

By the Committee on Governmental Oversight and Productivity;
and Senators Brown-Waite, Smith and Crist

302-469C-02

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A bill to be entitled

An act relating to public records; amending s.
119.07, F.S.; authorizing a delay in inspection
or copying of a public record under limited
circumstances; establishing procedures and
standards; limiting the applicability of the
provision; providing a statement of public
necessity; providing an effective date.

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

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

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

(3)

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

2.a. Except for an arrest record or a record of first
appearance, upon the request of the Florida Department of Law
Enforcement which meets the requirements of this section, an
agency that is the custodian of a public record shall delay
the inspection or copying of that public record for up to 7
days if the executive director of the department or his or her
designee certifies in writing:

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

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
6 criminal-investigative information related to the threatened
7 act of 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 7 days except as otherwise provided in
22 this section.

23 c. If, before the expiration of the period specified
24 for delay or the expiration of the 7-day 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 7-day 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 2.a.

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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 terror. 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

1 investigation is active. If it is discovered that an act of
2 terrorism is being investigated, the perpetrators may speed up
3 the timetable for the performance of the activity, as well as
4 flee, destroy evidence, or evade prosecution. As the danger
5 posed to the public is so extreme, and as it may become
6 imperative at times to temporarily delay access to specified
7 public records in order to prevent the imminent commission of
8 an act of terrorism, the Legislature finds that the procedures
9 provided in this act to temporarily delay inspection or
10 copying of specific public records that are part of an
11 investigation into a potential act of terrorism are reasonable
12 and in the best interests of the safety of the public. As a
13 result, the Legislature finds that there is substantial
14 justification and public necessity for permitting the head of
15 a law enforcement agency to request a delay in the inspection
16 or copying of a public record under the limited circumstances
17 and procedures set forth in this act.

18 Section 3. This act shall take effect upon becoming a
19 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 68-B
4 Provides process by which the Florida Department of Law
5 Enforcement (FDLE) may advise another agency to delay access
6 to a public record for a 7-day period.
7 Establishes standards that FDLE must comply with in order to
8 initiate the process.
9 Limits process to investigations related to terrorism as
10 defined in s. 775.30, F.S.
11 Permits 14 day extension upon court order.
12 Establishes elements that FDLE must prove in order to obtain
13 extension.
14 Provides for an in camera hearing.
15 Contains a statement of public necessity.
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