct. And as a
13 practical matter, most of this information would
14 flow first to FDLE, because we're the primary
15 agency for Florida domestic security, and then we
16 would share it with our state and local partners in
17 domestic security. And, of course, that is a
18 community that's just beyond criminal justice
19 agencies, which is why we have that last language

20 that you just mentioned.

21 MS. PETERSON: Any other questions? Okay.

22 Do we have a motion?

23 MS. GRINSTEAD: Barbara?

24 MS. PETERSON: Jeanne, yes?

25 MS. GRINSTEAD: This isn't -- I just want to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 make sure that this isn't too broad, again, with --

2 MS. PETERSON: Well, it needs some
3 wordsmithing, but it's -- there's standard language
4 in the statutes that if we went to drafting, they
5 would -- it would say, you know, it doesn't lose
6 its exempt status simply because it's shared with
7 another agency.

8 MS. GRINSTEAD: Okay. But any other agency,
9 entity, or person?

10 MS. PETERSON: Yes. Well, yes. There is
11 standard language in some other exemptions because
12 it might be a private --

13 MR. RAMAGE: It could be a hospital
14 administrator.

15 MS. PETERSON: Right. It could be a private
16 entity that they want to share it with. But there
17 is standard drafting language.

18 Do we have a motion?

19 MR. D'ALEMBERTE: Yes, so moved.

20 MS. PETERSON: Sandy moves. Do we have a

21 second?

22 SENATOR DOCKERY: Second.

23 MS. CARRIN: Carassas?

24 JUDGE CARASSAS: No.

25 MS. CARRIN: D'Alemberte?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MR. D'ALEMBERTE: Yes.

2 MS. CARRIN: Dockery?

3 SENATOR DOCKERY: Yes.

4 MS. CARRIN: Grinstead?

5 MS. GRINSTEAD: No.

6 MS. CARRIN: Lee?

7 MS. LEE: Yes.

8 MS. CARRIN: Peterson?

9 MS. PETERSON: Yes.

10 MS. CARRIN: Fails.

11 MS. PETERSON: Okay 1B, the racino background

12 information. This is the one that we were

13 presented with in Fort Lauderdale, and it would

14 create a public records exemption for information

15 provided to FDLE or DBPR for the purposes of

16 background checks and licensing reviews on people

17 working in the slot machine, pari-mutuel -- just

18 slot machines.

19 MR. RAMAGE: Gaming.

20 MS. PETERSON: Gaming. Do I have a motion?

21 Do we have any questions first?

22 MR. D'ALEMBERTE: I have a question and that

23 is -- I'm worried now, Madam Chair. I'm worried

24 about what happens after a denial. Can, at least

25 the person who's license is denied, get access to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 the information?

2 MR. RAMAGE: Yes.

3 MR. D'ALEMBERTE: Is that in here?

4 MR. RAMAGE: If you look under paragraph B,
5 this is all new language.

6 MR. D'ALEMBERTE: I'm sorry. I was spilling
7 coffee and not reading further.

8 MR. RAMAGE: But I actually put language
9 "Notwithstanding the exemption provided, any person
10 denied licensure in whole or in part upon any
11 non-public information provided shall be entitled
12 to review and copy any such information."

13 MR. D'ALEMBERTE: I should have been reading
14 and not spilling coffee.

15 MS. PETERSON: So do we have a motion? Sandy?

16 MR. D'ALEMBERTE: I'll support it.

17 MS. PETERSON: Makes a motion. Do we have a
18 second?

19 MS. LEE: Second.

20 MS. PETERSON: Renee seconds.

21 MS. CARRIN: Carassas?

22 JUDGE CARASSAS: No.

23 MS. CARRIN: D'Alemberte?

24 MR. D'ALEMBERTE: Yes.

25 MS. CARRIN: Dockery?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 SENATOR DOCKERY: Yes.

2 MS. CARRIN: Grinstead?

3 MS. GRINSTEAD: No.

4 MS. CARRIN: Lee?

5 MS. LEE: Yes.

6 MS. CARRIN: Peterson?

7 MS. PETERSON: No.

8 MS. CARRIN: Motion fails.

9 MS. PETERSON: Okay. And then he's asking --

10 I guess we need to have a motion first to

11 reconsider, because we voted this one down

12 yesterday, the sexual predator alert information.

13 So I think we need, first, a motion to reconsider.

14 SENATOR DOCKERY: I'll move to reconsider,

15 although it's a different amendment.

16 MS. PETERSON: It's different language, but

17 the concept is still the same. So --

18 MS. LEE: Second.

19 MS. PETERSON: All those in favor, say "Aye."

20 (A chorus of Ayes.)

21 MS. PETERSON: Unanimous. Okay.

22 And this has been narrowed -- if you remember

23 yesterday, it was any information provided to the

24 department. Now it is just the email address

25 provided to the department when requesting access

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 to the notification system. Jim Ray did a little
2 bit of research for us yesterday and found out that
3 the email notification system is authorized by law,
4 and it is pursuant to federal law, which may make
5 the difference in some consideration.

6 I had just one question, Mike. And we saw
7 what information -- I guess, if I'm remembering --
8 the Senator's got the actual language down there --
9 but I just wanted to see what the types of
10 information you get: the requester's email address,
11 and the points of reference?

12 MR. RAMAGE: It could be a church; it could be
13 a school; it could be your residence; it could be a
14 neighbor's residence; different types of
15 information. And in talking with our folks at
16 FDLE, while all of that information is of a general
17 concern, the major concern is that the email
18 address itself could be Googled, it can be
19 investigated, and you can find out who that email

20 address belongs to. That's the key that opens the
21 gate to the rest of the personal information. So
22 the email address, in and of itself, would be a
23 terrific protection against going further down the
24 path to finding the other personal information.

25 MS. PETERSON: The only question I have is,

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 it's the email address of non-sexual predators or
2 offenders; how do you determine that the --

3 MR. RAMAGE: Well, the offenders are required
4 to notify of us of the email addresses that they
5 use. So that's why we have that exemption in
6 there. We don't want to accidentally exempt their
7 information from disclosure, because that's
8 information that we want to disclose.

