

By Senators Brown-Waite and Smith

10-641-02

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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;

13       (VI) That the department will file a petition in  
14 circuit court within 24 hours after submitting the written  
15 request to the custodian of the record; and

16       (VII) That the request is made pursuant to this  
17 paragraph.

18       b. The department shall, within 24 hours after  
19 submitting the written certification with the agency that is  
20 the custodian of the record, file with the circuit court  
21 having jurisdiction in the district in which the custodial  
22 agency has its head office, a petition to delay inspection or  
23 copying of the public record. Upon review of the request in  
24 camera, the court may issue an order delaying inspection or  
25 copying of the record identified in the petition if the law  
26 enforcement agency establishes by substantial competent  
27 evidence that:

28       (I) There is a viable threat of an act of terrorism as  
29 defined by s. 775.30.

30       (II) The public record identified by the department  
31 constitutes active criminal-intelligence information or active

1 criminal-investigative information related to that threatened  
2 act of terrorism.

3 (III) Inspection or copying of the specified public  
4 record would jeopardize the ability of law enforcement  
5 agencies to prevent or reduce the threatened act of terrorism;  
6 and

7 (IV) The department has complied with the requirements  
8 of sub-subparagraph a.

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10 Upon making such a determination, the court may order the  
11 custodial agency to delay inspection or copying of the public  
12 record until the expiration of the 7 days or upon the  
13 expiration of any extension of that period.

14 c. Unless the court rules against the petition, the  
15 agency to which the request is made may not permit the  
16 specified public record to be inspected or copied, nor may it  
17 release the public record specifically requested in any form  
18 or as part of a more comprehensive request for information  
19 during the period specified for delay, unless that record is  
20 an arrest record or a record of first appearance, which is not  
21 to exceed 7 days except as otherwise provided in this section.

22 d. If, before the expiration of the period specified  
23 for delay or the expiration of the 7-day period, whichever  
24 applies, a request to inspect or copy that public record is  
25 received and, upon the refusal of the custodian to release the  
26 record, an action is filed to inspect or copy the record, the  
27 provisions of sub-subparagraph f. and s. 119.11 apply.

28 e. In order to extend the period during which  
29 inspection and copying of a public record is delayed, the  
30 department must apply to the court for an extension before the  
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1 expiration of the period specified for delay or the 7-day  
2 period, whichever applies.

3 f. 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-subparagraphs 2.a. and b.

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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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22                   SENATE SUMMARY

23       Provides process by which the Department of Law  
24       Enforcement may advise another agency to delay access to  
25       a public record for a 7-day period. Establishes standards  
26       that the department must comply with in order to initiate  
27       the process. Limits process to investigations related to  
28       terrorism. Permits a 14-day extension upon court order.  
29       Establishes elements that the department must prove in  
30       order to obtain extension. Provides for an in camera  
31       hearing. Contains a statement of public necessity.