

STORAGE NAME: h0493.go

DATE: March 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 493

RELATING TO: Florida Violent Crime Council/Exemption

SPONSOR(S): Representative Sindler

STATUTE(S) AFFECTED: s. 943.031

COMPANION BILL(S): SB 966(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 493 provides that any portion of a Florida Violent Crime Council ("Council") meeting where active criminal investigative information or active criminal intelligence information is presented to, reviewed by, or discussed by the Council is exempt from the public meetings requirements of s. 286.011, F.S., and Art. I, Sec. 24(b), Florida Constitution. This bill also makes portions of any public record, such as tape recordings, minutes, or notes, generated during exempt portions of a Council meeting exempt from the public records requirements of s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution, if they contain matters relating to active criminal investigative information or active criminal intelligence information. HB 493 states that the exemptions are a public necessity in order to assist law enforcement agencies in carrying out their functions.

The Council is an advisory board created by s. 943.031, F.S., within the Department of Law Enforcement ("department") to develop and implement a statewide strategy to address violent crime. Additionally, the Council reviews and approves all requests for funds from the Violent Crime Emergency Account. Local law enforcement agencies occasionally request emergency funds during high-profile trials involving violent crime, where local funds do not adequately cover the expenses surrounding such a trial.

HB 493 provides that the Council shall be considered a "criminal justice agency" within the definition of s. 119.011(4), F.S., but that the Council shall not be considered an "agency" within the definition of s. 120.52, F.S. This removes the Council from the requirements of ch. 120, F.S., the Administrative Procedure Act, which raises certain constitutional concerns addressed in the "Comments" section of this bill analysis.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Violent Crime Council

Section 943.031, F.S., establishes the Florida Violent Crime Council ("Council") in order to develop and implement a statewide strategy to address violent criminal activity. The Council consists of 12 members including the Attorney General, the secretary of the Department of Corrections, the secretary of Juvenile Justice, the Commissioner of Education, the president of the Florida Network of Victim/Witness Services, Inc., or their designates. Six members are appointed by the Governor. Section 943.031(3), F.S., provides that the Council must meet at least semiannually.

Section 943.031(4)(a), F.S., provides that the Council shall provide advice and make recommendations as necessary to the executive director of the Department of Law Enforcement ("department"). That section further provides that the Council may evaluate a non-exhaustive list of initiatives and advise the executive director of the department as to their feasibility. Such initiatives include:

- establishing a grant program for criminal justice agencies to develop and implement effective violent crime prevention and investigative programs;
- creating a criminal justice research and behavioral science center;
- expanding the use of automated fingerprint identification systems;
- identifying methods to prevent violent crime; and
- enhancing information sharing and assistance in the criminal justice community.

Section 943.031(4)(b), F.S., provides that the Council shall also perform other functions such as developing criteria for and approving disbursements of funds from the department's Violent Crime Investigative Emergency Account, and advising the executive director of the department on creating regional violent crime investigation coordinating teams and developing a statewide violent crime information system.

Additionally, s. 943.031(5), F.S., provides that the Council shall provide an annual report on its activities to the executive director of the department and other state leaders. The executive director must respond in writing to this report.

According to department staff, the Council has convened numerous times in order to develop and implement its statewide strategy to address violent crime. Additionally, several local law enforcement agencies have approached the Council in times of financial emergency generated by high-profile violent crimes. For example, the Jefferson County Sheriff's office applied for and received a disbursement from the Violent Crime Emergency Account during the well-publicized trials resulting from the recent road-side murder of a European tourist in Monticello (phone conversation with Daryl McLaughlin, Deputy Commissioner, Florida Department of Law Enforcement, March 6, 1997). Occasionally, active criminal files come before the Council during such

a high-profile meeting, and certain exempt information in these files may become subject to public scrutiny.

Public Records and the Council

Article I, Section 24(a), Florida Constitution, provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state ... except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.” Article I, Section 24(b), Florida Constitution, provides that meetings of any collegial public body of the executive branch of state government where public business is to be transacted or discussed must be open and noticed to the public, unless exempted or specifically closed by the Constitution. Article I, Section 24(c) provides that the legislature may exempt certain records and meetings from the requirements of subsections (a) and (b) by general law, providing that such a law must “state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.”