9 MS. PETERSON: So they are required to provide
10 you -- and we're hoping that they're complying.

11 MR. RAMAGE: Right.

12 MS. PETERSON: Okay.

13 Do I have a motion? Do I have any discussion
14 first, other than -- do I have a motion?

15 MS. LEE: I move approval.

16 MS. PETERSON: Renee. Do I have a second?

17 SENATOR DOCKERY: Second.

18 MS. CARRIN: Carassas?

19 SENATOR DOCKERY: Should we have a little

20 discussion first?

21 MS. PETERSON: Okay.

22 JUDGE CARASSAS: I'm not sure about this. I

23 don't mean to hold this up.

24 SENATOR DOCKERY: No, that's okay. But --

25 JUDGE CARASSAS: I think other folks have

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 questions about this. JoAnn, can you remind us of
2 what our vote was yesterday?

3 MS. CARRIN: Yes, sir.

4 JUDGE CARASSAS: That's the question I have,
5 was how we voted yesterday, to make sure that we're
6 on the same type of issue.

7 MS. CARRIN: Let me find it here.

8 MS. LEE: Madam Chair, this amendment would
9 protect the email address of the people who want to
10 be notified that a sexual predator or offender
11 would be released; is that correct?

12 MR. RAMAGE: Correct.

13 MS. PETERSON: Would be released?

14 MR. RAMAGE: Well, actually moving into their
15 neighborhood or moving into an area of concern.

16 MS. PETERSON: So, for example, your daughter
17 goes to a private school, you want to know when a
18 sexual predator moves within three miles or five
19 miles of your daughter's school. They would send

20 you a notification.

21 MS. LEE: Yes.

22 MS. PETERSON: JoAnn, do you have the --

23 MS. CARRIN: I do. Yesterday's vote was

24 Carassas, for; D'Alemberte, against; Dockery, for;

25 Grinstead, against; Lee, for; and Peterson,

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 against. It was three to three. It failed.

2 JUDGE CARASSAS: And we need a two-thirds vote
3 on this also?

4 MS. PETERSON: It needs to be all of us today.

5 JUDGE CARASSAS: The issue that I thought
6 about yesterday, I'll bring it up again today since
7 we're revisiting it. This is a good idea, to be
8 able to ask for these alerts, but, you know, we
9 always look at it this way -- I do, at least: Is
10 there a least restrictive way? I hate to use a
11 lawyer term but is there another way you can do
12 this?

13 And you can do that. You can do exactly the
14 same thing by going into the excellent system that
15 FDLE has set up, punch in your address, and you get
16 a map of exactly all the registered offenders
17 there. So you can do that at any time. This is an
18 alert process, which is, I think, it's an extra
19 thing that you can have, but it doesn't stop you

20 from finding out who those sexual predators are
21 that are near your house, near your school, for the
22 protection that you want. Am I understanding what
23 exactly the program is? I want to make sure I
24 understand the program.

25 MR. RAMAGE: I think there may be a little bit

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 of confusion here. The only email address that
2 would be protected by this proposal would be --
3 let's, say Senator Dockery wanted to sign up for
4 the affirmative notification. As part of that
5 sign-up procedure, we have to have an email to give
6 her the affirmative notification. And that's the
7 only thing we're exempting from public disclosure,
8 would be her personal email address, so that a
9 predator or someone else could not pull that
10 address and then Google it and do the research and
11 determine by the email name that was utilized who
12 she is, where she lives, and other personal
13 information that might be tied to the address.

14 So --

15 JUDGE CARASSAS: Let me jump right in on that
16 point. That's exactly what I'm getting at. But
17 Senator Dockery, Paula Dockery -- let's forget
18 Senator for a moment -- she can go in at any time,
19 put in her address, and find out where these sexual

20 predators are in her neighborhood or near her kid's

21 school.

22 MR. RAMAGE: She could do that, but our

23 philosophy --

24 JUDGE CARASSAS: She does not have to provide

25 her email address to get that information.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MR. RAMAGE: She does not have to do that to
2 do her own search. But we have technology and the
3 ability to affirmatively notify, if people want to
4 subscribe to that system. And it's a good system,
5 because it is somewhat onerous to have to go back
6 into the system on a regular basis and type in all
7 the locations and look at the map. This would drop
8 an email in your inbox saying, For your
9 information, Joe Sexual Predator has just moved
10 within the 5-mile radius of your daughter's school.
11 And then Paula Dockery could go back and access our
12 system and get more details about Joe Sexual
13 Predator if she chooses to do so. This is like an
14 alert, not unlike what you're doing on college
15 campuses, when they do the instant messaging when
16 there's a problem that occurs or something like
17 that. It's an affirmative approach.

18 MS. PETERSON: And Judge, I point out, thanks
19 to Jim, there was legislation passed in 2007

20 requiring FDLE to develop and maintain the system,
21 to provide automatic notification. They were
22 required to have that system up and running by
23 January 1st, 2008. So they are required to do it.
24 It is not a program that they thought might be a
25 good idea. There is legislative.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MR. RAMAGE: Mandate.

2 MS. PETERSON: Mandate.

3 JUDGE CARASSAS: I'm going to vote for it
4 again, because I think the goal is good. It's just
5 that there are other ways you can get to the same
6 place. And I think you understand that.

7 But in order to provide that service to the
8 citizens, there ought to be some protection if
9 that's a real concern. I don't think anybody gave
10 me an example of a sexual predator actually making
11 a public records request for those email addresses.
12 I don't know if they could happen. It could. I
13 don't know if it has happened, but it certainly
14 could.

15 MR. RAMAGE: And it's a new system.

16 JUDGE CARASSAS: All right. We'll give the
17 citizens that protection. I'm okay with that, even
18 though it is an exemption.

19 MS. PETERSON: Okay. We have the motion. We

20 have a second.

