

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 w/CS Public Records
SPONSOR(S): Ryan
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>3 Y, 2 N w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates a public records exemption for a donated manuscript or other archival material held by an official archive of a local government. The confidential and exempt status of such manuscript or other archival material is contingent upon special terms and conditions that limit the right to inspect or copy the manuscript or other archival material. This bill provides for expiration of the exemption, provides for future review and repeal of the exemption, and provides a statement of public necessity.

This bill appears to have a minimal fiscal impact on local governments. See "FISCAL IMPACT ON LOCAL GOVERNMENTS" section.

This bill requires a two-thirds vote of the members present and voting for passage because it is creating a new public records exemption.

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

STORAGE NAME: h1031a.sa.doc
DATE: March 22, 2004

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:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law authorizes the Division of Library and Information Services (Division) of the Department of State the Florida State Archives to preserve manuscripts and other archival material, which have been determined to have sufficient historical or other value to warrant continued preservation. Any nonpublic manuscript or other archival material placed in the keeping of the Division, under special terms and conditions, is only accessible in accordance with such terms and conditions. Such manuscript or archival material is also exempt from public disclosure to the extent necessary to meet such terms and conditions, or after 50 years from the date of the creation of the manuscript or other archival material, whichever is earlier.

At present, an official archive of a local government is not afforded the same exemption.

Effect of Bill

This bill creates a public records exemption for a donated manuscript or other archival material held by an official archive of a local government. The confidential and exempt status of such manuscript or other archival material is contingent upon special terms and conditions that limit the right to inspect or copy such manuscript or other archival material, but which manuscript or other archival material is not otherwise made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. Such manuscript or other archival material must be made available for inspection and copying:

- Fifty years after the date of the creation of the manuscript or other archival material;
- At an earlier date specified in the special terms or conditions; or
- Upon a showing of good cause before a court of competent jurisdiction.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law creating a public records exemption for certain manuscript or other archival material held by an official archive of a municipality or county, and provides for future review and repeal of the exemption.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require local governments to spend 1.7 million or more dollars.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2004, the Committee on State Administration adopted an amendment to HB 1031 and reported the bill favorably with CS. The bill, as filed, created a public records exemption for a manuscript or other archival material held by an official archive of a local government. It also provided for expiration of such exemption and provides for *expiration of exemptions for all other public records* held by such archive. The inclusion in this exemption of a time of expiration for all other public records raised constitutional concerns. Therefore, the bill with CS no longer provides for the expiration of exemptions for all other public records held by a local government archive.

¹ Section 119.15, F.S.