Section 119.07(1), F.S., states that “[e]very person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, [and] under reasonable conditions....” Section 119.07(3)(b), F.S., exempts “[a]ny active criminal intelligence information and active criminal investigative information” from the provisions of both s. 119.07(1) and Art. I, s. 24(a) of the Florida Constitution (see also ss. 119.07(3)(c), (e), (f), (g), (h), and (k)). The term “active criminal intelligence information” is defined in s. 119.011(3)(d), F.S., as information “relat[ing] to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.” The term “active criminal investigative information” is defined in s. 119.011(3)(d), F.S., as information “relat[ing] to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.”

Section 119.011(3)(a), F.S., defines “criminal intelligence information” as information with respect to an identifiable person or group of persons **compiled by a criminal justice agency** to anticipate, prevent, or monitor possible criminal activity. Further, s. 119.011(3)(b), F.S., defines “criminal investigative information: as information respecting an “identifiable person or group of persons **compiled by a criminal justice agency** in the course of conducting a criminal investigation of a specific act or omission....” Section 119.011(4), F.S., defines “criminal justice agency,” in pertinent part, as including law enforcement agencies, courts, prosecutors, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting other law enforcement agencies in the conduct of an active criminal investigation or prosecution.

Although no specific exemptions exist for Council records, it appears that active criminal investigative and active criminal intelligence information held by the Council in furtherance of its statutory objectives is already exempt from the requirements of s. 119.07(1) and Art. I, Sec. 24(a), Florida Constitution. Section 943.031, F.S., provides that the Council is created within the department (a law enforcement agency). Thus, the Council may be considered a part of the department, and likewise be considered a “criminal justice agency.” Accordingly, active criminal intelligence and criminal investigative information compiled by the Council would be exempt.

Even if the Council does not fall within the definition of a “criminal justice agency,” active criminal investigative or active criminal intelligence information held by the Council may still be exempt if it is received from a “criminal justice agency” such as the department. Exempt records do not necessarily lose their exempt status when transferred to another agency (see *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994)(holding that an active criminal investigative file was exempt under s. 119.07(3), F.S., “regardless of which agency has possession of the file.”); see *also* AGO 94-48).

Public Meetings and the Council

In addition to the constitutional public meetings requirements in Art. I, Sec. 24(b), Florida Constitution, s. 286.011(1), F.S., provides that “[a]ll meetings of any board or commission of any state agency or authority ... , except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.” Section 286.011(2), F.S., provides that public meeting minutes must be promptly recorded and made open to public inspection. Also, s. 286.011(3), F.S., provides for certain criminal and non-criminal punishments for public officers who violate the provisions of that section.

Meetings held by the Council appear to fall under the requirements of the public meetings law contained in s. 286.011, F.S., because the Council is a board, within the department, created by statute both to advise the department and to control the disbursement of funds from the department’s Violent Crime Emergency Account (see *Neu v. Miami Herald Publishing Company*, 462 So.2d 821 (Fla. 1985)). A public records exemption for the Council’s records does not imply an exemption from s. 286.011, F.S., for its meetings, even when exempt records are discussed at a Council meeting (see s. 119.07(5), F.S.). No constitutional or statutory provision appears to exempt Council meetings from the provisions of Art. I, s. 24(b), Florida Constitution, or s. 286.011, F.S.

B. EFFECT OF PROPOSED CHANGES:

HB 493 provides that the Council shall be considered a “criminal justice agency” within the definition of s. 119.011(4), F.S. As a “criminal justice agency,” any active criminal investigative or active criminal intelligence information that the Council compiles would be exempt from s. 119.07(1), F.S., and Art. I, Sec. 24, Florida Constitution (see Public Records and the Council discussion in Section II, A of this analysis).

HB 493 provides that any portion of a Council meeting where active criminal investigative information or active criminal intelligence information is presented to, reviewed by, or discussed by the Council is exempt from the provisions of s. 286.011, F.S., and Art. I, Sec. 24(b), Florida Constitution. The terms “active criminal investigative information” and “active criminal intelligence information” are defined in s. 119.011, F.S. This bill also provides that only Council members, supporting department staff, and other persons authorized to be present by the Council may be present during exempt portions of the meeting. In addition, HB 493 requires the Council to assure that any closure of its meetings pursuant to this section is limited in furtherance of the general policy of this state in favor of public meetings.