21 MS. CARRIN: Carassas?

22 JUDGE CARASSAS: After that delay, yes.

23 MS. CARRIN: D'Alemberte?

24 MR. D'ALEMBERTE: No.

25 MS. CARRIN: Dockery?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 SENATOR DOCKERY: Yes.

2 MS. CARRIN: Grinstead?

3 MS. GRINSTEAD: No.

4 MS. CARRIN: Lee?

5 MS. LEE: Yes.

6 MS. CARRIN: Peterson?

7 MS. PETERSON: Yes.

8 MS. CARRIN: Fails for lack of two-thirds.

9 MS. PETERSON: Okay. What time is it now?

10 Five 'til eleven. Let's take a short break then,

11 and stretch our legs.

12 MR. D'ALEMBERTE: Can we do that with

13 compliments to the court reporter?

14 MS. PETERSON: Absolutely.

15 (Whereupon, a recess was had in the

16 proceeding.)

17 MS. PETERSON: Okay. If we can get started

18 again. We still have a ton of stuff to do. So

19 where are we? We're on Electronic Access,

20 Standards for Databases and Data Dictionaries.

21 If you remember -- and I'm sorry, but I am not
22 the expert on this stuff. If you remember, we had
23 considerable testimony at the Sarasota meeting
24 about the need to create standards for creation of
25 agency databases and data dictionaries in order to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 facility public access. And it was Moe Tay-men
2 (phonetic) from the Sarasota Harold Tribune who was
3 talking about, you know, the different fields in a
4 database. And that is what, I believe, he was
5 talking about in creating the standards.

6 And I know we have a new technology office and
7 officer, who presumably will be addressing these
8 issues, and my suggestion is that we don't attempt
9 to create the standards but recommend the creation
10 of the standards. Because I don't think any of us
11 have the technological expertise to deal with this,
12 but to create databases and data dictionaries for
13 the purpose of facilitating public access to public
14 records. And we don't have to talk about the
15 standards. We will recommend the creation, and I
16 will attempt to deal with the issue in my report in
17 a way that is intelligent.

18 Any questions? Discussion? Do I have a
19 motion?

20 MS. GRINSTEAD: So moved.

21 JUDGE CARASSAS: Second.

22 MS. CARRIN: Carassas?

23 JUDGE CARASSAS: Yes.

24 MS. CARRIN: D'Alemberte?

25 MR. D'ALEMBERTE: Yes.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. CARRIN: Dockery? Absent. Grinstead?

2 MS. GRINSTEAD: Yes.

3 MS. CARRIN: Lee?

4 MS. LEE: Yes.

5 MS. CARRIN: Peterson?

6 MS. PETERSON: Yes.

7 MS. CARRIN: Perfect. Thank you.

8 MS. PETERSON: Now, the Unique Identifiers and

9 the Social Security Numbers. I think we're going

10 to -- because we were talking yesterday about

11 amending the exemption, that does not require a

12 two-thirds vote, because we will not be -- well, we

13 might be expanding it, depending on which way we

14 go. So we're going to hold that off, because we

15 want Senator Dockery to be part of that discussion,

16 and she had to leave until after lunch. So let's

17 put off the unique identifiers.

18 We did talk yesterday, if you remember, about

19 the unique identifiers. There is a requirement in

20 law now that a unique identifier system be created.

21 The Department of Revenue determined at one point

22 that it was too expensive. But JoAnn reported

23 yesterday that there is some reconsideration of the

24 issue, so we're going to put off, maybe, that for

25 further discussion until Senator Dockery comes

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 back.

2 Jean, did you have a question?

3 MS. GRINSTEAD: Are we going to recommend
4 creating the state-wide system or recommending that
5 it be created?

6 MS. PETERSON: It's already -- the requirement
7 for the creation of the state-wide unique
8 identifier system is already in law. So we would
9 not be recommending it, because it's already there.

10 MS. GRINSTEAD: Okay.

11 MS. PETERSON: I was not at all aware of it
12 and, apparently, neither were the people who
13 recommended it. And then, we would -- now, what
14 we're going to be talking about later this
15 afternoon is the amending of that general exemption
16 for social security numbers that's in Chapter 119.

17 The next issue is Redaction. Remember
18 yesterday, we adopted fee language that says that
19 redaction of exempt information from a public

20 record is not a special service or product. And
21 the recommendation is that we require agencies to
22 develop electronic recordkeeping systems with
23 redaction capability, or in the alternative, to use
24 redaction software capable of deleting information
25 that is exempt from public disclosure.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 I realize in drafting that recommendation that
2 not all records are in electronic formats. But
3 most -- and more and more agencies are going to
4 electronic systems, even if they're scanning in
5 paper records, and scanning them into an electronic
6 format. And I would also point out that there has
7 been a provision in law since 1995 that requires
8 agencies, when desiring or acquiring an electronic
9 record system, to consider public access, and that
10 consideration would include the redaction of exempt
11 information.

12 And I think that from the testimony we have
13 received, redaction of exempt information in
14 electronic information has been a considerable
15 barrier to the public's right of access, either in
16 terms of time or in terms of fees. And I think
17 that technology is advancing to the point, one,
18 where we can create systems with redaction
19 capability. We, for example, put all, as we're

20 entering data, we put all social security numbers
21 in field nine. And we have a system, software
22 capability, to provide all fields but for nine. So
23 we have an automatic redaction. There's also
24 software available, proprietary software, available
25 now that you can use to redact even a handwritten

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 social security number. So there is that
2 capability now, and we have to get to the point
3 where agencies are taking advantage of the
4 technology that's available in order to provide
5 quality public access and meaningful public access.

6 And I think, JoAnn, you had gotten some
7 information about the different redaction programs
8 available, because we had talked about the
9 possibility of maybe getting some kind of a state
10 contract or get agencies, you know, some ability to
11 buy software at a reduced cost.

