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 1434

SPONSOR: Senator Villalobos

SUBJECT: Public Libraries

DATE: March 13, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.			GO	
3.			ATD	
4.			AP	
5.				
6.				

I. Summary:

This bill authorizes municipalities to receive operating grants for public libraries, establishes minimum standards for receipt of funds, revises provisions relating to construction grants, and clarifies the public records exemption for library registration and circulation records and expands exceptions to it.

This bill amends the following sections of the Florida Statutes: 257.17, 257.191, 257.22, 257.23, and 257.261, and repeals section 257.19.

II. Present Situation:

State Aid to Libraries Program

The Department of State, Division of Library and Information Services (division), administers the State Aid to Libraries program, which provides operating grants to public libraries. (ss. 257.14 – 25, F.S.) Such grants may be no more than 25 percent of local funds expended to operate and maintain a public library. The Legislature annually appropriates funds for grants, which are prorated among eligible recipients. The division notes that with the exception of the first year of grants in 1962/63, annual appropriations have not been sufficient to meet the 25 percent match authorized in law.

All 67 counties now meet the statutory requirements to receive grants under the State Aid to Libraries program.

Section 257.17, F.S., provides that a political subdivision that has been designated by a county as the single library administrative unit is eligible to receive from the state an annual operating grant of not more than 25 percent of all local funds expended by that political subdivision during

the second preceding fiscal year for the operation and maintenance of a library, provided they meet certain conditions.

First, the political subdivisions must be:

- A county that establishes or maintains a library or that gives or receives free library service by contract with a municipality or nonprofit library corporation or association within such county;
- A county that joins with one or more counties to establish or maintain a library or contracts with another county, a special district, a special tax district, or one or more municipalities in another county to receive free library service;
- A special district or special tax district that establishes or maintains a library and provides free library service; or
- A municipality with a population of 200,000 or more that establishes or maintains a library and gives free library service.

Second, the library established or maintained by the political subdivision must:

- Be operated under a single administrative head and expend its funds centrally;
- Have an operating budget of at least $20,000 per year from local sources; and
- Give free library service to all residents of the county or residents of the special district or special tax district.

Subsection (3) stipulates that any political subdivision establishing public library service for the first time must submit a certified copy of its appropriation for library service, and its eligibility to receive an operating grant is to be based upon such appropriation.

Subsection (4) provides that a municipality with a population of 200,000 or more that establishes or maintains a library is eligible to receive from the state an annual operating grant of not more than 25 percent of all local funds expended by that municipality during the second preceding fiscal year for the operation and maintenance of a library, under the following conditions:

- The municipal library is operated under a single administrative head and expends its funds centrally;
- The municipal library has an operating budget of at least $20,000 per year from local sources; and
- The municipal library provides free library service to all residents of the municipality.

Paragraph (4)(b) provides that this subsection is repealed on July 1, 2002.

Section 257.19, F.S., provides for a single year library service establishment grant to any county, any counties and municipalities entering into an interlocal agreement pursuant to chapter 163, a special district, or a special tax district. The grant may exceed $50,000.

Section 257.191, F.S., authorizes the division to distribute library construction match grants to municipal, county, and regional libraries. The local matching portion may not be less than 50 percent.

Section 257.22, F.S., provides that funds appropriated to a county, a municipality, a special district, or a special tax district for the maintenance of a library or library service must be provided to the respective boards of county commissioners or chief municipal executive authorities.

Section 257.23, F.S., outlines grant application procedures for county commissioners and the chief municipal executive authority of municipalities. Applications are due October 1 of each year.

Review of the State Aid to Libraries Program
Chapter 2001-262, L.O.F, which delayed the repeal of s. 257.17(4), F.S., also included a provision to require the division to review the State Aid to Libraries program and determine any revisions needed to encourage and improve the delivery of free library service to the residents of the state. The division was specifically asked to explore the feasibility of extending the benefits of the State Aid to Libraries program to municipal libraries.

The division hired a consulting firm with expertise in statewide library development and state aid programs to assist in the review. The division reports that the consulting team worked extensively with all segments of the public library community, and on December 17, 2001, the division issued its report: *Improving The State Aid To Libraries Grant Program*. The substance of the recommendations of the report is included in the bill as filed.

Public Records Overview
Florida has a long history of granting public access to governmental records. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.[1] Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained in ch. 119, F.S., was first enacted in 1967.[2] The act has been the subject of amendment almost annually since its inception.

In 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

[1] Section 1, ch. 5942 (1909) stated: "That all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen."
[2] Chapter 67-125 (1967 L.O.F.)

