

By Representatives Gelber, Harrell, Green, Ball and Bullard

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.07, F.S.; authorizing a delay in inspection  
4           or copying of a public record under limited  
5           circumstances; establishing procedures and  
6           standards; limiting the applicability of the  
7           provision; providing a statement of public  
8           necessity; providing an effective date.

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10   Be It Enacted by the Legislature of the State of Florida:

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12           Section 1. Paragraph (b) of subsection (3) of section  
13   119.07, Florida Statutes, is amended to read:

14           119.07 Inspection, examination, and duplication of  
15   records; exemptions.--

16           (3)

17           (b)1. Active criminal intelligence information and  
18   active criminal investigative information are exempt from the  
19   provisions of subsection (1) and s. 24(a), Art. I of the State  
20   Constitution.

21           2.a. Except for an arrest record or a record of first  
22   appearance, upon the request of the Florida Department of Law  
23   Enforcement which meets the requirements of this section, an  
24   agency that is the custodian of a public record shall delay  
25   the inspection or copying of that public record for up to 48  
26   hours if the executive director of the department or his or  
27   her designee certifies in writing:

28           (I) The specific public record for which inspection or  
29   copying is to be delayed;

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1       (II) That the record is necessary for an investigation  
2 related to the threat of an act of terrorism as defined in s.  
3 775.30;

4       (III) That the specified public record is part of  
5 active criminal intelligence information or active criminal  
6 investigative information related to the threatened act of  
7 terrorism;

8       (IV) That inspection or copying of the specified  
9 public record would jeopardize the ability of law enforcement  
10 to prevent or reduce the threat of an act of terrorism;

11       (V) The specific time period during which inspection  
12 or copying is to be delayed; and

13       (VI) That the request is made pursuant to this  
14 paragraph.

15       b. The agency to which the request is made may not  
16 permit the specified public record to be inspected or copied,  
17 nor may it release the public record specifically requested in  
18 any form or as part of a more comprehensive request for  
19 information during the period specified for delay, unless that  
20 record is an arrest record or a record of first appearance,  
21 which is not to exceed 48 hours except as otherwise provided  
22 in this subparagraph.

23       c. If, before the expiration of the period specified  
24 for delay or the expiration of the 48-hour period, whichever  
25 applies, a request to inspect or copy that public record is  
26 received and, upon the refusal of the custodian to release the  
27 record, an action is filed to inspect or copy the record, the  
28 provisions of sub-subparagraph e. and s. 119.11 apply.

29       d. In order to extend the period during which  
30 inspection and copying of a public record is delayed, the  
31 state law enforcement agency must apply to the court for an

1 extension before the expiration of the period specified for  
2 delay or the 48-hour period, whichever applies.

3 e. Upon a review of the request in camera, the court  
4 may extend the period during which inspection and copying of a  
5 public record may be delayed for an additional 14 days if the  
6 law enforcement agency establishes by substantial competent  
7 evidence that:

8 (I) There is a viable threat of an act of terror;

9 (II) The public record identified by the law  
10 enforcement agency constitutes active criminal intelligence  
11 information or active criminal investigative information  
12 related to that threatened act of terrorism;

13 (III) Inspection or copying of the specified public  
14 record would jeopardize the ability of law enforcement to  
15 prevent or reduce the threatened act of terrorism; and

16 (IV) The law enforcement agency has complied with the  
17 requirements of sub-subparagraph a.

18  
19 Upon making such a determination, the court may order the  
20 custodial agency to delay inspection or copying of the public  
21 record until the expiration of the 14 days. This subparagraph  
22 shall stand repealed October 2, 2003, unless reviewed and  
23 saved from repeal through reenactment by the Legislature.

24 Section 2. The Legislature finds that delay in the  
25 ability to inspect or copy a public record provided by this  
26 act is a public necessity because of the great potential for  
27 harm to the public which exists in this era as a result of  
28 terrorism. An act of terrorism may come in an entirely unusual  
29 form and terrorists may use unexpected and unconventional  
30 methods. The potential for acts of terror performed in  
31 unthinkable ways was made amply evident by the events of

1 September 11, 2001. Individuals who resided, worked, and  
2 attended flying school in this state commandeered planes,  
3 murdered those on board who attempted to stop them, and then  
4 intentionally crashed those planes into the Pentagon and the  
5 World Trade Center, completely destroying the two main towers  
6 and surrounding structures. These acts of terror resulted in  
7 the deaths of approximately 6,000 persons. In addition, since  
8 that date, spores of anthrax have been purposefully  
9 distributed by persons yet unknown in Washington, D.C., other  
10 states, and communities within this state, in order to spread  
11 disease and cause death. As of this date, at least one  
12 Floridian has died because of anthrax, and other Floridians  
13 are being treated for the illness. Prior to these events,  
14 these methods of spreading destruction, death, and mayhem were  
15 unthinkable. The Legislature notes that, given the willingness  
16 of terrorists to die in the performance of acts of terror, it  
17 may not be able to foresee the manner or method in which an  
18 act of terrorism might be performed or the public information  
19 that could be used to facilitate or plan it. The Legislature,  
20 therefore, cannot foresee every public record that it must  
21 make confidential pursuant to its authority under s. 24(a),  
22 Art. I of the State Constitution, in order to stop acts of  
23 terrorism. Given the capabilities of modern day terrorists, as  
24 evidenced by the acts of September 11, 2001, and the potential  
25 that even more serious acts of terrorism could be perpetrated,  
26 the Legislature explicitly finds that state law enforcement  
27 investigations of acts of terrorism are of the highest  
28 priority and that there may be instances, which are yet  
29 unknown and unidentifiable, when the ability to inspect or  
30 copy a public record could jeopardize such an investigation by  
31 making the subjects of such investigations aware that an