12 MS. CARRIN: Yes. Our office did quite a bit
13 of research. Paige Bass, with our office,
14 researched, and there are a number of redaction
15 software, proprietary software, available from
16 companies that custom-design the system. So I
17 think there are options out there for agencies to
18 create their own and/or, you know, depending on
19 cost, potentially purchase products that are

20 available.

21 MS. PETERSON: And my suggestion, again, would

22 be that we adopt this recommendation and then ask

23 the state technology people to work on this, in an

24 attempt to find some solution to provide software

25 at reduced costs.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 Sandy?

2 MR. D'ALEMBERTE: This is a huge problem for
3 universities, because of the budget amendment.

4 That is not state law; it's federal law. And we're
5 not allowed to divulge information about students.

6 And we have some student athletes who draw the
7 interest sometimes of newspapers. And going

8 through reports that you've got, and taking out
9 information about students just is an enormously

10 time-consuming -- and frustrating to the press,

11 because you've got to redact. You can't produce

12 without violating the Buckley Amendment. But

13 redaction, and careful redaction, takes an enormous

14 amount of time.

15 So I'd really be interested in getting some

16 university counsel in on that discussion to make

17 sure that we understand how that software can be

18 adapted to their purposes. I don't think they want

19 to refuse the production or delay the production,

20 but it just simply can't be done reliably without a

21 great expenditure of time.

22 MS. PETERSON: I know from my experience with

23 the Joint Committee, there was a fairly infamous

24 investigative reporter who worked for the St. Pete

25 Times, who was everybody's nemesis in Tallahassee.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 And he used to travel around with a portable
2 computer tape drive and commercially available
3 redaction software. And that was back in 1995.

4 And I think what we have to do -- as I said,
5 it's already a requirement that we create these
6 systems. And what we have to do is somehow raise
7 everybody's attention to the fact that they're
8 required to do this now. And I think that that
9 provision has not been -- people have not been
10 paying attention to it when they're creating these
11 systems. And then we encourage, you know, and work
12 with the Office of Technology -- and the State
13 Technology Office.

14 Is that what it's called?

15 MS. CARRIN: It's called the Agency for
16 Enterprise Information Technology.

17 MS. PETERSON: We, you know, recommend that
18 they work with the agencies to help them develop,
19 in both state and local, to help them develop the

20 redaction capability that they need. We certainly
21 have enough bright people in university systems.
22 Somebody could make a fortune developing a
23 redaction software for use by the university system
24 and by local governments. And there are a number
25 of proprietary programs already in existence.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MR. D'ALEMBERTE: Barbara, a good possibility
2 here is that it's just some education about the way
3 you can approach the report-writing process if
4 people would learn to write investigative reports
5 and identify Student Number One, Student Number
6 Two, Student Number Three and then don't use their
7 names further in the report, your redaction problem
8 really is greatly reduced. But getting people
9 accustomed to doing that is really a big
10 educational problems.

11 MS. PETERSON: And I think that's one of the
12 issues that the Court Committee is wrestling with.
13 How do we -- and one of their recommendations --
14 I'm not sure where it is in the process right
15 now -- is that all the information like that, like
16 your social security number, your personal
17 financial information that might be on or in a
18 court record, be in a separate segregable page.
19 And it's educating the attorneys who, every day,

20 want to put social security numbers on every page,
21 social security numbers of every party on every
22 page. But to have that, you're absolutely right,
23 education plays a big part in this. And sort of,
24 changing people's focus, I think is critically
25 important.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 So if we -- you know, I think by saying
2 "require," what we will be doing is pointing out
3 it's already required and that agencies need to
4 start complying, and then encourage the new office
5 to work with the agencies in helping them to comply
6 with the redaction requirements.

7 MS. CARRIN: I would like to add that David
8 Taylor, who has been appointed as the Interim Chief
9 Information Officer has already been a great
10 support to our office. He's very open-government
11 oriented and we've had a great dialogue. He
12 assisted us with an agency who wanted to charge a
13 flat fee of \$50 an hour for computer time, and he
14 was able to make them understand they couldn't
15 justify the cost. And so we were able to get that
16 information to the public at no charge. And so I'm
17 very encouraged that he will be very helpful in
18 this process.

19 MS. PETERSON: Well, and maybe he can help

20 edit the report.

21 Renee, did you have a question or a comment?

22 MS. LEE: I have a question. I've heard you

23 say this is already required in the statute. Does

24 it say that you're required to do redaction or that

25 you're required to consider public access?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: It says -- I was trying to find
2 it. There are a number of provisions, and I did
3 lay them out, I think. There are a number of
4 provisions in the law already, all in the general
5 policy statement, 119.01. "Automation of public
6 records must not erode the right of access to those
7 records. Each agency must provide reasonable
8 public access to records electronically maintained
9 and must ensure that exempt and confidential
10 records are not disclosed. When designing or
11 acquiring electronic recordkeeping systems, an
12 agency must consider whether such systems are
13 capable of providing data in some common format.
14 An agency may not enter into a contract for the
15 creation or maintenance of a public record database
16 if that contract impairs the ability of the public
17 to inspect or copy."

18 MS. LEE: I get the flavor. One of my
19 concerns -- and I certainly support this. My only

20 concern, really, is the impact, the fiscal impact,
21 to a small county in asking them to retrofit a
22 computer system with this.

23 MS. PETERSON: We're not talking about
24 retrofitting. We're talking about the creation or
25 maintenance. So I'm not requiring retrofitted.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. LEE: If they've got a system, then
2 somehow they've got to get a compatible system to
3 take out any confidential or exempt information.

4 MS. CARRIN: Well, they're already required to
5 take out confidential or exempt information.

6 MS. LEE: But you're saying do it
7 electronically now.

8 MS. PETERSON: And they would also, I think,
9 be required to do it. If I want a copy of an
10 electronic record that contains exempt information,
11 they have to give it to me in the form or format in
12 which they maintain it already. And they would be
13 required, already, to redact it electronically.
14 How they do that --

15 MS. LEE: Sometimes it's manually.

16 MS. PETERSON: Sometimes it's manually. And
17 what we're talking about is trying to bring down
18 the cost of redaction software to make it more
19 affordable and efficient. But we're not talking

20 about retrofitting. We're talking about if they're
21 creating a new system. And most systems have a
22 fairly short shelf life. We're not asking anybody
23 to retrofit.

