

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1598

INTRODUCER: Community Affairs Committee and Senator Storms

SUBJECT: Open Government Act

DATE: March 9, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Howes	Yeatman	CA	Fav/CS
2.			JU	
3.			GO	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) for Senate Bill 1598 revises Florida’s open meetings and public records laws. The CS requires all elected and appointed public officials to undergo education and training on the requirements of the Open Government Act. The CS transfers Florida’s Sunshine law and other relevant sections of Chapter 286, F.S., to Chapter 119, F.S., on public records. The CS prohibits an agency from charging for the actual cost of duplication of paper documents or exporting electronic documents if a staff member spends less than 30 minutes preparing the document. The CS prohibits an agency from charging for redaction of personal information that is not considered a public record and prohibits an agency from charging for redaction of public records information that is considered exempt from the public records laws. The CS changes the definition of “actual cost of duplication.” The CS also adds “security system plan,” “commercial activity,” “commercial entity,” “any electronic medium stored, maintained, or used by an agency” and “trade secrets” to the list of definitions in chapter 119, F.S. The CS allows agencies to reduce or waive fees for public records. The CS provides for the repeal of an exemption in the 10th year after reenactment, unless the Legislature reenacts the exemption. The CS changes some of the noncriminal and criminal penalties for violations of the public records and open meeting laws.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 119.001, 119.011, 119.002, 119.003, 119.07, 119.071, 119.10, 119.12, 119.13, 119.15, 119.20, 119.201, 119.202, 119.30, 119.31, 119.32, 286.011, 286.0113, 286.012, and 286.26.

II. Present Situation:

Public records and Open Meetings

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first public records law in 1892.¹ In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to open meetings and public records to a constitutional level. Article I, section 24(a) of the Florida Constitution, and the Public Records Act,² specify the conditions under which public access must be provided to governmental records.

The Public Records Act is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record³ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Section 119.011(12), F.S., defines the term “public record” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁴ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁵

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.⁶

While the Florida Constitution provides records and meetings are to be open to the public, it also provides the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Currently, there are approximately 90

¹ Section 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

³ Section 119.011(12), F.S., defines “public records” to include “all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁴ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁶ Section 286.011, F.S.

exemptions to the open meetings and public records laws.⁷ Article I, section 24 of the Florida Constitution governs the creation and expansion of exemptions to provide, in effect, any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of public necessity that justifies the exemption. Article I, section 24 of the Florida Constitution provides any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁸ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹ The terms are not defined in the law, however, and it's not clear whether the distinction is clearly understood or consistently applied.¹⁰

An exemption from disclosure requirements for confidential information does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure.¹¹ For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant.¹² The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records.¹³ One federal court has also ordered that records may be subject to discovery in a civil action upon a showing of exceptional circumstances where the information was needed to complete service of process.¹⁴

Art. 1, Section 24 of the Florida Constitution, Chapter 119, F.S., and Chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under Art. 1, Section 24(a), of the Florida Constitution “any public body, officer, or employee of the state, or persons acting on their behalf” is subject to the public records law. Under Art. 1, Section 24(b), of the Florida Constitution, all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed is subject to the open meetings law. Under

⁷ See Commission on Open Government Reform, “Reforming Florida’s Open Government Laws in the 21st Century,” 3 (Jan., 2009).

⁸ Attorney General Opinion 85-62, August 1, 1985.

⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁰ See Commission on Open Government Reform, “Reforming Florida’s Open Government Laws in the 21st Century,” 3 (Jan., 2009).

¹¹ *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985).

¹² *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999).

¹³ *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2^d DCA 1990).

¹⁴ Court Order on Plaintiffs Motion for Substituted Service, *Allen v. City of Miami*, 2003 U.S. Dist. LEXIS 21778 (S.D. Fla. Nov. 14, 2003).

chapter 119, F.S., any agency¹⁵ is subject to the public records laws. Under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

The Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ provides for the review and repeal of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a review and repeal of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings, as well as records. The law clarifies an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created, revised, or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under 119.15, F.S., any exemptions to the open meetings and public records laws are automatically repealed after 5 years unless they are reenacted by the Legislature. If an exemption

¹⁵ “Agency” is defined as “...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

¹⁶ Section 119.15, F.S.

is reenacted during the 5 year review it is no longer required to be subject to Open Government Sunset Review Act of 1995.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

Florida's Commission on Open Government Reform

Although both the open meetings law and the public records law have been amended since first enacted and some reforms made, never in Florida's long history of open government have both laws been reviewed in their entirety.¹⁷ As a result, there are inconsistencies and redundancies in the law, and some argue that the state's open government laws have failed to keep pace with today's technology, resulting in an erosion of the public's constitutional right of access to government meetings and records.¹⁸ In June 2007, Governor Charlie Crist created the Commission on Open Government Reform for the express purpose of reviewing, evaluating, and issuing recommendations regarding Florida's public records and open meetings laws.¹⁹

The commission held four public hearings throughout the state to receive testimony from invited speakers and the public.²⁰ The commission did extensive legal research, including a thorough review of the history of Florida's open government laws, a search of current statutory law and applicable case law, and a study of laws enacted in other states.²¹ Testimony from the public also was solicited, as was written testimony.²² The commission adopted a series of proposals that have become the basis for the changes proposed in this bill.

