State Administration Council

Wednesday, March 15, 2006
2:30 PM – 3:00 PM
MORRIS HALL (17 HOB)

REVISED

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Administration Council

Start Date and Time:	Wednesday, March 15, 2006 02:30 pm
End Date and Time:	Wednesday, March 15, 2006 03:00 pm
Location:	Morris Hall (17 HOB)
Duration:	0.50 hrs

Consideration of the following bill(s):

HB 189 CS Building Designations by Williams
HB 7007 Review under the Open Government Sunset Review Act regarding Child Support Services by Governmental Operations Committee
HB 7009 Review under the Open Government Sunset Review Act regarding Local Government Managers by Governmental Operations Committee
HB 7011 Review under the Open Goverment Sunset Review Act regarding Code Enforcement Officers by Governmental Operations Committee
HB 7013 Review under the Open Goverment Sunset Review Act regarding Copyright of Data Processing Software created by Governmental Agencies by Governmental Operations Committee
HB 7015 Review under the Open Goverment Sunset Review Act regarding Archaeological Sites by Governmental Operations Committee
HB 7027 Review under the Open Government Sunset Review Act regarding Long-term Care Facilities by Governmental Operations Committee

NOTICE FINALIZED on 03/13/2006 13:40 by ELLINOR.MARTHA

HB 189 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 CS Building Designations
SPONSOR(S): Williams and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Brazzell/Mitchell	Williamson
2) Environmental Regulation Committee	6 Y, 0 N	Perkins	Kliner
3) State Administration Council		Brazzell/Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

Current law does not permit the naming of a state building for a living person unless specifically provided by law.

The bill designates the entire site at 2600 Blair Stone Road in Tallahassee, Florida, which houses a building and a laboratory facility for the Department of Environmental Protection, as the "Bob Martinez Center" and directs the Department of Management Services to erect suitable markers.

This bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to have a fiscal impact on local governments and the fiscal impact on state government will depend on the type of markers which are erected.

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:

Section 267.062, Florida Statutes, prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law.

The site at 2600 Blair Stone Road in Tallahassee, Florida, houses a building and a laboratory facility for the Department of Environmental Protection. The bill designates the entire site as the "Bob Martinez Center" and directs the Department of Management Services to erect suitable markers.

Robert "Bob" Martinez served as Florida's 40th Governor from 1987-1991, the state's first American Governor of Hispanic descent. Martinez was also the second Republican governor since Reconstruction. He was born and raised in Tampa, later attending the University of Tampa. He served as mayor of Tampa for seven years. As Governor, he championed the Surface Water Improvement and Management Act (also known as the SWIM program), which established uniform policies for managing and protecting Florida's surface waters. He also supported an innovative solid waste disposal program.[1]

C. SECTION DIRECTORY:

Section 1: Designates the Bob Martinez Center and directs suitable markers to be erected.

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 appear to create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   Funding for suitable markers is required. The Department of Management Services estimates the cost at approximately $30,000.[2] Final costs, however, will depend on the type of markers erected.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate local expenditures.

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[1] Allen Morris & Joan Perry Morris, The Florida Handbook, 2005-2006 325-326 (30th ed. 2005).
[2] Fla. Dep't of Mgmt. Serv., HB 189 (2006) Staff Analysis (Dec. 12, 2005) (on file with dep't).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. Since there is an office building and a laboratory at 2600 Blairstone Road in Tallahassee, Florida, the strike-all amendment designates the entire site as the Bob Martinez Center.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to building designations; designating the
7 Department of Environmental Protection building and
8 laboratory on the site at 2600 Blair Stone Road in
9 Tallahassee as the "Bob Martinez Center"; directing the
10 Department of Management Services to erect suitable
11 markers; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Bob Martinez Center designated; Department of
16 Management Services to erect suitable markers.--
17 (1) The site at 2600 Blair Stone Road in Tallahassee,
18 which houses offices and a laboratory facility for the
19 Department of Environmental Protection, is designated as the
20 "Bob Martinez Center."
21 (2) The Department of Management Services is directed to
22 erect suitable markers designating the Bob Martinez Center as
23 described in subsection (1).

