

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1491 Public Records and Public Meetings Exemptions  
**SPONSOR(S):** Joyner and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Ethics &amp; Elections Committee</u>	<u></u>	<u>West</u>	<u>Mitchell</u>
3) <u>Local Government Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Current law provides a public records and public meetings exemption for the Commission on Ethics and a county-established Commission on Ethics and Public Trust, with regard to information concerning a complaint or preliminary investigation conducted by those commissions. HB 1491 expands the current exemption to include a Commission on Ethics and Public Trust that is established by a municipality. It provides for future review and repeal of the exemptions on October 2, 2010, and provides a statement of public necessity.

The bill could have a fiscal impact on local governments; however, it does not appear to have a fiscal impact on state government.

This bill takes effect upon becoming law.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases public access to records and meetings of a Commission on Ethics and Public Trust established by a municipality.

**Safeguard individual liberty** – This exemption will help protect a person's good name and reputation during the time that a complaint is being investigated. It appears to meet the requirement of Open Government Sunset Review Act of 1995 of protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Commission on Ethics

The Commission on Ethics (Commission) is a non-paid, appointed body consisting of nine members.<sup>1</sup> The Commission serves as guardian of the standards of conduct for officers and employees of the state, and of a county, city, or other political subdivision of the state.<sup>2</sup> It also serves as the independent commission provided for in the State Constitution.<sup>3</sup>

A county<sup>4</sup> or municipality<sup>5</sup> also has the authority to create a Commission on Ethics and Public Trust.

##### Public Records and Meetings Exemptions

Current law provides a public records exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission or a county-established Commission on Ethics and Public Trust. In addition, any proceedings regarding a complaint or preliminary investigation are exemption from public meetings requirements. Such exemptions no longer apply when the:

- Complaint is dismissed as legally insufficient;
- Alleged violator requests in writing that the records and proceedings be made public; or
- Commission or Commission on Ethics and Public Trust determines there is probable cause to believe that a violation has occurred.

The public records and public meetings exemptions do not currently apply to a municipally established Commission on Ethics and Public Trust.

##### **Effect of Bill**

The bill amends the current exemption to include a Commission on Ethics and Public Trust that is established by a municipality. It provides for future review and repeal of the exemptions on October 2,

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<sup>1</sup> Section 112.321(1), F.S.

<sup>2</sup> Section 112.320, F.S.

<sup>3</sup> Section 8(f), Art. II of the State Constitution.

<sup>4</sup> Section 125.01, F.S.

<sup>5</sup> Section 166.021, F.S.

2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 112.324, F.S., creating a public records and meetings exemption for a Commission on Ethics and Public Trust established by a municipality.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of "upon becoming a law."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill could create a fiscal impact on local governments, because staff of a municipally established Commission on Ethics and Public Trust would have to be trained in the categories of information that are confidential and exempt from public disclosure versus records that are available for public inspection and copying. The commission also could incur costs associated with redacting confidential and exempt information prior to releasing a public record.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

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 and Public Meetings Laws**

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. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings 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, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995<sup>6</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.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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<sup>6</sup> Section 119.15, F.S.