III. Effect of Proposed Changes:

Section 1 amends s. 119.001, F.S., to label this chapter as the "Open Government Act."

Section 2 creates s. 119.002, F.S., which requires all elected and appointed public officials to undergo education and training on the requirements of the Open Government Act.

Section 3 moves s. 119.011 F.S., to s. 119.003, F.S. The CS also amends this section by changing the definition of "Actual cost of duplication" to include both the cost of the material and supplies used to duplicate the public record and the agency resources including staff time and the use of information technology resources. "Security system plan," "commercial activity,"

¹⁷ See Commission on Open Government Reform, "Reforming Florida's Open Government Laws in the 21st Century," Jan. 2009.

¹⁸ *Id.*

¹⁹ Fla. Exec. Order No. 07-107 (June 19, 2007), <http://www.flgov.com/pdfs/orders/07-107-ogreformcomm.pdf>

²⁰ See Commission on Open Government Reform, "Reforming Florida's Open Government Laws in the 21st Century," Jan. 2009, http://www.flgov.com/pdfs/og_2009finalreport.pdf.

²¹ *Id.*

²² *Id.*

and “commercial entity” are also all added to the list of definitions and are defined as they were in s. 119.071, F.S. “Any electronic medium stored, maintained, or used by an agency” is also added to the list of definitions and defined as any electronic format that the agency can reasonably provide as part of the standard operation of its electronic recordkeeping system. “Trade Secrets” is also added to the list of definitions and defined as it is in s. 688.02, F.S.²³

Section 4 amends s. 119.07(4) F.S., by prohibiting an agency from charging for the “actual cost of duplication” of paper documents or exporting electronic documents, if a staff member spends less than 30 minutes preparing the document. This includes both materials and supplies as well as staff time. If a document is requested to be converted into an electronic format and the agency is able to meet this request, the agency must oblige. This section also provides that the cost of clerical or supervisory assistance may be no greater than the base hourly rate of the lowest paid personnel capable of providing this service. It is unclear when these provisions would apply. This section also allows agencies to reduce or waive the fees provided in this section so long as they are uniformly applied among persons similarly situated.

This section prohibits an agency from charging a fee for costs associated with redaction of information from a public record that the agency maintains is personal in nature and not a public record.²⁴ This section prohibits agencies from charging fees after January 1, 2013, for costs associated with redaction of exempt or confidential and exempt information from a public record that has been requested to be inspected or copied. Finally, this section deletes s. 119.07(4)(d), F.S., which had allowed agencies to charge a special service fee, in addition to the actual costs of duplication, if the nature or volume of public records requested required extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved.

Section 5 deletes the following definitions from s. 119.071, F.S., and moves them to s. 119.003, F.S.: security system plan, commercial activity, and commercial entity. (See Section 3).

Section 6 creates s. 119.13, F.S., which requires The Division of Library and Information Services of the Department of State to adopt a rule to establish a model policy for providing public access to public records.

Section 7 amends s. 119.15, F.S., by providing that any new exemptions to the open meetings and public records laws are automatically repealed every 10th year after the initial reenactment (the initial reenactment must take place within 5 years of the exemption being enacted), unless the Legislature acts to reenact. Although the CS does not directly address what happens to exemptions that have already been reenacted, it is likely that these exemptions would not be subject to 10-year review because typically if bill is reenacted the open government sunset review language is deleted during the reenactment.

²³ Section 688.002, F.S., defines trade secret as information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

²⁴ A public record means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. s. 119.003, F.S.

Section 8 transfers and renumbers s. 286.011(1)-(2), F.S., as s. 119.20(1)-(2). The section also transfers and renumbers s. 286.011(6), F.S., as s. 119.20(3), F.S.

Section 9 transfers and renumbers s. 286.011(8), F.S. as s. 119.201, F.S. The section also transfers and renumbers s. 286.0113 F.S., as s. 119.201(2), F.S.

Section 10 transfers and renumbers s. 286.012, F.S., as s. 119.202, F.S.

