

STORAGE NAME: h0131B.sec.doc

DATE: October 26, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 131-B

RELATING TO: Public Records/Inspection & Copying

SPONSOR(S): Representative(s) Gelber & others

TIED BILL(S):

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

- (1) SELECT COMMITTEE ON SECURITY
 - (2)
 - (3)
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I. SUMMARY:

This bill creates a process by which the Florida Department of Law Enforcement (FDLE) may direct another agency to delay access to a particular public record for an initial 48-hour period for seeking a court order to preclude the inspection or copying of a public record for a period of up to 21 days. FDLE may seek this order only in circumstances related to an active investigation for terrorism. The court may extend the order delaying access to a public record for a second period of up to 21 days.

This delay provision does not apply to arrest records and records of first appearance in court.

This bill amends section 119.07(3), Florida Statutes.

The bill does not appear to have a fiscal impact

The bill contains a statement of public necessity. The bill provides that the exemption would stand repealed on October 2, 2003, unless saved through reenactment.

The bill would take effect upon becoming law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 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.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a process by which the Florida Department of Law Enforcement (FDLE) may direct another agency to delay access to a particular public record for an initial 48-hour period for seeking a court order to preclude the inspection or copying of a public record for a period of up to 21 days. FDLE may seek this order only in circumstances related to an active investigation for terrorism. The court may extend the order delaying access to a public record for a second period of up to 21 days.

Under the bill, the executive director of the FDLE must certify in writing to the custodial agency specifically enumerated statements. First, the record that is subject to the delay process must be identified. Further, that record must be related to an active investigation into terrorism. The term "terrorism" is not defined in the bill but refers to a definition that is not yet enacted into law. The head of the FDLE must certify in writing that the record, if publicized, could jeopardize the active investigation.

The agency that receives the certified request is not permitted to release the record individually or as part of a larger request for information during the initial 48-hour period of delayed access. The 21-day period of delay may be extended by an additional 21-day period if the law enforcement agency applies to the court for an extension prior to the end of the first 21-day period. The court, in an *in camera* hearing, is authorized to extend the period of delayed access for a second period of up to 21 days.

To obtain the initial period and the subsequent extension, the executive director of FLDE must show by competent, substantial evidence that there is a viable threat of a terrorist act, that the particular record is part of an active investigation into that threatened act, that access to that record could jeopardize the investigation, and that the law enforcement agency has complied with the requirements of the section.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2003, unless reviewed and saved from repeal through reenactment.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see section II.c, above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

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