

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations

BILL: CS/CS/SB 1464

INTRODUCER: Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Governmental Oversight and Accountability Committee; and Senators Gaetz and Benacquisto

SUBJECT: Public Records/Public Meetings/Application to Officers-elect

DATE: February 29, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	Fav/CS
2.	Martin	Meyer, R.	BTA	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 1464 (CS) requires that officers-elect adopt and implement reasonable measures to ensure compliance with the public records requirements established by Chapter 119, F.S. The CS requires that officers-elect maintain public records in accordance with the policies and procedures of the office to which they have been elected. The CS defines officers-elect as the Governor, Lieutenant Governor, Attorney General, Chief Financial Officer and Commissioner of Agriculture. The CS requires that transition records stored online or electronically be preserved to allow for public inspection. The CS requires an officer-elect to deliver transition records to their office as soon as practicable upon taking the oath of office. This CS clarifies any person elected to a state or local government board or commission who has not yet taken office is subject to the public meetings requirements established in ch. 286, F.S.

This CS creates s. 119.035, amends s. 286.011, and reenacts s. 112.3215(8)(b) of the Florida Statutes.

II. Present Situation:

Florida Public Records and Meetings Laws

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

Every person has the right to inspect or copy any public record 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.

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides 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, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.³ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁴ A bill enacting an exemption⁵ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁶

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24, Fla. Constitution.

³ Art. I, s. 24(c), Fla. Constitution.

⁴ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁵ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁶ Art. I, s. 24(c), Fla. Constitution.

Application of Public Records and Meetings Requirements to Officers-Elect

Officers-elect have been held subject to public records and meetings requirements upon certification of their election.⁷ Although not explicitly stated in statute, this principle has been adopted through case law.⁸ *Hough* stated that members-elect of boards, commissions, agencies and other governing bodies are subject to the public meetings requirements.⁹ However, case law has not specifically ruled on the requirement to have written communications of officers-elect open to public inspection. Despite ambiguity in the law, the Department of State has routinely archived transition records for incoming governors since 1971.

III. Effect of Proposed Changes:

Section 1 creates s. 119.035, F.S., specifying that officers-elect are subject to the public records requirements contained in Ch. 119, F.S.; requiring that public records of an officer-elect are to be maintained according to the policies and procedures of the public office to which the officer has been elected; requiring that an officer-elect maintain transition records contained in an online or electronic communication or recordkeeping system; requiring the officer-elect to deliver public records created during the transition to the person or persons responsible for records in such office upon taking the oath of office; providing a definition for officers-elect.

Section 2 amends s. 286.011, F.S., providing that meetings with or attended by any person elected to a state or local government board or commission who has not yet taken office, and at which official acts are to take place, are considered public meetings open to the public and must be reasonably noticed.

Section 3 reenacts s. 112.3215(8)(b), F.S., incorporating the amendment to s. 286.011, F.S.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ See Attorney General Opinion 74-40.

⁸ See *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973).

⁹ *Id.* at 289.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations on February 28, 2012:

This CS clarifies those elected to a state or local government board or commission, but who have not yet taken office, are subject to the open meetings requirements contained in the Sunshine Law.

CS by Governmental Oversight and Accountability on January 26, 2012:

The CS adds a definition of “officers-elect” as applied to Section 119.035, F.S.

B. Amendments:

None.