Section 11 transfers and renumbers s. 119.10, F.S., as s. 119.30, F.S., and amends this section to provide that:

- A violation of any law that relates to access to public records or meetings shall be considered a violation of this chapter.
- A person who willfully and knowingly violates any of the provisions of this chapter commits a misdemeanor of the first degree. Public officers are no longer subject to suspension and removal or impeachment for refusing access to public records. (Currently, only public officers who knowingly refuse access to public records can be charged with a misdemeanor of the first degree.)
- Conduct that occurs outside the state which would constitute a knowing violation of the public records and open meetings laws is a misdemeanor of the first degree.
- If a court determines that an agency has denied access to public records, denied access to a meeting where official acts are taken; shown intentional disregard for the public's constitutional right of access as guaranteed by s. 24, Art. I of the State Constitution; or exhibited a pattern of abuse of the requirements of this chapter, the court may assess a penalty against the agency equal to twice the amount awarded pursuant to this section.

Section 12 transfers and renumbers s. 286.011(2), F.S., as s. 119.31, F.S., and amends this section to provide that the circuit courts of this state have jurisdiction to issue injunctions to enforce any portion of the public records and open meetings laws in chapter 119, F.S. (Currently, the circuit courts may only issue injunctions to provide access to the recorded minutes of open meetings.)

Section 13 transfers, renumbers, and combines ss. 119.12, F.S. and 286.11(5), F.S., as s. 119.32, F.S. This section is also amended to provide that whenever an individual is charged with a violation of the public records and open meetings laws and subsequently acquitted, the agency may reimburse the individual for any portion of his or her reasonable attorney's fees.

Section 14 repeals s. 119.011, F.S., for technical reasons.

Section 15 repeals s. 119.10, F.S., for technical reasons.

Section 16 repeals s. 119.12, F.S., for technical reasons.

Section 17 repeals s. 286.011, F.S., for technical reasons.

Section 18 repeals s. 286.0113, F.S., for technical reasons.

Section 19 repeals s. 286.012, F.S., for technical reasons.

Section 20 reenacts s. 27.02, F.S., to incorporate the CS made by this act into s. 119.07, F.S.

Section 21 reenacts s. 119.01(2)(f), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 22 reenacts s. 119.0712(1)(d), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 23 reenacts s. 119.084(2)(a), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 24 reenacts s. 455.219(6), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 25 reenacts s. 456.025(11), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 26 reenacts s. 458.3193(1)(c), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 27 reenacts s. 459.0083(1)(c), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 28 reenacts s. 472.011(16), F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 29 reenacts s. 1012.31, F.S., to incorporate the provisions made by this CS into s. 119.07, F.S.

Section 30 reenacts s. 17.076(5), F.S., to incorporate the provisions made by this CS into s. 119.071, F.S.

Section 31 reenacts s. 119.0714, F.S., to incorporate the provisions made by this CS into s. 119.071, F.S.

Section 32 reenacts s. 1007.35(8)(b), F.S., to incorporate the provisions made by this CS into s. 119.071, F.S.

Section 33 amends s. 11.0431(2)(a), F.S., conforming cross references.

Section 34 amends s. 28.001, F.S., conforming cross references.

Section 35 amends s. 28.24(12)(e), F.S., conforming cross references.

Section 36 amends s. 73.0155(2), F.S., conforming cross references.

Section 37 amends s. 97.0585(1), F.S., conforming cross references.

Section 38 amends s. 112.3188(2)(c), F.S., conforming cross references.

Section 39 amends s. 163.61, F.S., conforming cross references.

Section 40 amends s. 257.34, F.S., conforming cross references.

Section 41 amends s. 257.35(1), F.S., conforming cross references.

Section 42 amends s. 281.301, F.S., conforming cross references.

Section 43 amends s. 364.107(3)(a), F.S., conforming cross references.

Section 44 amends s. 382.0085(2)(d), F.S., conforming cross references.

Section 45 amends s. 383.402(9), F.S., conforming cross references.

Section 46 amends s. 550.0251(9), F.S., conforming cross references.

Section 47 amends s. 607.0505, F.S., conforming cross references.

Section 48 amends s. 617.0503(6), F.S., conforming cross references.

Section 49 amends s. 636.064(3), F.S., conforming cross references.

Section 50 amends s. 668.50(2)(m), F.S., conforming cross references.

Section 51 amends s. 668.6076, F.S., conforming cross references.

Section 52 amends s. 741.313(4)(c), F.S., conforming cross references.

Section 53 amends s. 787.03(6)(c), F.S., conforming cross references.

Section 54 amends s. 817.568(5), F.S., conforming cross references.

Section 55 amends s. 817.569, F.S., conforming cross references.

Section 56 amends s. 893.0551(3)(a)(c), F.S., conforming cross references.

