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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 539 (PCB TU 02-01)
RELATING TO: Public Records
SPONSOR(S): Committee on Tourism, Representative Trovillion and others
TIED BILL(S):

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

- (1) TOURISM YEAS 5 NAYS 0
- (2) STATE ADMINISTRATION YEAS 5 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
- (4)
- (5)

I. SUMMARY:

This council substitute reorganizes chapter 119, F.S., the Public Records Act, in order to topically group similar subjects. Changes were not made to definitions or requirements in chapter 119, F.S., except to conform to Art. I, s. 24 of the State Constitution.

This council substitute amends various sections of law regarding the reduction of timeframes for or elimination of retention of specific records if: the current retention requirements are no longer relevant to the respective agency's statutory requirements; the records are no longer being maintained by the originating agency; the retention timeframe is inordinate; the records are required to be maintained in outdated formats; or the records are retained in a format or timeframe contrary to state records retention laws. This council substitute amends certain sections of law containing the phrase "permanent record" or "permanent file" in order to specify that such records do not require indefinite retention.

This council substitute provides that when a duty or responsibility of an agency is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian.

This council substitute designates the Department of State's Records Management Center as the "James C. 'Jim' Smith Records Management Center".

This council substitute repeals certain sections of law. In addition, it corrects numerous cross-references necessitated by the renumbering of sections in chapter 119, F.S., and adds other sections of law that need reference changes; deletes superfluous language referencing the Federal Code of Regulation because these provisions are no longer necessary; and makes numerous editorial changes.

See "Fiscal Comments" section.

See "Other Comments" section.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 Management

Chapter 119, F.S., the Public Records Act, contains: policy statements regarding public records; maintenance and custody requirements; inspection, copying and fee standards; an exemption review process; and exemptions. The chapter has been amended numerous times but has not undergone a comprehensive review and revision.

In addition to chapter 119, F.S., numerous other statutes require state and local agencies to retain and store records that have historical or other value. The statutes specify records retention periods of two years to 30 years and may authorize destruction following such periods. Other public records are to be permanently retained.

The Department of State, Division of Library and Information Services, Bureau of Archives and Records Management is charged, by law¹, with establishing and administering a records management program. The bureau provides minimum record retention schedules for state and local government; approves or disapproves requests for destruction of records; establishes standards for creation, use, and storage of records; provides training and technical assistance services regarding the management and preservation of records; and operates the records storage center in Tallahassee, Florida.

The Florida State Archives is the central repository for the archives of state government and is mandated by law to collect, preserve, and make available for research the historically significant records of the state, as well as private manuscripts, local government records, photographs, and other materials.

During the 2001 interim, the House Committee on Tourism reviewed the state's records management system. The impetus of the committee's report was a 1999 review by the Office of Program Policy Analysis and Government Accountability (OPPAGA) which concluded that there was confusion regarding records retention and destruction. Additionally, there was continued concern that these issues had not been resolved. The OPPAGA report recommended that the Legislature review possible statutory changes to alleviate the confusion.

¹ Section 257.36(1)a., F.S.

The House Committee on Tourism focused on the provisions of law that needed to be revised in order to address outdated, ambiguous, or nonessential statutory requirements regarding the retention and destruction of agency records. Based upon the committee's survey of state agencies, agency follow-up questions, meetings with the Bureau of Archives and Records Management, review of state law, and meetings with various House committee staff regarding changes proposed, the *Records Management for State Agencies Report* recommended statutory changes for reduction of timeframes for or elimination of retention of specific agency records. The report recommended that sections of law containing the phrase "permanent record" or "permanent file" be reviewed for statutory clarification. Some of the records did not require indefinite retention, but rather retention pursuant to state records retention policy.

On October 9, 2001, the House Committee on Tourism directed committee staff to prepare legislation addressing the retention and destruction of agency records. On November 27, 2001, meeting, the committee approved the *Records Management for State Agencies Report* and discussed, amended, and unanimously passed a committee bill that addressed issues raised in the report.

Senate Interim Project 2002-135 Relating to Public Records

During the 2002 interim, the Senate Committee on Governmental Oversight and Productivity reviewed chapter 119, F.S., and the public records exemptions found in that chapter. The interim project was conceived as a multi-year, multi-stage project. The first phase includes a comprehensive review and reorganization of the Public Records Act.² Later stages are to include a review of the public records exemptions found in chapter 119, F.S., and the creation of a section in that chapter for general exemptions that apply to all agencies, as well as agency-specific exemptions.³

C. EFFECT OF PROPOSED CHANGES:

This council substitute reorganizes chapter 119, F.S., the Public Records Act, in order to topically group similar subjects. Changes were not made to definitions or requirements in chapter 119, F.S., except to conform to Art. I, s. 24 of the State Constitution.