24 MS. LEE: If it's limited to creating a new
25 system and a community goes into buy one, then I

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 agree.

2 MS. PETERSON: Yes, we're not talking about
3 retrofitting. Retrofitting is very, very
4 expensive.

5 Any other questions? Do we have a motion?

6 MR. D'ALEMBERTE: I make the motion, so long
7 as we can couple it with the idea that this would
8 not be an unfunded mandate. I think that's where
9 Renee's concern is and mine as well. So if we're
10 going to ask that agencies and local governments be
11 required to do this, we ought to make sure that
12 they get the resources to do it.

13 MS. PETERSON: And we will make it clear in
14 the recommendation that we're not talking about
15 retrofitting, that we're talking about as they move
16 forward. In other words, when Lee County or
17 Hillsborough County redesigns its system, that they
18 redesign it with redaction capability.

19 MR. D'ALEMBERTE: I think that's right. And

20 if there's any expense, let's make sure that we at
21 least carry -- that our recommendation is that
22 there be funding.

23 MS. PETERSON: Do we have a second?

24 MS. LEE: Second.

25 MS. CARRIN: Carassas?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 JUDGE CARASSAS: Yes.

2 MS. CARRIN: D'Alemberte?

3 MR. D'ALEMBERTE: Yes.

4 MS. CARRIN: Dockery?

5 SENATOR DOCKERY: Yes.

6 MS. CARRIN: Grinstead?

7 MS. GRINSTEAD: Yes.

8 MS. CARRIN: Lee?

9 MS. LEE: Yes.

10 MS. CARRIN: Peterson?

11 MS. PETERSON: Yes.

12 MS. CARRIN: Thank you. Passes.

13 MS. PETERSON: Now, the next one. If you

14 remember, we had a lot of testimony on email

15 access. And there were basically two

16 recommendations. But they -- two, I should say,

17 general types of exemptions. And I tried to

18 condense them into one. And that is -- the

19 recommendation was that we require agencies to

20 provide public access to all public record email
21 through the use of public access terminals or
22 websites. And I think JoAnn looked into the
23 possibility of doing that at just the Governor's
24 Office and was overwhelmed by the amount of email
25 that the Governor received within a very short

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 period of time. And trying to provide access to
2 that email via a public access terminal or a
3 website was overwhelming. Am I correct?

4 MS. CARRIN: Virtually impossible to be able
5 to do that and be able to protect any private
6 information that citizens send into the government.

7 MS. PETERSON: Any private, exempt
8 information?

9 MS. CARRIN: Right. Private, exempt
10 information, which happens routinely.

11 MS. PETERSON: So I'm not sure exactly where
12 we go with this, except to perhaps make a goal that
13 agencies enhance their ability to provide access to
14 public records emails. And again, work with the
15 technology people to, sort of, provide assistance
16 on this.

17 I know what's happening is that people, on a
18 regular basis, not just reporters, but citizens,
19 are wanting email and they're not getting it. I've

20 been working with a man who's trying to get the
21 email of one person in his local government, and
22 they're trying to charge him \$125 an hour to get
23 the email that he says should be available -- he's
24 a technology guy -- and he could just copy this
25 little file and have it. It shouldn't take any

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 time at all. So I think we need to address it.

2 Whether we should require them at this point,
3 whether it should be a phase-in, whether it should
4 be a goal by this date, I'm not at all sure what we
5 do or how we do it. But I do think we need to deal
6 with the email problem.

7 Jean?

8 MS. GRINSTEAD: Are we recommending state
9 agencies do this or all public entities?

10 MS. PETERSON: When we're talking about access
11 to email, we'd be talking about all agencies.

12 MS. GRINSTEAD: Okay.

13 MS. PETERSON: Any suggestions?

14 MS. LEE: Well, Madam Chair, emails are
15 provided either by -- and here is how we do it in
16 our office. You request an email of Commissioner
17 Doe. We pull down all of his emails. They go into
18 a file. Somebody has to go through each of those
19 emails to review for any exempt information. So

20 it's not manually handled, but there are times when
21 we have to pull emails out of that batch that we
22 get. So that ends up being printed. But if there
23 are no emails that contain exempt information, then
24 we just press the button and send them to the
25 person requesting the documents. Otherwise, they

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 have to be printed, exempt information removed, and
2 then the person has a choice of -- usually they get
3 the hard copies of that.

4 I'm a little concerned about having the public
5 access terminals. If there's somebody who can
6 monitor those terminals, remove exempt information,
7 who can remove other offensive information that
8 comes through those terminals -- and I've
9 personally seen some of that. It takes really
10 close monitoring to do that. That's a staff person
11 who's going to have to do that.

12 MS. PETERSON: I think -- I mean, it depends,
13 obviously, on how we word the recommendation. It
14 would be all nonexempt, public record email. And I
15 think part of this problem may be addressed through
16 some of our other recommendations; for example,
17 increased education. A lot, I think, at the small
18 local government level, I think a lot of people are
19 not -- a lot of commissioners and government

20 employees are not realizing that a lot of the
21 emails that they send and receive are public
22 record. You know, help agencies. And this could
23 be, again, depending on our recommendation, but I
24 could see a role of the Office of Open Government
25 helping agencies developing procedures where, you

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 know, you get your standard, public record email,
2 it goes in one file; we get it; Oh, this might have
3 some exempt information; and then, we only have to
4 review a subset of the public records.

5 But I'm not suggesting that we adopt this
6 language. But I am suggesting that we make some
7 recommendation regarding email. And I'm not saying
8 public access terminals at this point, or even
9 websites at this point, but there should be some
10 aspirational goal.