24 Section 2. This act shall take effect July 1, 2006.

HB 7007

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7007 PCB GO 06-01 OGSR Child Support Services
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 0 N	Brazzell/Williamson	Williamson
1) State Administration Council		Brazzell/Williamson	Bussey
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for personal identifying information held by a non-Title IV-D county child support agency. The exemption will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on local governments. This bill does not appear to have a fiscal impact on state government.

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:

Background

The court may order either or both parents who owe a duty of support to a child to pay support, based on guidelines provided in law.[1] The State of Florida, through the Department of Revenue (DOR) and through the Dade County State Attorney's Office (for cases in Miami-Dade County) and the Manatee County Clerk of Court (for cases in Manatee County) under contract with the DOR, offers child support enforcement services to certain individuals who receive or believe they are entitled to receive child support. These are "Title IV-D" services provided in accordance with Title IV-D of the Social Security Act. Such services provided by the DOR and its contractors include:

- Establishment of paternity;
- Establishment of a support order;
- Modification of support orders;
- Collection of child support; and
- Enforcement of support orders.

Parents applying for or receiving public assistance must use Title IV-D child support enforcement services. Custodial parents of children who are not receiving public assistance may choose to avail themselves of the DOR's child support enforcement services. Information that identifies individuals using DOR's child support enforcement services is confidential and exempt from public records requirements;[2] this is required under federal law.

Broward County offers a more limited array of child support enforcement services for parents who are not required to use Title IV-D services but wish to receive similar services and who meet certain requirements.[3] These services are "non-Title IV-D" services.[4] In particular, Broward County collects child support and enforces support orders.

Current law provides a public records exemption for information that identifies individuals using non-Title IV-D county child support enforcement services.[5] Information made confidential and exempt[6] includes "any information that reveals the identity of applicants for or recipients of child support services, including the name, address, and telephone number of such persons, in the possession of a

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[1] Section 61.13(1)(a), F.S.
[2] Section 409.2579, F.S.
[3] According to Broward County Support Unit staff, a support order must already have been entered, both parties must live in Florida, and at least one of the parties must live in Broward County. Additionally, the party seeking support must not have retained a private attorney to collect the support.
[4] Counties' Clerks of Court may provide depository services; however, this is not child support enforcement. Records relating to depository services administered by a Clerk of Court are specifically excluded from the definition of "non-Title IV-D county child support enforcement agency".
[5] Section 61.1827, F.S.
[6] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

non-Title IV-D county child support enforcement agency . . ." The statute permits disclosure of the information under limited circumstances, such as during investigations, prosecutions, or criminal or civil proceedings connected with the administration of the non-Title IV-D county child support enforcement program and when required by certain state or federal laws. The non-Title IV-D county child support enforcement agency, however, cannot disclose the name, address, or whereabouts of an applicant, recipient, or child to a person against whom a protective order has been entered if the county agency has reason to believe that the release of information to such person could harm the applicant, recipient, or child.[7]

Pursuant to the Open Government Sunset Review Act,[8] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 61.1827, F.S., to remove the repeal date.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   None. This bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[7] Section 61.1827(2), F.S.
[8] Section 119.15, F.S.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding child support services;
4 amending s. 61.1827, F.S., which provides an exemption
5 from public records requirements for information that
6 reveals the identity of applicants for or recipients of
7 child support services; making editorial changes; removing
8 the scheduled repeal of the exemption under the Open
9 Government Sunset Review Act; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 61.1827, Florida Statutes, is amended
14 to read:
15 61.1827 Identifying information concerning applicants for
16 and recipients of child support services.--
17 (1) Any information that reveals the identity of
18 applicants for or recipients of child support services,
19 including the name, address, and telephone number of such
20 persons, held by ~~in the possession of~~ a non-Title IV-D county
21 child support enforcement agency is confidential and exempt from
22 ~~public disclosure pursuant to~~ s. 119.07(1) and s. 24(a) of Art.
23 I of the State Constitution. The use or disclosure of such
24 information by the non-Title IV-D county child support
25 enforcement agency is limited to the purposes directly connected
26 with:

