

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: CS/SB 2624

INTRODUCER: Health Regulation and Senator Oelrich

SUBJECT: Task Force on Open Government

DATE: March 29, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill creates a nine-member Task Force on Open Government within the Office of Open Government of the Executive Office of the Governor to review, evaluate, and issue recommendations concerning the public-records and public-meetings laws.

The task force must meet the requirements of s. 20.052, F.S., which specifies requirements for each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency. Task force members must be appointed within 45 days after the effective date of the bill. The Office of Open Government must assist the task force and provide all necessary data collection, analysis, research, and support services.

The task force must consider the issues of privacy and public access as they relate to the collection and dissemination of information contained in public records maintained by an agency as defined in the Public Records Law in chapter 119, F.S. The bill specifies certain items the task force must consider. The final report of the task force is due January 1, 2008.

This bill creates two undesignated sections of law.

II. Present Situation:

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida

Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Office of Open Government

The Executive Office of the Governor is created under s. 14.201, F.S. The Governor is the head of the Executive Office of the Governor. The Office of Open Government was created by an

executive order issued by Governor Crist on January 2, 2007.¹ The Office of Open Government has not been created by statute. The primary functions of the Office of Open Government are to:

- Assure full and expeditious compliance with Florida's open government and public records laws, and
- Provide training to all executive agencies under the Governor's jurisdiction on transparency and accountability.

Establishment of Advisory Bodies

Section 20.052, F.S., specifies requirements for each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency.

III. Effect of Proposed Changes:

The bill creates the nine-member Task Force on Open Government within the Office of Open Government of the Executive Office of the Governor to review, evaluate, and issue recommendations concerning the public-records and public-meetings laws.

The task force must meet the requirements of s. 20.052, F.S. Task force members must be appointed within 45 days after the effective date of the bill. Three members are appointed by the Governor, three members by the Speaker of the House of Representatives, and three members by the President of the Senate. The Office of Open Government must assist the task force and provide all necessary data collection, analysis, research, and support services. No earlier than 55 days and no later than 75 days after the effective date of the bill, the task force must meet to establish procedures and elect a chairperson and vice chairperson.

The task force must consider the issues of privacy and public access as they relate to the collection and dissemination of information contained in public records maintained by an agency as defined in s. 119.011, F.S. The task force must specifically, consider:

- How the collection, storage, retrieval, dissemination, and accessibility of public records through advanced technologies has affected the expectation of privacy regarding sensitive, personal information contained in public records; the role and effectiveness of the custodian of public records as defined in s. 119.011, F.S.; the ability of agency networks to communicate with each other; the security and safety of residents; and the interests of business, research, and media industries.
- How best to balance the positive and negative effects of electronic access to public records.
- Whether agencies require excessive and unnecessary information, and if so, the best manner in which to address the issue.
- Whether categories of information should be made confidential or exempt from public disclosure in part or in totality.

¹ See State of Florida Office of the Governor, Executive Order Number 07-01.

- What information is and should be accessible electronically, the circumstances warranting accessibility, and the need for restrictions with respect thereto.
- Whether levels of electronic accessibility should be established based on the nature of the information and the user of the information, circumstances warranting the establishment of levels of accessibility, and the need for restrictions with respect thereto.
- What impediments exist with regard to preventing the unauthorized or inadvertent disclosure of confidential or exempt information in current and future agency records.
- Who should be responsible for ensuring that confidential or exempt information is kept confidential or exempt from public disclosure; and
- What, if any, penalties should be in place if disclosure of confidential or exempt information occurs.

The task force is authorized to examine and recommend changes to laws, rules, and policies governing all public records. The task force must review, at a minimum, documents compiled by the legislative, executive, and judicial branches; the clerks of court; and the Florida Bar relating to privacy, technology, and public records.

The bill requires the task force to submit a final report which must include specific recommendations regarding privacy and public records to the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2008. The report must include any proposed legislation or recommendations for changes in rules. The report must identify any necessary support services, additional training, and fiscal impact resulting from its recommendations.

Members of the task force may be reimbursed for per diem and travel expenses but may not receive any compensation for their duties on the task force. For any task force members who are state employees, their per diem and travel expenses must be provided from the budgets of the employing agencies. The task force is terminated on June 30, 2008.

The bill provides an appropriation of an unspecified amount of monies from the General Revenue Fund to the Executive Office of the Governor for reimbursement of task force members for per diem and travel expenses.

The effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Executive Office of the Governor will incur costs to implement the bill. The Executive Office of the Governor is currently preparing its analysis of the fiscal impact of the bill to reflect changes contained in the committee substitute.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