> or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

As a result of the adoption of this constitutional amendment, the statutory right of access contained in the Public Records Law was raised to a substantive constitutional right and the legislative and judicial branches of state government were made subject to government-in-the-sunshine requirements. The amendment also "grandfathered" exemptions that were in effect on July 1, 1993.[3]

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24(c) of the State Constitution, authorizes only the Legislature to create exemptions from government-in-the-sunshine requirements. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. The exemption may be no broader than necessary to comport with the public necessity. Further, a law that creates a public exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

A new constitutional requirement for creating public records exemptions was adopted by the electorate in November of 2002. That amendment to Article I, s. 24 of the State Constitution requires that exemptions must be enacted by a two-thirds vote of each house.

In addition to the State Constitution, the Public Records Law[4] specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental entities. Section 119.07(1)(a), F.S., requires:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee…

The Public Records Law states that, unless specifically exempted, all agency[5] records are to be available for public inspection. The term "public record" is broadly defined to mean:

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[3] Article I, s. 24(d) of the State Constitution.
[4] Chapter 119, F.S.
[5] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[6]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.[7] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[8]

The Legislature is expressly authorized to create exemptions to public records requirements. Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that creates an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes a record confidential, with no provision for its release such that its confidential status will be maintained, that record may not be released by an agency to anyone other than to the persons or entities designated in the statute.[10] If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[11]

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida's citizens to discover the actions of their government.[12] The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are narrowly construed so they are limited to their stated purpose.[13]

Exemptions to open government requirements are subject to repeal five years after their initial enactment unless they are reviewed and saved by the Legislature.[14] An exemption also may be subjected to this automatic review and repeal process if it has been "substantially amended." An exemption has been substantially amended if it ". . . expands the scope of the exemption to

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[6] Section 119.011(1), F.S.
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[8] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[9] Art. I, s.24(c) of the State Constitution.
[10] Attorney General Opinion 85-62.
[11] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[12] *Christy v. Palm Beach County Sheriff's Office*, 698 So.2d 1365 (Fla. 4th DCA 1997).
[13] *Krischer v. D'Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).
[14] An exemption that is required by federal law or that applies solely to the Legislature or the State Court System is expressly excluded from the automatic review and repeal process by s. 119.15(3)(d) and (e), F.S.

include more records or information or to include meetings as well as records."[15] The Open Government Sunset Review Act of 1995[16] provides for the systematic review and repeal of exemptions through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Open Government Sunset Review Act states than an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
3. Protects information of a confidential nature concerning entities, including but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[17]

While the standards in the Open Government Sunset Review Act appear to limit the Legislature in the process of review of exemptions, as the Florida Supreme Court has ruled in a series of cases, one session of the Legislature cannot bind another.[18] The Legislature is only limited in its review process by constitutional requirements. If an exemption does not explicitly meet the requirements of the act, but if it falls within constitutional requirements, the Legislature cannot be bound by the terms of the Open Government Sunset Review Act.

Further, s. 119.15(4)(e), F.S., makes explicit that

> . . . notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or

[15] Section 119.15(3)(b), F.S.
[16] Section 119.15, F.S.
[17] Section 119.15(4)(b), F.S.
[18] As the Florida Supreme Court has ruled in a series of cases, the most recent of which is *Neu v. Miami Herald Publishing Company*, 462 So.2d 821 (Fla. 1985), one legislative body cannot bind a future Legislature to an obligation. In *Neu*, a case addressing the Public Meetings Law, the court stated "A legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law." See *Neu v. Miami Herald Publishing Company*, 462 So.2d 821, 824 (Fla. 1985). In an earlier case reviewing a challenge to establishment of geographic municipal boundaries, the court stated that, "[t]he Legislature cannot prohibit a future Legislature by proper enactment changing boundaries which it [the earlier Legislature] established." *Kirklands v. Town of Bradley*, 139 So. 144, 145 (Fla. 1932).

> incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10, F.S., any public officer violating any provision of ch. 119, F.S., is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding $1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

Public Records Exemption for Library Registration and Circulation Records
Section 257.261, F.S., makes library registration records and circulation records confidential and exempt from the requirements of Article I, s. 24 of the State Constitution, except in accordance with a proper judicial order. That section defines "library registration records" to mean ". . . any information that a library requires a patron to provide in order to become eligible to borrow books and other materials . . . ." Section 257.261, F.S., defines "circulation records" to include ". . . all information that identifies the patrons who borrow particular books and other materials."

Statistical reports of registration and circulation are expressly excluded from the exemption.