27 (a) Any investigation, prosecution, or criminal or civil
28 proceeding connected with the administration of any non-Title
29 IV-D county child support enforcement program;
30 (b) Mandatory disclosure of identifying and location
31 information as provided in s. 61.13(8) by the non-Title IV-D
32 county child support enforcement agency when providing non-Title
33 IV-D services; ~~or~~
34 (c) Mandatory disclosure of information as required by ss.
35 409.2577, 61.181, 61.1825, and 61.1826 and Title IV-D of the
36 Social Security Act; or~~.~~
37 (d) Disclosure to an authorized person, as defined in 45
38 C.F.R. s. 303.15, for purposes of enforcing any state or federal
39 law with respect to the unlawful taking or restraint of a child
40 or making or enforcing a child custody or visitation
41 determination. As used in this paragraph, the term "authorized
42 person" includes a noncustodial parent, unless a court has
43 entered an order under s. 741.30, s. 741.31, or s. 784.046.
44 (2) The non-Title IV-D county child support enforcement
45 agency shall not disclose information that identifies by name
46 and address an applicant for or recipient of child support
47 services or the whereabouts of such party or child to another
48 person against whom a protective order with respect to the
49 former party or the child has been entered if the county agency
50 has reason to believe that the release of information to such
51 person could result in physical or emotional harm to the party
52 or the child.
53 (3) As used in this section, "non-Title IV-D county child
54 support enforcement agency" means a department, division, or

55 other agency of a county government which is operated by the
56 county, excluding local depositories pursuant to s. 61.181
57 operated by the clerk of the court, to provide child support
58 enforcement and depository services to county residents.
59 ~~(4) This section is subject to the Open Government Sunset~~
60 ~~Review Act of 1995 in accordance with s. 119.15 and shall stand~~
61 ~~repealed on October 2, 2006, unless reviewed and saved from~~
62 ~~repeal through reenactment by the Legislature.~~
63 Section 2. This act shall take effect October 1, 2006.

HB 7009

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7009 PCB GO 06-02 OGSR Local Government Managers
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 0 N	Williamson	Williamson
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption for certain identification and location information regarding an employee relations director, assistant director, manager, or assistant manager of a local government agency or water management district. It also reenacts and narrows the public records exemption for certain identification and location information regarding the spouse or child of that manager. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring fiscal impact on local governments. The bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records Exemption for Certain Local Government Managers

Current law provides a public records exemption for certain identification and location information regarding a current or former employee relations director, assistant director, manager, or assistant manager (manager) of a local government agency or water management district.[1] Specifically, the home address, telephone number, social security number, and photograph of the manager are exempt[2] from public disclosure. In addition, a public records exemption exists for the:

- Name, home address, telephone number, social security number, photograph and place of employment of the spouse of the manager; and
- Name, home address, telephone number, social security number, photograph, place of employment, and the name and location of the school or daycare facility attended by the child of the manager.

Further, an agency, other than the employing agency, must maintain the exempt status of the identification and location information upon receipt of a written request by the affected manager or that manager's employer.[3]

Pursuant to the Open Government Sunset Review Act,[4] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemption

House staff reviewed the public records exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.[5] Staff concluded that certain information currently protected by the public records exemption either is protected by a more general public records exemption or is not maintained by the employing agency. A narrower public records exemption protects the release of social security numbers.[6] The employing agency does not maintain the photograph of the spouse or child of the manager.

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[1] In order to receive the benefit of the exemption, such personnel's duties and responsibilities must include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties. Section 119.071(4)(d)2., F.S.

[2] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[3] Section 119.071(4)(a)(2), F.S.

[4] Section 119.15, F.S.

[5] Staff surveyed and interviewed managers as part of the review process.

