

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1851 PCB ETEL 05-03 Public Records  
**SPONSOR(S):** Ethics & Elections Committee and Reagan  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2644

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Ethics & Elections Committee	11 Y, 0 N	Mitchell	Mitchell
1) State Administration Council	8 Y, 0 N	Mitchell	Bussey
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1851 (formerly PCB ETEL 05-03) is linked to HB 1849 (formerly PCB ETEL 05-02), which creates an electronic filing system for quarterly legislative and executive lobbying activity reports filed with the Division of Legislative Information Services (division) and the Florida Commission on Ethics (commission), respectively. Lobbying activity reports contain detailed information on expenditures.

The bill creates a public records exemption for user identifications and passwords assigned to lobbyists and principals by the division and commission for limiting access to the electronic filing system. The bill also creates a temporary public records exemption for all draft reports and files electronically stored in the system; the final report is made available to the public on the statutory due date for filing activity reports.

Article I, s. 24(c), Fla. Const., requires a two-thirds vote of each house for passage of a newly created public records or public meetings exemption.

The bill takes effect upon becoming law, provided HB 1849 or similar bill creating the electronic filing system is also enacted into law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Maintain public security** - The bill provides an exemption for user identifications and passwords assigned to lobbyists and principals so that access to the proposed electronic filing system may be limited to authorized users.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Records Laws

Article I, s. 24(a), Fla. Const., expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Section 119.01(1), F.S., provides:

It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

Article I, s. 24(c), Fla. Const., provides that the Legislature may, by general law, provide exemptions from these requirements. The general law must state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish its purpose.

##### Passage of Public Records Exemptions

In 2002, HJR 327 was proposed by Representative Carassas and others. HJR 327 amended art. I, s. 24, Fla. Const., to require a two-thirds vote of each house in order to enact an exemption to the requirement that public meetings be open to the public or that a public record be open to copying and inspection.

The joint resolution was approved at the general election in November 2002, and became effective in January 2003.

Thus, this bill must receive a 2/3 vote of each house to be enacted.

The bill creates public records exemptions for:

- Security/Identification: exempts from public records all user identifications and passwords used by the division and commission to limit unauthorized access to the electronic filing system; and

- Draft Reports/Files: exempts all reports and files stored in the electronic system until such time as the reports have been submitted as filed.

The bill also provides for automatic repeal of the exemption in s. 112.32156, F.S., on October 2, 2010, unless reenacted by the Legislature.

If enacted by a two-thirds vote of each chamber, the bill takes effect upon becoming law, *provided* that HB 1849 or similar legislation creating the electronic filing system is also enacted into law.

C. SECTION DIRECTORY:

**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:

D. FISCAL COMMENTS:

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, s. 24(a), Fla. Const., 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 and meetings from the requirements of Art. I, s. 24, Fla. Const. 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.

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