

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 985 Pub. Rec./County/Complaints on Conduct/Disclosure

SPONSOR(S): Eisnaugle and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1582

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Governmental Affairs Policy Committee</u>	<u></u>	<u>Williamson</u>	<u>Williamson</u>
2)	<u>Military & Local Affairs Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements.

The bill expands those exemptions for the Commission on Ethics and the Commission on Ethics and Public Trust established by a county or municipality by extending its application to any county that has established a local investigatory process. It provides for repeal of the exemptions on October 2, 2014, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Commission on Ethics

The Commission on Ethics (Commission) is a non-paid, appointed body consisting of nine members.¹ 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.²

Current law establishes the duties and powers of the Commission.³ Chief among these responsibilities is the duty to receive and investigate sworn complaints of violation of the code of ethics and of any other breach of the public trust,⁴ including investigation of all facts and parties materially related to the complaint.

A county or municipality also has the authority to create a Commission on Ethics and Public Trust.

Current Applicable Public Record and Public Meeting Exemptions

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt 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 whether probable cause exists to believe that a violation has occurred.⁵

The exemptions currently are subject to the Open Government Sunset Review Act and are scheduled to repeal October 2, 2010, unless reviewed and saved from repeal by the Legislature.⁶

¹ Section 112.321(1), F.S.

² Section 112.320, F.S.

³ See s. 112.322, F.S.

⁴ As provided in s. 8(f), Art. II of the State Constitution.

⁵ Section 112.324(2)(a), F.S.

⁶ Section 112.324(2)(b), F.S.

Public Records and Open Meetings Laws

Article I, s. 24(a) of the State 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) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that 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 of the State 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 stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.⁷

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 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 Act⁸ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

Effect of Bill

The bill expands the current public record and public meeting exemptions for the Commission and the Commission on Ethics and Public Trust established by a county or municipality by extending its application to any county that has established a local investigatory process. It provides for repeal of the exemptions on October 2, 2014, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 112.324, F.S., to revise the current public record and public meeting exemptions for certain complaints and related records and proceedings by expanding its application to those investigations performed by a county that has established a local investigatory process.

Section 2 provides for legislative review and repeal of the exemption.

Section 3 provides a public necessity statement.

Section 4 provides a July 1, 2009 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁷ Section 24(c), Article I of the State Constitution.

⁸ Section 119.15, F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on counties with an established local investigatory process, because staff responsible for complying with public records requests could require training related to expansion of the public record exemption. In addition, those counties could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the county.

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:

Vote Requirement

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 record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Current law provides the public record and public meeting exemptions for any municipality with an established Commission on Ethics and Public Trust. As drafted, the bill changes the application to *any* municipality whether or not it has established such commission.

In addition, current law already provides for future repeal of the exemptions on October 2, 2010, pursuant to the Open Government Sunset Review Act. The bill provides a repeal date different from the current law. It is suggested that section 2 of the bill be removed and s. 112.324(2)(b), F.S., be amended to extend the repeal date to October 2, 2014.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.