

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 119, F.S., the Public Records Act (Act), contains: policy statements regarding public records; maintenance and custody requirements; inspection, copying, and fee standards; an exemption review process; and public records exemptions. The Act has been amended numerous times but, until last year, had not undergone a comprehensive review and revision.

During the 2004 legislative session, the Legislature passed Committee Substitute for Senate Bill 1678,¹ which was the first stage of a multi-year review of the public records and public meetings issues recommended by the Study Committee on Public Records. The primary goal of the bill was the reorganization of the Act by topic.² The bill did not, however, affect public records exemptions or address the Open Government Sunset Review Act of 1995.

Public Records Exemptions

There are approximately 900 public records and public meetings exemptions. Such exemptions can be found in the Act, and throughout the Florida Statutes. The bulk of the exemptions found in the Act are located in a section that establishes standards for inspecting and copying records, sets permissible fees for copies, and establishes other requirements. Some of the exemptions apply generally to all agencies while others apply to only state agencies or local agencies, and others apply more specifically to a specific agency. Furthermore, these exemptions, for the most part, are not arranged by topic.

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,³ sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It 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.

¹ The bill was approved by the Governor on June 18, 2004; *see*, chapter 2004-335, L.O.F.

² In 2002, the Florida Legislature created a 22-member Study Committee on Public Records (study committee). The study committee was legislatively directed to address a broad scope of issues regarding court records, official records, privacy, and public access. On February 15, 2003, the study committee submitted recommendations to the Governor, Chief Justice of the Supreme Court, President of the Senate, and Speaker of the House of Representatives. The legislative recommendations included reorganizing the Public Records Act by topic, creating a definition of "redact", and grouping the public records exemptions by either topic or records custodian. *See* chapter 2002-302, L.O. F. The term of the Study Committee expired June 30, 2003. *See also* STUDY COMMITTEE ON PUBLIC RECORDS Examination of the Effects of Advanced Technologies on Privacy and Public Access to Court Records and Official Records FINAL REPORT, February 15, 2003.

³ Section 119.15, F.S.

It does not, however, require consideration of whether the exemption under review is redundant of other exemptions or if it could be merged with other exemptions, or if a uniform exemption could be created. Amending the Open Government Sunset Review Act of 1995 to require consideration of those issues could result in a periodic, scheduled review of a greater number of exemptions, which could result in fewer exemptions scattered throughout the statutes.

Effect of Bill

Public Records Exemptions

The bill reorganizes, by records custodian (the agency responsible for keeping the record), the public records exemptions located in the Public Records Act. It is structured as follows:

- General exemptions;
- Executive branch agency exemptions;
- Executive branch agency-specific exemptions; and
- Local government agency exemptions.

General exemptions are those exemptions that apply to all state and local governments, other separate units of government created by law, and any other public or private entity acting on behalf of any public agency.⁴ Executive branch agency-specific exemptions are those exemptions that apply to a specific state agency, for example, the Department of Transportation.

The “general exemptions” are further grouped by subject. The subheadings are as follows:

- Agency administration;
- Agency investigations;
- Security;
- Agency personnel information; and
- Other personal information.

The bill transfers the exemption for investigatory records of the Chief Inspector General to chapter 112, F.S., which governs such investigations, and transfers the section regulating capital postconviction records to chapter 27, F.S., which governs capital postconviction issues. It removes superfluous language, makes conforming changes, and corrects cross-references, with regards to public records exemptions transferred within the bill.

Open Government Sunset Review Act of 1995

The bill clarifies that the Open Government Sunset Review Act of 1995, does not apply to a federally required exemption or to an exemption that applies solely to the Legislature or the State Court System. It requires an exemption to provide the constitutional and statutory section from which the information or meeting is made exempt. It adds to the list of legislative considerations:

- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Finally, the bill removes duplicative language and makes conforming and editorial changes.

⁴ Section 119.011(2), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.01, F.S., making a conforming change.

Section 2 amends s. 119.07, F.S., making conforming and cross-reference changes.

Sections 3 through 8 amend s. 119.071, F.S., transferring general exemptions relating to “agency administration.”

Sections 9 through 17 amend s. 119.071, F.S., transferring general exemptions relating to “agency investigations.”

Sections 18 and 19 amend s. 119.071, F.S., transferring general exemptions relating to “security.”

Sections 20 through 23 amend s. 119.071, F.S., transferring general exemptions relating to “agency personnel information.”

Sections 24 through 29 amend s. 119.071, F.S., transferring general exemptions relating to “other personal information.”

