

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1691 Public Records Exemptions
SPONSOR(S): Rivera
TIED BILLS: HB 1681 **IDEN./SIM. BILLS:** None

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) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. As such, the inspector general conducts audits and investigations of the agency.

This bill creates a public records exemption for audit and investigative workpapers and reports of the inspector general until the audit or investigation is complete and the report becomes final, less any confidential and exempt information. It makes clarifying changes, provides for future review and repeal of the exemptions, and provides a statement of public necessity.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL COMMENTS" section. It does not have a fiscal impact on local governments.

This bill requires a two-thirds vote of the members present and voting for passage.

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

STORAGE NAME: h1691a.sa.doc
DATE: March 15, 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 establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.¹ Each inspector general, in carrying out his or her auditing duties and responsibilities, must review and evaluate internal controls necessary to ensure the fiscal accountability of the agency; and conduct financial, compliance, electronic data processing, and performance audits of the agency; and prepare audit reports of his or her findings.² In carrying out his or her investigative duties and responsibilities, the inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.³

Audit workpapers and reports of the inspector general are public records less any confidential and exempt information. However, when a complaint has been received by the inspector general, the name or identity of the individual filing the complaint must not be disclosed without the individual's written consent, unless disclosure is unavoidable during the course of an audit or investigation.⁴

Effect of Bill

This bill creates a public records exemption for audit workpapers, investigative workpapers, and reports of the inspector general until the audit or investigation is complete and the report becomes final, less any confidential and exempt information. These exemptions track the public records exemptions provided to the auditor general and local government internal auditors.

Such exempt information is, by its nature, incomplete and could be misleading. Release of inaccurate or incomplete information could be detrimental to the agencies audited or investigated. The exemptions for the inspector general are a necessity because premature release of such information could pose a high risk of misleading information being made public.

This bill has a contingent effective date. It makes clarifying changes, provides for future review and repeal of the exemptions, and provides a statement of public necessity.

¹ Section 20.055(2), F.S.

² Section 20.055(5), F.S.

³ Section 20.055(6), F.S.

⁴ Section 20.055(5)(b), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 20.055, F.S., creating a public records exemption for audit and investigative workpapers and reports of the agency inspector general.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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.

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:

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 1995⁵ 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

None.

⁵ Section 119.15, F.S.