[6] Section 119.071(5)(a), F.S.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It narrows the public records exemption by removing the exemption for the photograph of the spouse or child of a manager. The bill removes the duplicative public records exemption for social security numbers.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reenact and narrow the public records exemption for managers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   None. The bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Governmental Operations Committee adopted an amendment to PCB GO 06-02 and reported the bill favorably. The current public records exemption for information concerning a child of a local government manager was inadvertently removed from the bill. The amendment reinstated the application of that exemption.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding local government managers;
4 amending s. 119.071, F.S.; narrowing the public records
5 exemption for personal identifying information of current
6 or former human resource, labor relations, or employee
7 relations directors, assistant directors, managers, or
8 assistant managers of any local government agency or water
9 management district with specified duties and the spouses
10 and children of such personnel; removing the scheduled
11 repeal of the exemption under the Open Government Sunset
12 Review Act; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraph (d) of subsection (4) of section
17 119.071, Florida Statutes, is amended to read:
18 119.071 General exemptions from inspection or copying of
19 public records.--
20 (4) AGENCY PERSONNEL INFORMATION.--
21 (d)1. The home addresses, telephone numbers, social
22 security numbers, and photographs of active or former law
23 enforcement personnel, including correctional and correctional
24 probation officers, personnel of the Department of Children and
25 Family Services whose duties include the investigation of abuse,
26 neglect, exploitation, fraud, theft, or other criminal
27 activities, personnel of the Department of Health whose duties
28 are to support the investigation of child abuse or neglect, and

29 personnel of the Department of Revenue or local governments
30 whose responsibilities include revenue collection and
31 enforcement or child support enforcement; the home addresses,
32 telephone numbers, social security numbers, photographs, and
33 places of employment of the spouses and children of such
34 personnel; and the names and locations of schools and day care
35 facilities attended by the children of such personnel are exempt
36 from s. 119.07(1). The home addresses, telephone numbers, and
37 photographs of firefighters certified in compliance with s.
38 633.35; the home addresses, telephone numbers, photographs, and
39 places of employment of the spouses and children of such
40 firefighters; and the names and locations of schools and day
41 care facilities attended by the children of such firefighters
42 are exempt from s. 119.07(1). The home addresses and telephone
43 numbers of justices of the Supreme Court, district court of
44 appeal judges, circuit court judges, and county court judges;
45 the home addresses, telephone numbers, and places of employment
46 of the spouses and children of justices and judges; and the
47 names and locations of schools and day care facilities attended
48 by the children of justices and judges are exempt from s.
49 119.07(1). The home addresses, telephone numbers, social
50 security numbers, and photographs of current or former state
51 attorneys, assistant state attorneys, statewide prosecutors, or
52 assistant statewide prosecutors; the home addresses, telephone
53 numbers, social security numbers, photographs, and places of
54 employment of the spouses and children of current or former
55 state attorneys, assistant state attorneys, statewide
56 prosecutors, or assistant statewide prosecutors; and the names

57 and locations of schools and day care facilities attended by the
58 children of current or former state attorneys, assistant state
59 attorneys, statewide prosecutors, or assistant statewide
60 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
61 the State Constitution.
62 2. The home addresses, telephone numbers, ~~social security~~
63 ~~numbers,~~ and photographs of current or former human resource,
64 labor relations, or employee relations directors, assistant
65 directors, managers, or assistant managers of any local
66 government agency or water management district whose duties
67 include hiring and firing employees, labor contract negotiation,
68 administration, or other personnel-related duties; the names,
69 home addresses, telephone numbers, ~~social security numbers,~~
70 ~~photographs,~~ and places of employment of the spouses and
71 children of such personnel; and the names and locations of
72 schools and day care facilities attended by the children of such
73 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
74 the State Constitution. ~~This subparagraph is subject to the Open~~
75 ~~Government Sunset Review Act in accordance with s. 119.15 and~~
76 ~~shall stand repealed on October 2, 2006, unless reviewed and~~
77 ~~saved from repeal through reenactment by the Legislature.~~
78 3. The home addresses, telephone numbers, social security
79 numbers, and photographs of current or former United States
80 attorneys and assistant United States attorneys; the home
81 addresses, telephone numbers, social security numbers,
82 photographs, and places of employment of the spouses and
83 children of current or former United States attorneys and
84 assistant United States attorneys; and the names and locations

