

STORAGE NAME: h2049a.go

DATE: April 21, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 2049

RELATING TO: Public Records/Commission on Human Relations

SPONSOR(S): Representative Bush

COMPANION BILL(S): SB 2330 (similar)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (2) REAL PROPERTY & PROBATE
 - (3) JUDICIARY
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for a public record exemption and confidentiality for information which reveals the identity of complainants and alleged violators of fair housing practices contained in records held by the Commission on Human Relations (which has a nearly identical exemption for such records relating to complaints of violations of employment practices under this chapter).

It provides a statement of public necessity, and shall be effective upon becoming law.

Note. On April 21, 1999, the Committee on Governmental Operations adopted an amendment which states that this law is subject to the Open Government Sunset Review Act of 1995, which provides for an automatic repeal unless saved through reenactment by the Legislature.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every 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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. 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.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

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The Commission on Human Relations is assigned to the Department of Management Services, but in the performance of its duties under the Florida Civil Rights Act of 1992 (Chapter 760, Part I, F.S.), it is not subject to control, supervision or direction by the department. Sec. 760.04, F.S. The commission is required to:

promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, handicap, or marital status and mutual understanding and respect among members of all economic, social, racial, religious, and ethnic groups, and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members. Sec. 760.05, F.S.

The commission is required to receive, initiate, investigate, seek conciliation, hold hearings on, and act upon complaints alleging any discriminatory practice under the Florida Civil Rights Act of 1992, which deals primarily with employment discrimination. In furtherance of those duties, the commission can issue subpoenas to compel the attendance and testimony of witnesses, and compel the production of evidence pertaining to any investigation or hearing convened.

In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. Sec. 760.06(6), F.S.

The commission currently has a public record exemption for all complaints, records and documents which relate to and identify a complainant, employer, employment agency, labor organization, or joint labor-management committee. Such records are confidential and shall not be disclosed except to the parties or in the course of a hearing or proceeding. The exemption does not apply to documents which are a part of any hearing or court proceeding. Sec. 760.011(12), F.S.

Under the Fair Housing Act (Chapter 760, Part II, F.S.), the commission has similar powers to investigate complaints of discrimination in housing. Sec. 760.33, F.S. However, the commission does not have a similar public record exemption. It does have an exemption for testimony and records related to informal proceedings to resolve complaints of housing discrimination. "Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the person concerned." Sec. 760.34(1), F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for a public record exemption and confidentiality for information which reveals the identity of complainants and alleged violators of fair housing practices contained in records held by the Commission on Human Relations (which has a nearly identical exemption for such records relating to complaints of violations of employment practices under this chapter).

It provides a statement of public necessity, and shall be effective upon becoming law.

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?

Yes. By exempting information which identifies complainants and alleged violators of the Fair Housing Act, the commission may be more able to resolve complaints.

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

N/A

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

Yes. Individuals would no longer have access to certain public records.

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

The bill does not eliminate or reduce an agency or a program.

- (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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

Yes. Individuals would no longer have access to certain public records.

- 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?

Yes. By exempting information which identifies complainants and alleged violators of the Fair Housing Act, complainants and alleged violators may be more able to resolve complaints without suffering unfair interference or additional discrimination.

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

Yes. Individuals would no longer have access to certain public records.

5. Family Empowerment:

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

The bill does not purport 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:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the ability of municipalities or counties to raise revenues.

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

The bill does not reduce the state taxes shared with municipalities or counties.

V. COMMENTS:

The bill does not have the traditional language which states: "This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature." All new public record exemptions or substantially amended exemptions are automatically subject to repeal unless they are required by federal law or apply only to the legislature or courts. Sec. 119.15, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 21, 1999, the Committee on Governmental Operations adopted an amendment which states that this law is subject to the Open Government Sunset Review Act of 1995, which provides for an automatic repeal unless saved through reenactment by the Legislature.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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