This council substitute amends various sections of law regarding the reduction of timeframes for or elimination of retention of specific records if: the current retention requirements are no longer relevant to the respective agency's statutory requirements; the records are no longer being maintained by the originating agency; the retention timeframe is inordinate; the records are required to be maintained in outdated formats; or the records are retained in a format or timeframe contrary to state records retention laws. This council substitute amends certain sections of law containing the phrase "permanent record" or "permanent file" in order to specify that such records do not require indefinite retention.

This council substitute amends s. 257.36, F.S., to require that when any agency's duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian. Designation of the records custodian must be in accordance with s. 119.021, F.S. The records custodian is responsible for payment of the storage service charge regarding records.

² Chapter 119, F.S.

³ See Senate Interim Project Report 2002-135 for further details.

This council substitute repeals ss. 212.095(6)(d), 238.03(9), and 591.34, F.S., relating to refunds from the Department of Revenue, the Department of Management Services' Teachers Retirement System, and the Department of Agriculture's seed tree cutting program. The council substitute also repeals ss. 119.0115; 119.012; 119.02; 119.031; 119.041; 119.05; 119.06; 119.08; 119.083; 119.085; 119.09; and 119.10, F.S.

Additionally, the council substitute corrects numerous cross-references necessitated by the renumbering of sections in chapter 119, F.S., and adds other sections of law that need reference changes; deletes superfluous language referencing the Federal Code of Regulation because these provisions are no longer necessary; and makes numerous editorial changes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 18.20(1), F.S. Removes the word "permanent" from the phrase "permanent record" regarding the Treasurer's reproductions of warrants, records, and documents.

Section 2. Compiles all of the existing policy statements contained in the Public Records Act into one general state policy section.

Section 3. Compiles and alphabetizes definitions distributed throughout the Public Records Act into a designated definitions section.

Section 4. Repeals ss. 119.0115, 119.012, and 119.02, F.S. Relocates the provisions found in those sections to other sections of law within the Public Records Act.

Section 5. Substantially rewords s. 119.021, F.S., relating to designation of a custodian. Includes custodial requirements relating to the maintenance, preservation, and retention of public records.

Section 6. Repeals ss. 119.031, 119.041, 119.05, and 119.06, F.S. Relocates the provisions found in those sections to other sections of law within the Public Records Act.

Section 7. Amends s. 119.07, F.S. The amendments do not contain any new standards or requirements, but are current requirements that have been co-located topically.

Section 8. Repeals ss. 119.08 and 119.083, F.S. Relocates the provisions found in those sections to other sections of law within the Public Records Act.

Section 9. Amends s. 119.084, F.S. relating to copyright of data processing software created by governmental agencies; sale price; and licensing fees.

Section 10. Repeals ss. 119.085 and 119.09, F.S. Relocates the provisions found in those sections to other sections of law within the Public Records Act.

Section 11. Clarifies s. 119.10, F.S., which establishes penalties for violation of Ch. 119, F.S.

Section 12. Amends s. 119.105, F.S., relating to protection of victims of crimes or accidents. Removes the reference to "general or special law".⁴

Section 13. Amends s. 120.55(1)(a), F.S., regarding the Administrative Procedures Act. Removes language relating to publishing in a permanent compilation entitled "Florida Administrative Weekly".

⁴ This section was removed because under Article I, s. 24 of the State Constitution, an exemption cannot be enacted in special law.

Adds language relating to a continuous revision system, compiling, and publishing the "Florida Administrative Code".

Section 14. Amends s. 257.36(2)(b), F.S., regarding records and information management. Provides that when an agency's duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian.

Section 15. Amends s. 328.15(5), F.S., regarding the Department of Highway Safety and Motor Vehicles. Removes the words "a permanent" and inserts the words "an official" regarding recorded liens records.

Section 16. Amends s. 372.5717(4), F.S. Removes the word "permanent" regarding hunter safety certification cards for the Florida Fish and Wildlife Conservation Commission.

Section 17. Amends s. 560.121(2), F.S. Reduces the retention of examination reports, investigatory records, and applications from 10 years to three years from the date that the examination or investigation ceases to be active. Provides for application records and related information compiled by the Department of Banking and Finance (DBF) or photographic copies to be retained by DBF for a period of at least two years from the date that the investigation ceases to be active.

Section 18. Amends s. 560.123(6), F.S. Reduces the retention of DBF reports of transaction involving currency or monetary instruments from five calendar years to three calendar years after receipt of the report.