11 MS. LEE: I would support that. I just don't
12 want to require -- I can't support public access
13 terminals or the ability to get into a county's
14 website and get whatever emails a member of the
15 public wants. I just think that is begging for
16 trouble. But to enhance the opportunity to get
17 emails or some aspirational goal, I certainly can
18 support.

19 MS. PETERSON: Judge?

20 JUDGE CARASSAS: What about limiting the
21 current right of the citizen to ask for email?
22 We're not touching that issue. They have the
23 right -- they can make the request. Even if there
24 is no terminal, even if this technology is not
25 available. It's not going to stop a citizen from

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 coming in and saying, I need to see Commissioner
2 Smith's email. We're talking about making it
3 easier for them.

4 MS. PETERSON: Correct.

5 JUDGE CARASSAS: I think that has to be
6 aspirational, because we don't want to end up
7 burdening local government. I happen to have
8 worked for the City of Clearwater and -- correct me
9 if I'm wrong; Cindy Goudeau is here, our City
10 Clerk -- and this was years ago, we put in -- there
11 were terminals that allow access for the public,
12 reporters especially, to look at that. So good
13 local governments can do that.

14 But I don't know if this Commission should
15 require it. And I think that's a fine line. We go
16 back and forth on that line. I know the arguments
17 on both sides. But as long as we're not touching
18 the requirement that they're going to have to
19 provide it, I think how they do it should be

20 aspirational. I guess that's the bottom line if

21 you're looking for a response.

22 MS. PETERSON: So perhaps "encourage

23 agencies."

24 JUDGE CARASSAS: But not mandate.

25 MS. PETERSON: No. "Encourage agencies to

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 provide enhanced public access to all nonexempt
2 public record email," and then we can give them
3 examples of how that can be done. We can just
4 leave it at that. I mean, because I know there are
5 some agencies that provide access to public record
6 email through the use of terminals. Some of them
7 just hand you a disk with all the emails on it.
8 Some of them stand over you and watch you as you
9 look at the emails on-line. So we have, you
10 know -- and then through the opportunity for more
11 education and perhaps assistance in developing
12 policies, that may go a long way to reaching our
13 goal.

14 Jeanne?

15 MS. GRINSTEAD: I think the redaction issue is
16 going to help a lot on this, too. Because if we're
17 requiring agencies to develop recordkeeping systems
18 with redaction capability, that ultimately can lead
19 to public access terminals because those emails

20 could be --

21 MS. PETERSON: I think the emails, the
22 testimony we received, are harder, because they
23 aren't -- you know, if I send Renee an email, I
24 might say, I need help with my utility service;
25 here is my social security number. That's in a

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 text field and can't be redacted easily using
2 redaction software. If Renee sends an email to the
3 utility system saying Barbara Peterson needs, they
4 might have a format that she could attach that
5 would have it in a redactable field. But when
6 we're talking ability, text it's much harder to
7 redact.

8 Now, there is software I've seen that can go
9 into a text field and just because of the
10 sequence -- but, you know, if I use slashes instead
11 of dashes, or I do a double indent, then it makes
12 it a little harder. So talking about redacting
13 email is a little harder than redacting other kinds
14 of electronic databases.

15 So "encourage agencies to provide enhanced
16 access to public record emails -- access to public,
17 nonexempt, public record email through the use, for
18 example, of" -- or we could give them some
19 examples.

20 JUDGE CARASSAS: Can we change the word

21 "require" to "request" in your sentence?

22 MS. PETERSON: I think we changed it to

23 "encourage."

24 JUDGE CARASSAS: That's fine.

25 MS. PETERSON: We "encourage."

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 JUDGE CARASSAS: It would say "Encourage
2 agencies to provide public access to all public
3 record email through the use of public access
4 terminals or websites."

5 MS. PETERSON: "Encourage agencies to provide
6 enhanced public access to all nonexempt, public
7 record email through the use, for example -- " So
8 it wouldn't be mandating, or it would be giving
9 them other alternatives as well. Something along
10 those -- I mean, I will have to wordsmith it, but
11 it will be encouraging. And we'll ask -- we'll
12 also recommend that the Office of Technology, the
13 new Technology Office work with the Office of Open
14 Government, that the Office of Open Government work
15 with the local agencies, local government, and
16 state agencies to help them provide better access.

17 MS. LEE: Move approval.

18 JUDGE CARASSAS: I think I understand that.

19 I'll second that.

20 MS. CARRIN: Carassas?

21 JUDGE CARASSAS: Yes.

22 MS. CARRIN: D'Alemberte?

23 MR. D'ALEMBERTE: Yes.

24 MS. CARRIN: Grinstead?

25 MS. GRINSTEAD: Yes.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. CARRIN: Lee?

2 MS. LEE: Yes.

3 MS. CARRIN: Peterson?

4 MS. PETERSON: Yes.

5 MS. CARRIN: Passes.

6 MS. PETERSON: Okay, Use of Personal Computers

7 and Personal Internet Account to conduct public

8 business. We had some testimony, if you remember,

9 from Pat Gleason about this yesterday. And I asked

10 that she clarify my understanding that the use of

11 personal computers and/or personal internet

12 accounts to conduct public business does not alter

13 the public's right of access to the business, the

14 public records maintained on those computers or

15 transmitted by such accounts. If it meets the

16 definition of a public report, it is a public

17 record. And the corollary there is if I, as a

18 constituent, send one of my commissioners a letter

19 to his home or her home and it relates to public

20 business, it is as much a public record as if I

21 sent it to City Hall. So that's one.

22 And also to clarify that public records

23 maintained on personal computers or transmitted by

24 personal internet accounts are subject to current

25 disclosure and retention requirements.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 Sandy?

2 MR. D'ALEMBERTE: I'm so convinced that that's
3 the law today, I don't know what we need to do with
4 either of these things.

