

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1305 (CS/CS/SB 1464)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Adkins (Gaetz)	115 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1464	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1305 passed the House on February 23, 2012, and subsequently passed the Senate on March 7, 2012.

The bill provides that the Public Records Act applies to certain officers-elect upon their election to public office, and provides that certain meetings attended by a person elected to a board or commission, who has not yet taken office, is a public meeting.

The State Constitution and the Florida Statutes set forth the state's public policy regarding access to government records and meetings. However, current law does not specifically address if officers-elect are subject to the Public Records Act or the Government in the Sunshine Law. The Third District Court of Appeal has ruled on the issue providing that members-elect of boards, commissions, and agencies are within the scope of the Government in the Sunshine Law. Although the Public Records Act was not addressed by the Third District Court of Appeal, the Department of State has routinely archived transition records for incoming governors.

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office. The term "officer-elect" only applies to the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records. Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by any person elected to a specific board or commission who has not yet taken office, during which official acts are to be taken, is deemed a public meeting. Reasonable notice of such meeting must be provided.

The Department of State indicates no fiscal impact as a result of the bill.

The bill was approved by the Governor on March 23, 2012, ch. 2012-25, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

State Constitution: Public Records and Open Meetings

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.

Florida Statutes: Public Records and Open Meetings

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes.

*Public Records Act*¹

Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. "Public record" is defined to mean

[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.²

"Agency" is defined to mean

[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.³

The Public Records Act does not apply to legislative⁴ or judicial⁵ records.

Government in the Sunshine Law

Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.⁶ The board or commission must provide reasonable notice of all public meetings.⁷ Public meetings may not be held at any location that discriminates on the basis of

¹ See chapter 119, F.S.

² Section 119.011(12), F.S.

³ Section 119.011(2), F.S.

⁴ See *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992) (definition of "agency" in the Public Records Act does not include the Legislature or its members).

⁵ Relying on separation of powers principles, the courts have consistently held that the judiciary is not an agency for purposes of chapter 119, F.S. See, e.g., *Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government).

⁶ Section 286.011(1), F.S.

⁷ *Id.*

sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.⁸ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁹

Officers-elect

Officers-elect have been held subject to public record and public meeting requirements upon certification of their election.¹⁰ Although not specifically addressed in current law, this principle has been adopted through case law. In *Hough v. Stemberge*,¹¹ the Third District Court of Appeal held that "members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law."¹² Although the Public Records Act was not addressed in *Hough*, the Department of State has routinely archived transition records for incoming governors.

Effect of Bill

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office. The term "officer-elect" only applies to the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records.

Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by any person elected to a specific board or commission who has not yet taken office, during which official acts are to be taken, is deemed a public meeting. Reasonable notice of such meeting must be provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ See Attorney General Opinion 74-40.

¹¹ 278 So.2d 288 (Fla. 3rd DCA 1973).

¹² *Hough* at 289.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

The Department of State indicates there will be no fiscal impact on the department.¹³

The bill could create a minimal fiscal impact on the office of an officer-elect complying with public record requests. The costs would be absorbed, however, as they would be part of the day-to-day responsibilities of the person responsible for responding to records in such office.

¹³ Department of State Bill Analysis on HB 1305, January 30, 2012 (on file with the Government Operations Appropriations Subcommittee).