

STORAGE NAME: h0051.go

DATE: December 14, 1998

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

BILL #: HB 51

RELATING TO: Public Record/Copying/ID Information

SPONSOR(S): Representative Heyman

COMPANION BILL(S): None

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

- (1) GOVERNMENTAL OPERATIONS
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill would require all persons who wish to inspect or copy public records to give their name, address, date of birth and proof of identity to the custodian of the records. The bill would specify such a requirement is a "reasonable condition" for accessing public records.

The bill would allow public agencies access to certain confidential personal information for employment purposes, and would require those agencies to maintain the confidentiality of those records.

II. SUBSTANTIVE RESEARCH:

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

[e]very 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.

Chapter 119.011, F.S., gives an expansive definition to the term "public record," meaning, "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."

B. EFFECT OF PROPOSED CHANGES:

The bill would require all persons who wish to inspect or copy public records to give their name, address, date of birth and proof of identity to the custodian of the records. If the person is acting on behalf of another person or entity, the person would have to give the name and address of that person or entity to the custodian of the public records. The bill would specify such a requirement is a "reasonable condition" for accessing public records.

The bill would allow public agencies access to certain confidential personal information for employment purposes, and would require those agencies to maintain the confidentiality of those records.

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.

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

Yes. The bill would require all custodians of public records to obtain the name, address, date of birth and proof of identity of all persons who seek access to any public record, including such commonly requested records as commission agendas and election results. Records of these requests would themselves become public records. With rare exception, custodians of public records are not required to obtain such identifying information prior to permitting a person to inspect or copy public records.

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

Although the bill does not provide for an exemption from the Public Records Law, it would virtually prohibit the ability of a person to request a copy of a public record over the telephone or internet, and would require requests by mail to include the requester's date of birth and some proof of identity. The failure to include the identifying information would either prompt the custodian of the public record to notify the requester by mail or telephone, or allow the custodian to ignore the request altogether.

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

An agency program is not 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?

Although the bill does not provide for an exemption from the Public Records Law, it would virtually prohibit the ability of a person to request a copy of a public record over the telephone or internet, and would require requests by mail to include the requester's date of birth and some proof of identity. The failure to include the identifying information would either prompt the custodian of the public record to notify the requester by mail or telephone, or allow the custodian to ignore the request altogether.

- 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?

The bill would require persons who wish to inspect or copy public records to supply their name, address, date of birth and proof of identity to the custodian of the public records.

The bill would allow public agencies access to certain confidential personal information for employment purposes, and would require those agencies to maintain the confidentiality of those records.

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

The bill may produce a chilling effect upon persons who wish to inspect or copy public records by requiring them to supply certain identifying information to the custodian of the public records.

The bill would virtually prohibit the ability of a person to request a copy of a public record over the telephone or internet, and would require requests by mail to include the requester's date of birth and some proof of identity. The failure to include the identifying information would either prompt the custodian of the public record to notify the requester by mail or telephone, or allow the custodian to ignore the request altogether.

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?

No.

- 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 would not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

STORAGE NAME: h0051.go

DATE: December 14, 1998

PAGE 7

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 119.07, F.S., 1998 Supp.

E. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & 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.

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:**

The bill would not require the counties or municipalities to spend funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill would not restrict the authority of the counties or municipalities to raise revenue.

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

The bill would not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

Under current law, with rare exception, custodians of public records cannot require any identifying information about a person who wishes to inspect or copy public records. Under our "Government in the Sunshine" the state does not have an interest in knowing who is inspecting or copying public records. By requiring certain identifying information from the person wishing to access public records, the bill may cause some persons to not seek access to public records out of a reluctance to provide such identifying information. Such a chilling effect may be desirable when persons seek public records for malevolent purposes, but undesirable when persons seek public records anonymously for legitimate purposes.

Since the bill would apply to all persons who seek access to any public record, it is unclear how burdensome the custodians of public records would find the requirement that they obtain the identifying information, especially for public records that are routinely made easily available to the public at large, such as commission agendas and election results. For such

STORAGE NAME: h0051.go

DATE: December 14, 1998

PAGE 9

items, the requirement to obtain the identifying information may cause an unnecessary burden and delay in making certain public records available.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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