5 MS. PETERSON: I think we simply need to
6 restate it.

7 MR. D'ALEMBERTE: Put it in the report?

8 MS. PETERSON: Put it in the report; put it in
9 our conclusions.

10 MR. D'ALEMBERTE: Yeah.

11 MS. PETERSON: And then the question is, do we
12 make a recommendation? And what -- I had a
13 question that I want to -- well, the question I had
14 was Pat seems to suggest that we might want to
15 consider -- and I'm not sure whether there's law on
16 this already or not -- but the creation of law, or
17 policy, you know, ordinances at the local level,
18 about the use of government property.

19 When we were talking about -- because the

20 other issue was the personal use of government
21 computers, and that was the third issue that's not
22 actually listed here. And I don't know if we just
23 want to leave that up -- whether there is something
24 already there. I know a lot of local governments
25 already have policies in place about the use of

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 government computers.

2 MS. LEE: Madam Chair, I really think that's
3 going too far into the government's issue of local
4 government. I think we're -- I think what we're
5 doing is high flying. We're trying to identify
6 those policies that everybody in the State of
7 Florida can comply with. I think a local
8 government should make its own decision about the
9 level of use that they allow the employees to use
10 the public computer. I mean, it is -- computers
11 are such a frequent method of communication now.
12 It's hard to tell the difference between that and
13 the telephone. Do you restrict your employees from
14 using the telephone? And how do you monitor that?
15 I just think that is a decision for the local
16 government.

17 MS. PETERSON: And I agree with you. I'm just
18 restating what I thought I heard Pat suggest
19 yesterday. In terms of computers, it is a little

20 easier, in the sense that we can capture email
21 traffic and email computer traffic and email
22 correspondence. I just hate the idea of a city
23 sponsoring a seminar on how to avoid the Public
24 Records Law.
25 But I think if we, in terms of conclusions,

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 that the use -- we could state it in the form of a
2 conclusion and say because it's already law, we
3 don't need to make any recommendation on this. But
4 by restating it, I think that helps.

5 MS. LEE: Highlight the importance of it;
6 sure.

7 MS. PETERSON: So we don't need a
8 recommendation on that. I will state that in the
9 form of a conclusion, and we won't make a
10 recommendation.

11 Number six, Emerging Technologies. This hits
12 on three issues: text messages, instant messages,
13 and then the third issue, the use of technology to
14 meet via remote means. And I was told yesterday
15 that text messages and instant messaging may or may
16 not be transitory. It depends on your service and
17 what you ask for in the service. And the example
18 used -- it was Alexis Lambert with the Attorney
19 General's Office that told me this -- the mayor of

20 Detroit who just got in trouble because he had lied
21 under oath about his messages to his staffer. In
22 fact, his service that he was using captured those
23 instant messages and retained them for a period of
24 six months. So they were retained.

25 So I think what we -- you know, again, we

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 cannot, again, require that everybody use Sprint or
2 that everybody use Verizon. But I think that, one,
3 we can state a conclusion, clarifying that all
4 texts and instant messages relating to public
5 business, if it meets the definition of a public
6 record, is subject to disclosure and retention
7 requirements because it is a public record. We can
8 either amend the Sunshine Law to prohibit the use
9 of text and instant messaging technology during
10 public meetings subject to the Sunshine. That is
11 --

12 MS. LEE: May I?

13 MS. PETERSON: Yes, ma'am.

14 MS. LEE: This seems pretty broad to me. And
15 maybe if we could tie it to public business -- What
16 I hear you saying is to prohibit the use of text
17 messages or instant messages during any board
18 meeting or --

19 MS. PETERSON: Subject to the Sunshine.

20 MS. LEE: Yeah, any meeting subject to the

21 Sunshine.

22 MS. PETERSON: And I know that some states

23 have already done that.

24 MS. LEE: Well, there may be times where

25 somebody is waiting on an emergency call from

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 someone other than another board member. Then they
2 may have to use their equipment. So if we can tie
3 it back to the public business, then I -- this
4 seems to be a personal restriction, a restriction
5 on a person and their use of their equipment versus
6 the use of the equipment for public business.

7 MS. PETERSON: I understand and I'm just
8 trying to figure out how to word that. I
9 understand what you're saying.

10 MS. CARRIN: To discuss business at hand?

11 MS. LEE: Or any public business.

12 MS. PETERSON: Judge, do you have a
13 suggestion?

14 JUDGE CARASSAS: I don't think I have a
15 suggestion. My recollection from Pat Gleason --
16 and I do listen to her carefully when she speaks to
17 us -- and I remember talking about text messages
18 specifically. And she equated it -- correct me if
19 I'm wrong -- to the spoken word. I remember her

20 saying that. And we have never figured out a way
21 of capturing the spoken word when people talk to
22 each other. Theoretically, they shouldn't be
23 talking about public business and they shouldn't be
24 doing that. But short of recording every
25 conversation, which we do not do as privacy issues,

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 I don't see how -- I may be going against the group
2 here on this, but I don't see how the text -- I'm
3 not convinced the text is more like email versus
4 more like the spoken word.

5 MS. PETERSON: I think it depends on whether
6 it's captured or not, whether it's transitory or
7 not. And again, it gets back to the Detroit mayor.
8 Maybe what we need to do is clarify that discussion
9 of public business, through the use of text and
10 instant messaging, relating to public business is a
11 violation of the Sunshine law. And that's what she
12 did. Say if they're sitting there texting and
13 emailing each other about what's going on at the
14 meeting, they're having a discussion. And we
15 could --

16 MS. CARRIN: And it would be a violation.

17 MS. PETERSON: And it would be a violation of
18 the Sunshine Law. I asked her that question
19 specifically yesterday. And then, so, just clarify

20 that point. We bring home the educational message.

21 JUDGE CARASSAS: How do you enforce that?

22 Everything else is enforceable. The email, you

23 could eventually discover that somebody didn't

24 provide email. How do you ever enforce something

25 that is not retained, like the spoken word?