It appears that members of the public will be asked to leave a Council meeting during portions of the meeting when exempted information comes before the Council.

However, if an entire meeting is closed because its sole purpose is to discuss exempted information, a question arises as to whether this meeting would be noticed to the public. In either situation, there is no way to determine whether the information discussed includes only exempted information. Also, questions may arise regarding the propriety of allowing the Council wide discretion in choosing who will attend its meetings when exempt information is discussed. In light of these questions, it is unclear how the Council will "assure" limited closure of its meetings in furtherance of the state's policy in favor of public meetings.

HB 493 also provides that portions of any public record, such as tape recordings, minutes, and notes, generated during an exempt portion of a Council meeting are confidential and exempt from s. 119.07(1) and Art. I, Sec. 24(a), Florida Constitution, if the information relates to active criminal investigations or active criminal intelligence information. As earlier discussed, active criminal investigative and active criminal intelligence information transferred to the Council by other law enforcement agencies appears to retain its exempt status. However, the Council is apprehensive that this exempt status will be compromised if the contents of exempt documents are revealed in records produced at Council meetings. This bill not only exempts information produced at an exempt portion of a Council meeting, but also makes such information confidential.

HB 493 states that the Legislature finds it a public necessity to create the aforementioned exemptions for certain Council meetings and records because revealing active criminal investigative or active criminal intelligence information to the public would negatively impact the ability of law enforcement agencies to carry out their investigatory and intelligence gathering functions. This bill also provides that the exemptions it creates for certain Council meetings and records will be subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S. This means that both exemptions will stand automatically repealed on October 2, 2002, unless the Legislature reviews and reenacts them.

HB 493 provides that the Council is not an "agency" for purposes of s. 120.52, F.S., also known as the Administrative Procedure Act (see Section V., Comments, of this analysis).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Council meetings are currently open to the public in accordance with s. 286.011, F.S. This bill would prohibit the public from attending certain portions of Council meetings and it would prevent the public from accessing certain documents produced at those portions of the meetings.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- HB 493 provides that the Legislature finds it a public necessity that certain limited portions presentations and discussion of the Council that are related to active criminal investigative or active criminal intelligence information shall remain confidential and exempt from public disclosure; provides that it is a public necessity that certain portions of Council meetings and meeting records shall remain confidential; provides that the Council shall not be considered an "agency" within the definition of s. 120.52, F.S. (Administrative Procedure Act), but shall be considered a "criminal justice agency" within the definition of s. 119.011(4), F.S.; provides that any portion of a Council meeting where active criminal investigative or active criminal intelligence information is presented to, reviewed by, or discussed by the Council is exempt from s. 286.11, F.S., and Art. I, Sec. 24(b), Florida Constitution; provides that only Council members, supporting staff from the department, and other authorized persons may attend the exempted portions of the meetings; provides that the Council shall assure that any closure of portions of its meetings is limited in order to maintain the general state policy in favor of public meetings; makes confidential and exempt from s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution, any public record generated during a portion of a Council meeting closed by this section which contain information relating to active

criminal investigations or matters constituting active criminal intelligence; subjects the aforementioned exemptions to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S.; repeals the aforementioned exemptions on October 2, 2002, unless reviewed and reenacted by the Legislature.

Section 2 -- Provides that this bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

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2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

In removing the Council from the definition of "agency" in s. 120.52, F.S., this bill removes the Council from the requirements of the Administrative Procedure Act. For example, the Council would not be bound by the procedures in ch. 120 in preparing rules and any person wishing to contest a decision of the Council would not be able to utilize an administrative appeals process, rather, that person's sole recourse would be in court. The primary subject matter of HB 493 is a public records and meetings exemption. Article I, Section 24(c), Florida Constitution, requires that exemption laws contain **only** exemptions from the requirements of Article I, Sections 24(a) and (b), Florida Constitution and provisions governing enforcement. To include a provision relative to ch. 120, F.S., does not appear to comport with the requirements of Art. I, Sec. 24(c), Florida Constitution.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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