Sections 30 and 31 create s. 119.0711, F.S., transferring exemptions relating to executive branch agencies.

Sections 32 and 33 create s. 119.0712, F.S., transferring executive branch agency-specific exemptions.

Sections 34 through 36 create s. 119.0713, F.S., transferring exemptions relating to local government agencies.

Section 37 amends s. 119.15, F.S., relating to the Open Government Sunset Review Act of 1995.

Section 38 creates s. 112.31891, F.S., transferring an exemption relating to investigatory records of the Chief Inspector General.

Section 39 creates s. 27.7081, F.S., transferring an exemption relating to capital postconviction public records production.

Sections 40 through 53 makes cross-reference changes.

Section 54 provides an October 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See “FISCAL COMMENTS” section.

2. Expenditures:

See “FISCAL COMMENTS” section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

There are costs associated with a complete revision to a statute, including printing costs. It would be expected that over time, as exemptions are consolidated and their number reduced, printing costs will be reduced. Further, as it becomes less difficult for staff to find agency specific exemptions that are applicable to requested public records, records request research and production time will be reduced, thereby lowering costs associated with public records requests.

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. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

CURRENT LAW	HB 1731
119.07(6)(a)	Transferred and redesignated as s. 119.071(1)(a).
119.07(6)(b)	Transferred and redesignated as s. 119.071(2)(c).
119.07(6)(c)	Transferred and redesignated as s. 119.071(2)(f).
119.07(6)(d)	Transferred and redesignated as s. 119.071(2)(d).
119.07(6)(e)	Transferred and redesignated as s. 119.071(4)(c).
119.07(6)(f)	Transferred and redesignated as s. 119.071(2)(h).
119.07(6)(g)	Transferred and redesignated as s. 119.071(2)(i).
119.07(6)(h)	Transferred and redesignated as s. 119.071(2)(a).
119.07(6)(i)	Transferred and redesignated as s. 119.071(4)(d).
119.07(6)(j)	Transferred and redesignated as s. 119.071(5)(e).
119.07(6)(k)	Transferred and redesignated as s. 119.071(2)(e).
119.07(6)(l)	Transferred and redesignated as s. 119.071(1)(d).

CURRENT LAW	HB 1731
119.07(6)(m)	Transferred and redesignated as s. 119.071(1)(b).
119.07(6)(n)	Transferred and redesignated as s. 119.0711(2).
119.07(6)(o)	Transferred and redesignated as s. 119.071(1)(f).
119.07(6)(p)	Transferred and redesignated as s. 119.0713(1).
119.07(6)(q)	Transferred and redesignated as s. 119.0711(1).
119.07(6)(r)	Transferred and redesignated as s. 119.071(5)(d).
119.07(6)(s)	Transferred and redesignated as s. 119.071(2)(j).
119.07(6)(t)	Transferred and redesignated as s. 119.071(1)(c).
119.07(6)(u)	Transferred and redesignated as s. 119.071(2)(g).
119.07(6)(v)	Transferred and redesignated as s. 119.071(4)(b).
119.07(6)(w)	Transferred and redesignated as s. 112.31891.
119.07(6)(x)	Transferred and redesignated as s. 119.071(4)(a).
119.07(6)(y)	Transferred and redesignated as s. 119.0713(3).
119.07(6)(z)	Transferred and redesignated as s. 119.0713(4).
119.07(6)(aa)	Transferred and redesignated as s. 119.0721(2).
119.07(6)(bb)	Transferred and redesignated as s. 119.071(5)(f).
119.07(6)(cc)	Transferred and redesignated as s. 119.0721(1).
119.07(6)(dd)	Transferred and redesignated as s. 119.071(5)(b).
119.07(6)(ee)	Transferred and redesignated as s. 119.071(3)(b).
119.07(6)(ff)	Transferred and redesignated as s. 119.071(3)(c).
119.07(6)(gg)	Transferred and redesignated as s. 119.071(5)(a).
119.07(6)(hh)	Transferred and redesignated as s. 119.0713(2).
119.07(6)(ii)	Transferred and redesignated as s. 119.071(1)(e).
119.07(6)(jj)	Transferred and redesignated as s. 119.071(5)(c).
119.071	Transferred and redesignated as s. 119.071(3)(a).
119.072	Transferred and redesignated as s. 119.071(2)(b).
119.0721	Transferred and redesignated as s. 119.071(5)(a).
119.19	Transferred and redesignated as s. 27.7081.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.