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: The same we that we enforce the
2 telephone conversations between two commissioners
3 at 6:00 o'clock in the morning. We look for
4 anecdotal evidence they're violating the law. Or
5 we see them up there going like this all through
6 the meeting. And I took Sandy's point very well
7 about law students. You know, when you have a back
8 row of law students all giggling, looking at their
9 internet screen when you're talking about
10 constitutional issues, you know they're not paying
11 attention. Either that or I spilled coffee on
12 myself again.

13 So, perhaps, what we have to do is amend that
14 to, again, make it more of a clarification, that
15 the use of this kind of technology for the purpose
16 of conducting a discussion relating to public
17 business is a violation of the Sunshine.

18 MR. D'ALEMBERTE: Don't we do that already?

19 MS. PETERSON: We do. But we're, again,

20 enforcing or re-enforcing the point.

21 MR. D'ALEMBERTE: So are you going to put it

22 in the report?

23 MS. PETERSON: I'll put it in as a conclusion.

24 MR. D'ALEMBERTE: I like that.

25 MS. GRINSTEAD: Would it not be clear to just

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 say "Text and instant messages relating to public
2 business are public record subject to disclosure
3 and retention requirement." The Sunshine Law
4 applies to text and instant messaging technology?

5 MS. PETERSON: No. Because not all of those
6 text and instant messages are captured, so they're
7 transitory. And we're talking more about the use
8 of these technologies to avoid Sunshine
9 requirements. If they're captured, yes, they are
10 public record, as with the Detroit mayor.

11 MS. GRINSTEAD: But if they're not captured,
12 they're subject to Sunshine.

13 MS. PETERSON: Exactly. They could be subject
14 to both, is what I'm saying. And so I think -- and
15 that was the issue, was the use of these
16 technologies to avoid Sunshine requirements. So if
17 we restate this to say it's a violation of
18 Sunshine, I think we're getting more to the point.
19 And we're just actually, again, restating what the

20 law is today. And it serves as reinforcement.

21 MS. GRINSTEAD: Okay.

22 MS. PETERSON: Now, do we amend the Sunshine

23 Law to prohibit the use of text and instant

24 messaging for the purposes of conducting

25 discussions relating to public? I can go back and

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 look at how some of the other states have dealt
2 with that.

3 MS. CARRIN: Isn't it already covered?
4 Because we're having a discussion -- you're having
5 a discussion of public business outside of the
6 Sunshine.

7 MR. D'ALEMBERTE: Yeah. That seems to be --

8 MS. PETERSON: Yes. This went back, if you
9 remember, in the Tallahassee public hearing. All
10 those people from Taylor County, how rude it was
11 that these guys were up here and, you know, all of
12 their commissioners are up there not paying any
13 attention to them, instant messaging each other.
14 So, I guess we don't have to -- if we just clarify,
15 we don't have to amend; correct? Because we're
16 already saying if they're using it to conduct
17 public -- discuss public business.

18 MR. D'ALEMBERTE: Barbara, the only thing I
19 would add is perhaps a recommendation that

20 government agencies consider the possibility of
21 blocking instant messaging during public meetings.
22 And I really think Renee has made a good point,
23 that a number of people rely on this messaging
24 system for emergency purposes, family members in
25 the hospital or whatever, and we ought to allow

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 some access. If you could take and turn over a
2 cell phone or a Blackberry and turn it over to
3 someone else to get that message for you and then
4 just block it from public meetings -- because I
5 think it really sets up a very bad dynamic for
6 citizens and for the commissioners. So to suggest
7 that they, at least, consider it. I would not
8 prohibit it, but I would recommend that they
9 consider blocking it the same way that universities
10 sometimes block access.

11 MS. PETERSON: Or how about that we recommend
12 that agencies consider adopting policies relating
13 to the use -- I mean, for example, I lost my
14 87-year-old father yesterday and I still haven't
15 found him. And every time we took a break I had to
16 go back there and check my voice mail and emails.
17 So I understand it. But we still have to consider,
18 you know, the decorum of the meeting and the
19 public's right. So maybe, Sandy, we'll recommend

20 that "Agencies consider adopting policies regarding
21 the use of text and instant messaging during
22 meetings subject to the Sunshine."

23 MS. LEE: Move approval.

24 MS. PETERSON: Okay. Do we have a second?

25 MR. D'ALEMBERTE: Second.

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 MS. PETERSON: Okay. So this is -- we're
2 doing clarifying -- do we need to -- clarification,
3 we don't need one.

4 We need one on the recommendation: "Recommend
5 that agencies consider adoption of policies
6 regarding the use of text and instant messaging
7 during public meetings."

8 Okay. So we've got a first and second.

9 MS. CARRIN: Carassas?

10 JUDGE CARASSAS: Yes.

11 MS. CARRIN: D'Alemberte?

12 MR. D'ALEMBERTE: Yes.

13 MS. CARRIN: Grinstead?

14 MS. GRINSTEAD: Yes.

15 MS. CARRIN: Lee?

16 MS. LEE: Yes.

17 MS. CARRIN: Peterson?

18 MS. PETERSON: Yes.

19 The third one here, amend the law to allow

20 agencies to meet via remote means under certain
21 specified conditions. I think Pat made that quite
22 clear that state agencies are already authorized
23 when necessary, and that local government can come
24 and get specific authority, as Monroe County did,
25 on an as-needed basis. So I don't know that we

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 have to deal with that one.

2 MS. LEE: And I think there are things in
3 place, so long as a quorum is present at their
4 regular place of meeting, local governments can do
5 it as well.

6 MS. PETERSON: Yeah. So I don't think we
7 really need to deal with that one.

8 We've already done Financial Transparency.
9 Let's leave Public Participation until after lunch.
10 So we'll pick up on E after lunch. We'll we back
11 here at 1:00 o'clock.

12 (Whereupon, a recess was had in the
13 proceeding.)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 **CERTIFICATE OF REPORTER**

2

3

4

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 246 through

8 371, 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.

13

14

15

LISA A. BABCOCK

16

Court Reporter

17

18

19

20

21

22

23

24

25

FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491