

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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, however, may 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 addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record.

Confidential and Exempt Records

There is a difference between records that the Legislature designates as exempt from public disclosure and those the Legislature deems confidential and exempt. Records classified exempt from public disclosure are permitted to be disclosed under certain circumstances.¹ If the Legislature designates certain records confidential and exempt from public disclosure, such records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption.²

Definition of "Agency"

It should be noted that the definition of "agency" provided in the Public Records Act includes the phrase ". . . and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency.*"³ [Emphasis added.] Agencies often are authorized, and in some instances are required, to "outsource" certain functions. Under the current case law standard, an agency is not required to have explicit statutory authority to release public records in its control to its agents. Its agents, however, are required to comply with the same public records custodial requirements with which the agency must comply.

Confidentiality Travels

In *Ragsdale v. State*,⁴ the Supreme Court held that

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.⁵

¹ See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

² See *Attorney General Opinion 85-62*, August 1, 1985.

³ Section 119.011, F.S.

⁴ 720 So.2d 203 (Fla. 1998).

⁵ *Id.* at 206, 207.

In *City of Riviera Beach v. Barfield*,⁶ the court stated, “[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”⁷

Effect of Bill

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements, as opposed to records only made exempt, cannot release such records except as provided in statute or by court order. This clarification is the standard contained in case law.

The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. This clarification also is the standard contained in case law; however, some confusion exists because some statutes explicitly state that the receiving agency or other governmental entity must maintain the confidential and exempt status of the record received while other statutes do not. The bill makes it clear that the same standard applies to each record that is confidential and exempt by expressly stating this standard in the Public Records Act.

The bill reiterates that the provisions do not limit access to any record by an agency or entity acting on behalf of a custodian of public records; the Legislature; or pursuant to court order.

Finally, the bill creates subheadings for s. 119.021, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.021, F.S., to clarify agency custodial requirements for records deemed confidential and exempt.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

⁶ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

⁷ *Id.* at 1137.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This 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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.