

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1717 (PCB SA 03-15A) Public Records Exemption/Executioner's Identifying Information  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1028

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2<sup>nd</sup> of the fifth year after enactment.

This bill repeals the public records exemptions for information identifying an execution and information identifying any person prescribing, compounding, dispensing, or administering the lethal injection. These exemptions are duplicative of an exemption found in chapter 945, F.S. Therefore, the exemptions are repealed as a housekeeping measure.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** pcb15b.sa.doc  
**DATE:** March 4, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

##### Background

Current law requires a death sentence to be executed by electrocution or lethal injection. The law also provides a public records exemption for information identifying the executioner<sup>1</sup> and a public records exemption for information identifying any person prescribing, compounding, dispensing, or administering the lethal injection.<sup>2</sup> These exemptions are duplicative of a public records exemption found in s. 945.10, F.S.

Current law provides for future review and repeal of the public records exemption for information identifying any person prescribing, compounding, dispensing, or administering the lethal injection. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 922.106, F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to the Department of Corrections and held meetings with department staff regarding such exemption.

##### Effect of Bill

As a result of those meetings and questionnaire response, this bill repeals s. 922.106, F.S., because it is a duplicative public records exemption. This bill also repeals the public records exemption for an executioner's identifying information, found in s. 922.10, F.S., because it is a duplicative public records exemption. In both instances, the information is made confidential and exempt<sup>3</sup> in s. 945.10(g), F.S.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 922.10, F.S., by removing the public records exemption for information identifying an executioner.

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<sup>1</sup> Section 922.10, F.S.

<sup>2</sup> Section 922.106, F.S.

<sup>3</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

Section 2. Repeals s. 922.106, F.S., which provides a public records exemption for information identifying any person prescribing, compounding, dispensing, or administering a lethal injection is confidential and exempt from public disclosure.

Section 3. Amends s. 945.10, F.S., by making editorial changes.

Section 4. Provides that the act shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

### D. FISCAL COMMENTS: None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

### B. RULE-MAKING AUTHORITY: None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995<sup>4</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

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<sup>4</sup> Section 119.15, F.S.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of art. 1, s. 24, Fla. Const.. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.