Section 19. Amends s. 560.129(5), F.S. Reduces the retention of examination reports, investigatory records, and applications from 10 years to three years from the date that the examination or investigation ceases to be active. Provides that application records and related information compiled by DBF or photographic copies be retained by DBF for a period of at least two years from the date that the investigation ceases to be active.

Section 20. Amends s. 624.311(3), F.S. Allows the Department of Insurance to provide for electronic recordkeeping. Removes language requiring that each page be reproduced in exact conformity with the original.

Section 21. Amends s. 624.312(1), F.S. Provides that other reproductions from an electronic recordkeeping system, before October 1, 1982, must be admissible in evidence as originals. After October 1, 1982, certified reproductions from an electronic recordkeeping system will be admissible in evidence as originals.

Section 22. Amends s. 633.527(2), F.S. Reduces the retention for all examination test questions, answer sheets, and grades administered under the State Fire Marshal from five years to two years from the date of examination.

Section 23. Removes s. 655.50(8)(a), F.S., relating to DBF retaining copies of certain reports.⁵ Amends ss. 655.50(8)(c) and (d), F.S. Removes the 10 year retention requirement and provides a five year retention requirement as contained in 31 C.F.R., parts 103.33 and 103.34, which is the minimum federal retention schedule contained in the federal code, with the exception of trust companies, which are state regulated.

⁵ DBF no longer receives paper copies of currency transaction report forms. Those reports are electronically filed with the federal government and maintained in a database that can be accessed by DBF's Investigations Office.

Section 24. Amends s. 945.25(1), F.S. Replaces the word “permanent” with the word “official” and replaces the words “may be practicably available” with the word “practical”. Removes s. 945.25(2), F.S., regarding permanent records of persons placed on probation and every person who may be subject to pardon and commutation of sentence.⁶

Section 25. Amends s. 985.31(4)(e), F.S. Removes the word “permanent” from a child’s medical file for serologic blood or urine test on a serious or habitual juvenile offender.

Section 26. Repeals s. 212.095(6)(d), F.S.

Section 27. Repeals s. 238.03(9), F.S.

Section 28. Repeals s. 591.34, F.S.

Sections 29 through 56. Makes conforming changes.

Section 57. Designates the Department of State’s Records Management Center in Tallahassee, Florida as the “James C. ‘Jim’ Smith Records Management Center”.

Section 58. Provides a July 1, 2002 effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See “FISCAL COMMENTS”.

2. Expenditures:

Minimal costs will be associated with the designation of the Department of State’s Records Management Center.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶ This section is being removed due to the statutory elimination of parole for most offenses committed on or after October 1, 1983 and all remaining cases for commitments committed on or after October 1, 1995.

D. FISCAL COMMENTS:

Cost savings may be associated with a complete revision of chapter 119, F.S., including printing costs. Over time, as exemptions are consolidated and reduced, costs will be reduced. Furthermore, as it becomes less difficult to locate exemptions in statute, costs will be reduced. In addition, with regards to the Records Management Center, the Department of State concludes that the state will realize a cost avoidance of approximately \$86.00 per cubic foot per year. This is inclusive of personnel cost, floor space, filing equipment, and supplies. The Department of State is unable to determine how many cubic feet of records this council substitute will affect. However, it is the department's opinion that the cost avoidance to the state could be significant on an annual basis.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority of counties or municipalities to raise revenue.

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

This council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Section 57 of the council substitute designates the Department of State's Records Management Center as the "James C. 'Jim' Smith Records Management Center". This section raises single subject issues because the council substitute relates to public records.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on State Administration

On February 7, 2002, the Committee on State Administration reported HB 539 favorably with a strike-all amendment. That amendment is traveling with the bill. The strike-all amendment is different from the bill in that it corrects numerous cross-references necessitated by the renumbering of sections in chapter 119, F.S., and adds other sections of law that need reference changes; deletes a provision naming a building because of a single subject issue; deletes superfluous language referencing the Federal Code

of Regulation because these provisions are no longer necessary; and makes numerous editorial changes.

Council for Smarter Government

On February 14, 2002, the Council for Smarter Government heard HB 539 and adopted an amendment to the traveling amendment. The amendment to the amendment reinstates a provision found in the bill which designates the Department of State's Records Management Center as the "James C. 'Jim' Smith Records Management Center". The bill was reported favorably as a council substitute.

The council substitute is different from the bill in that it corrects numerous cross-references necessitated by the renumbering of sections in chapter 119, F.S., and adds other sections of law that need reference changes; deletes superfluous language referencing the Federal Code of Regulation because these provisions are no longer necessary; and makes numerous editorial changes.

VII. **SIGNATURES:**

COMMITTEE ON TOURISM:

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

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