

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1028

SPONSOR: Criminal Justice Committee

SUBJECT: Executioner/Identification Information/Public Record

DATE: March 4, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Section 922.106, F.S., exempts from public disclosure information that would identify any person who prescribes, prepares, compounds, dispenses or administers the lethal injection used to carry out a death sentence pursuant to ch. 922, F.S. Pursuant to the requirements of s. 119.15, F.S., the Open Government Sunset Review Act of 1995, the exemption will be automatically repealed on October 2, 2003, unless it is reenacted.

This bill repeals s. 922.106, F.S., but retains the same exemption in s. 945.10(g), F.S. Because s. 945.10(g), F.S., also provides an exemption for the identity of the executioner, the duplicative exemption in s. 922.10, F.S., is also deleted.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 922.10, 922.106, 945.10.

II. Present Situation:

Prior to 1998, electrocution was the only method for carrying out a death sentence in Florida. Section 922.10, F.S., specified electrocution as the method of execution and exempted the executioner's identity from public disclosure. In 1998, the Legislature created s. 922.105, F.S., to permit administration of the death penalty by lethal injection if execution by electrocution was held to be unconstitutional. The Legislature also created s. 922.106, F.S., to exempt the identity of the person who administered a lethal injection from public disclosure. In 2000, ss. 922.10 and 922.105, F.S., were amended to establish lethal injection as the method of execution unless the sentenced person affirmatively chose electrocution. The exemption in s. 922.106, F.S., was expanded to include persons who prescribe, prepare, compound, or dispense a lethal injection. Section 945.10, F.S., which enumerates confidential and exempt records or information of the

Department of Corrections, was also amended to include an exemption for the same categories of records that are exempted by ss. 922.10 and 922.106, F.S.

Pursuant to the requirements of s. 119.15, F.S. (the Open Government Sunset Review Act of 1995), the exemption in s. 922.106, F.S., will be automatically repealed on October 2, 2003, unless it is reenacted. Section 119.15(2)(a) - (c), F.S., provides that an exemption is to be created or maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

The exemption meets criterion (a), which is set forth in more detail in s. 119.15(4)(b)2, F.S. The exempted information is of a sensitive personal nature concerning individuals, and public disclosure of the information could jeopardize the safety of a person who prescribes, prepares, compounds, dispenses, or administers a lethal injection.

The exemption also meets criterion (b), which is set forth in more detail in s. 119.15(4)(b)1, F.S. The exemption is necessary for the effective and efficient administration of a governmental program. Without it, the Department of Corrections would be significantly impaired in performing its duty to execute death sentences.

Section 119.15(4)(a), F.S., requires that the Legislature consider four questions as part of the sunset review process. These questions and staff responses follow:

- (1) What specific records or meetings are affected by the exemption?

Execution protocols, death watch logs, wing logs, and other documents that could identify a person who prescribes, prepares, compounds, dispenses, or administers a lethal injection.

- (2) Whom does the exemption uniquely affect, as opposed to the general public?

Specified persons whose identity is exempt, as well as persons under sentence of death, their attorneys, and the news media.

- (3) What is the identifiable public purpose or goal of the exemption?

As stated by the Legislature when it expanded the exemption in 2000, the exemption protects the safety and welfare of a person who prescribes, prepares, compounds, dispenses, or administers a lethal injection by preventing exposure to potential harassment, intimidation, harm and unwarranted invasion into the person's privacy. In *Bryan v. State*, 753 So.2d 1244 (Fla. 2000), the Florida Supreme Court found this to be a valid public purpose.

The exemption also enables the Department of Corrections to carry out its statutory responsibility to execute death sentences.

- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

No.

Section 119.15(4)(b), F.S., also requires that an exemption must serve an identifiable public purpose and be no broader than is necessary to meet the public purpose it serves.

Based upon the foregoing and the detailed analysis included in Interim Project Report 2003-214, the exemption in s. 922.106, F.S., meets the statutory criteria for reenactment. However, it is redundant because it duplicates the exemption that is found in s. 945.10(g), F.S.

III. Effect of Proposed Changes:

The bill maintains the public records exemption for information that would identify any person who prescribes, prepares, compounds, dispenses or administers the lethal injection used to carry out a death sentence. However, s. 922.106, F.S. is repealed. The bill also repeals that portion of s. 922.10, F.S., that provides an exemption for the identity of an executioner. Both exemptions are maintained in s. 945.10(g), F.S., with non-material stylistic changes.

The exemptions in s. 945.10(g), F.S., specifically apply only to records of the Department of Corrections. However, the exempt information concerning persons involved in the execution process would only be found in department records. Because of designation of the information as “confidential and exempt,” it cannot be released to any person or entity. If inadvertently released to another agency, the information retains its exempt character.

IV. Constitutional Issues:

- A. Municipality/County Mandates Restrictions:

None.

- B. Public Records/Open Meetings Issues:

This is a public records bill and the issues are discussed in the body of the analysis.

- C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

- A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