Section 57 amends s. 914.27(5), F.S., conforming cross references.

Section 58 amends s. 943.031(9)(a-b), F.S., conforming cross references.

Section 59 amends s. 943.0313(7), F.S., conforming cross references.

Section 60 amends s. 943.0314(1)(a), F.S., conforming cross references.

Section 61 amends s. 943.032(2), F.S., conforming cross references.

Section 62 provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By reducing the ability of counties and municipalities to collect fees from public records requests and the redaction of public records, the bill reduces their revenue-raising authority.

Subsection (d) of section 18 of Article VII, Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2009-2010 \$1.88 million). A fiscal estimate is currently not available.

If it is determined that this bill has more than an insignificant fiscal impact, the bill would require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

Article I, section 24(a) of the Florida Constitution, the Sunshine Law,²⁵ and the Public records Act,²⁶ specify the conditions under which public access must be provided to meetings and governmental records. Although the changes proposed by this CS substantially modify the Sunshine Law²⁷ and the Public Records Act²⁸ they appear to conform to the intent of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the fiscal impact of this CS.

²⁵ Section 286.011, F.S.

²⁶ Chapter 119, F.S.

²⁷ Section 286.011, F.S.

²⁸ Chapter 119, F.S.

B. Private Sector Impact:

The impact of this CS on the private sector is indeterminate.

C. Government Sector Impact:

The requirement that the Division of Library and Information Services of the Department of State to adopt a rule to establish a model policy for providing public access to public records will cause the Department of State to incur costs. At this time these costs are indeterminate.

The requirement that all elected and appointed public officials undergo training on public records and open meetings will cause local governments and agencies to incur costs. At this time these costs are indeterminate.

VI. Technical Deficiencies:

In discussions with proponents of this bill, it was indicated that the bill intended to allow local governments to charge for material costs associated with all public records requests. As the bill is currently written material costs may only be charged if the public records request takes longer than 30 minutes of staff time to complete. Going forward this issue may need to be clarified.

VII. Related Issues:

Currently, under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws. Although the CS incorporates this language into the proposed ss. 119.20, F.S., and 119.201, F.S., in an attempt to keep the same entities subject to the open meetings laws, this change creates some confusion. For example, lines 897-898 of the CS state that if a court determines that an agency has violated s. 119.20, F.S., then the court may assess a penalty against the agency equal to twice the amount awarded. However, s. 119.20, F.S., does not refer to an agency; instead it refers to all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws. This creates a question of who is subject to the double penalty.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the CS.)

CS by the Community Affairs Committee on March 9, 2010:

- All elected and appointed public officials are now required to get education and training on the public records and open meeting laws.
- The definition of “actual cost of duplication” is changed to provide that the agency’s overhead costs, associated with duplication of public records, can’t be

included in the fee charged for public records requests that take more than 30 minutes to complete.

- The definition of “security system plan” as currently defined in the Florida Statutes is added to the list of definitions in chapter 119, F.S.
- The CS deletes the new fee list for duplication of public records and provides that materials and staff time may only be charged if the public records request takes more than 30 minutes for staff to complete. The CS also reinstates the current statutory fee list for public record requests that take longer than 30 minutes. The current statutory fee list authorizes charges up to 15 cents per one sided copy, no more than an additional 5 cents for each two-sided copy, and for all other copies the actual cost of duplication. The CS also provides that an agency may not charge a fee for redaction of personal information that is not considered a public record. Also, after January 1, 2013, an agency may not charge for redaction of a record that is considered exempt or confidential and exempt from public records.
- The CS provides that if agency is able to convert the public record into the electronic format requested as a step in the process of copying or exporting the requested record, the agency must provide the record in the format requested.
- The CS changes the definition of who is subject to the open meetings laws by deleting the provision that “any collegial body of any agency” is required to have open meetings. This causes the original statutory language to be reinstated which provides that all meetings of “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision” must be open to the public.
- The Division of Library and Information Services of the Department of State is required to adopt a rule to establish a model policy for providing public access to public records.
- The CS changes the punishments for violations of the open meetings and public records laws. In the CS any violation of a law that relates to public records or open meetings is now considered a violation of chapter 119, F.S., and violators can be punished accordingly. Also, any conduct that occurs outside the state which is a knowing violation of the public records and open meetings laws is now a misdemeanor of the first degree. Finally, if a court determines that an agency has denied an individual access to open meetings or public records, or exhibited a pattern of abuse of the open meeting or public records laws, the court may double the monetary penalty against the agency.
- If an individual is charged with a violation of the public records or open meetings laws and is acquitted the agency may reimburse the individual for any portion of his or her reasonable attorney’s fees.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