Under the exemption, library registration records and circulation records may be made available to any business, municipal or county law enforcement officials or to judicial officials for the purpose of ". . . recovering overdue books, documents, films, or other items or materials owned or otherwise belonging to the library." Further, those officials are permitted access to the records for the purpose of " . . . collecting fines or overdue books, documents, films, or other items of materials." If a patron is under the age of 16, confidential information can be released ". . . relating to the minor's parent or guardian.[19]

A person who violates s. 257.261, F.S., is guilty of a misdemeanor of the second degree, as punishable in ss. 775.082 and 775.083, F.S. Section 775.082(3)(b), F.S., provides for a prison term not exceeding 60 days. Section 775.083(1)(e), F.S., provides for a $500 fine.

According to the Department of State (DOS), s. 257.261, F.S., is interpreted differently among local communities. The DOS states that currently some libraries allow parental access to their children's records and some prohibit this access.

III. Effect of Proposed Changes:

Section 1 amends s. 257.17, F.S., to make all municipalities eligible to participate in the state aid program and to directly receive state funds, including municipalities that provide or receive free

[19] The phrase authorizing release to parents, however, is not particularly clear: "In the case of a public library patron under the age of 16, a public library may only release confidential information relating to the parent or guardian of the person under 16." The word "relating" should be deleted to clarify the section.

library service by contract with a nonprofit library corporation or association within the municipality. Eligibility requirements are changed in the following ways:

- Political subdivisions are required to employ a professional librarian who has completed a library education program accredited by the American Library Association with at least 2 years of full-time paid professional experience after completing the library education program in a public library that is open to the public for a minimum of 40 hours per week;
- The requirement that a library have an annual operating budget of at least $20,000 from local sources is eliminated;
- A political subdivision in a county that offers library service and receives operating grants must provide the same level of service to the residents of any other political subdivision in the county receiving grants;
- At least one library or branch library be open for 40 hours or more each week;
- Libraries must have a long-range plan, annual plan of service, and an annual budget as conditions for grant eligibility; and
- Libraries must engage in joint planning for coordination of services within a county or counties that receive operating grants.

Subsection (4) is deleted, as the provision was repealed on July 1, 2002, pursuant to paragraph (4)(b). This provision allowed certain municipalities to be eligible to receive a state operating grant.

Section 2 amends s. 257.191, F.S., to state in a different way that the local matching portion of construction grants[20] be no less than the grant amount, "unless the matching requirement is waived by s. 288.06561." This provision of statute relates to the waiver of state financial match requirement for projects in rural areas.

This section is also amended to specify that initiation of a library construction project 12 months or less prior to the grant award under this section does not affect the eligibility of an applicant to receive a library construction grant.

Section 3 amends s. 257.22, F.S., allowing all eligible political subdivisions to receive warrants, rather than only the "respective boards of county commissioners or chief municipal executive authorities."

Section 4 amends s. 257.23, F.S., to expand the entities eligible to apply for the operating grant. In addition, December 1 is designated as the deadline for certifying the annual tax income and rate of tax or annual appropriation for library service. This aligns the respective document submission date with political subdivision budget development timelines.

[20] Construction grants are limited to $500,000 per grant, pursuant to Form# DLIS/PLC01, as authorized by 1B-2.011, F.A.C. However, availability of such grant is limited by annual legislative appropriation. In FY 2002/03, the Legislature appropriated $5.38 million for library construction grants.

Section 5 repeals s. 257.19, F.S., to eliminate grants that were provided to assist newly formed county systems in meeting their non-reoccurring start-up costs. Because library service is now available in all 67 counties, these grants are no longer needed.

Section 6 amends s. 257.261, F.S., to clarify the public records exemption for library registration and circulation records and expand exceptions to it. It authorizes a business entity that may be operating a public library or working on behalf of a library to disclose exempt information to the parent or guardian of a public library patron under the age of 16 for the purpose of collecting fines or recovering overdue books or other library materials. This section does not, however, grant a parent or guardian access to his or her child's library records for the purpose of monitoring or discovering what books the child checks out at the library.

Section 7 provides an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create an exemption to public records requirements, but clarifies the exemption and expands exceptions to it. As a result, the bill does not create a new exemption to public records requirements and is not subject to new constitutional requirements for creating an exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By authorizing a business entity to disclose exempt information to a parent or guardian of a patron under the age of 16 for the purpose of collecting fines or retrieving overdue books or materials, a business entity operating a library or working on behalf of a library may collect more fees and retrieve more materials.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This legislation makes all municipalities eligible for operating grants under the State Aid to Libraries grant program. In 2002, the Department of State estimated that up to 26 municipalities may be eligible to apply. In FY 2002/03, $38.4 million was appropriated for library grants.

VIII. Amendments:

None.