85 of schools and day care facilities attended by the children of
86 current or former United States attorneys and assistant United
87 States attorneys are exempt from s. 119.07(1) and s. 24(a), Art.
88 I of the State Constitution. This subparagraph is subject to the
89 Open Government Sunset Review Act in accordance with s. 119.15
90 and shall stand repealed on October 2, 2009, unless reviewed and
91 saved from repeal through reenactment by the Legislature.
92 4. The home addresses, telephone numbers, social security
93 numbers, and photographs of current or former judges of United
94 States Courts of Appeal, United States district judges, and
95 United States magistrate judges; the home addresses, telephone
96 numbers, social security numbers, photographs, and places of
97 employment of the spouses and children of current or former
98 judges of United States Courts of Appeal, United States district
99 judges, and United States magistrate judges; and the names and
100 locations of schools and day care facilities attended by the
101 children of current or former judges of United States Courts of
102 Appeal, United States district judges, and United States
103 magistrate judges are exempt from s. 119.07(1) and s. 24(a),
104 Art. I of the State Constitution. This subparagraph is subject
105 to the Open Government Sunset Review Act in accordance with s.
106 119.15 and shall stand repealed on October 2, 2009, unless
107 reviewed and saved from repeal through reenactment by the
108 Legislature.
109 5. The home addresses, telephone numbers, social security
110 numbers, and photographs of current or former code enforcement
111 officers; the names, home addresses, telephone numbers, social
112 security numbers, photographs, and places of employment of the

113 spouses and children of such persons; and the names and
114 locations of schools and day care facilities attended by the
115 children of such persons are exempt from s. 119.07(1) and s.
116 24(a), Art. I of the State Constitution. This subparagraph is
117 subject to the Open Government Sunset Review Act in accordance
118 with s. 119.15 and shall stand repealed on October 2, 2006,
119 unless reviewed and saved from repeal through reenactment by the
120 Legislature.
121 6. The home addresses, telephone numbers, places of
122 employment, and photographs of current or former guardians ad
123 litem, as defined in s. 39.820, and the names, home addresses,
124 telephone numbers, and places of employment of the spouses and
125 children of such persons, are exempt from s. 119.07(1) and s.
126 24(a), Art. I of the State Constitution, if the guardian ad
127 litem provides a written statement that the guardian ad litem
128 has made reasonable efforts to protect such information from
129 being accessible through other means available to the public.
130 This subparagraph is subject to the Open Government Sunset
131 Review Act in accordance with s. 119.15 and shall stand repealed
132 on October 2, 2010, unless reviewed and saved from repeal
133 through reenactment by the Legislature.
134 7. An agency that is the custodian of the personal
135 information specified in subparagraph 1., subparagraph 2.,
136 subparagraph 3., subparagraph 4., subparagraph 5., or
137 subparagraph 6. and that is not the employer of the officer,
138 employee, justice, judge, or other person specified in
139 subparagraph 1., subparagraph 2., subparagraph 3., subparagraph
140 4., subparagraph 5., or subparagraph 6. shall maintain the

141 exempt status of the personal information only if the officer,
142 employee, justice, judge, other person, or employing agency of
143 the designated employee submits a written request for
144 maintenance of the exemption to the custodial agency.
145 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7011 PCB GO 06-03 OGSR Code Enforcement Officers
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 0 N	Williamson	Williamson
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption for certain identification and location information regarding a code enforcement officer and that officer's spouse or child. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring fiscal impact on local governments. The bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records Exemption for Code Enforcement Officers

Code enforcement officers (officers) are responsible for the administration of a wide range of health, safety, and environmental regulations. Current law provides a public records exemption for certain identification and location information regarding a current or former officer.[1] Specifically, the home address, telephone number, social security number, and photograph of the officer are exempt from public disclosure. In addition, a public records exemption exists for the:

- Name, home address, telephone number, social security number, photograph and place of employment of the spouse of the officer; and
- Name, home address, telephone number, social security number, photograph, place of employment, and the name and location of the school or daycare facility attended by the child of the officer.

Further, an agency, other than the employing agency, must maintain the exempt status of the identification and location information upon receipt of a written request by the officer or that officer's employer.[2]

Pursuant to the Open Government Sunset Review Act,[3] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemption

House staff reviewed the public records exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.[4] Staff concluded that certain information currently protected by the public records exemption either is protected by a more general public records exemption or is not maintained by the employing agency. A narrower public records exemption protects the release of social security numbers.[5] The employing agency does not maintain the photograph of the spouse or child of the officer.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It narrows the public records exemption by removing the exemption for the photograph of the spouse or child of an officer. The bill removes the duplicative public records exemption for social security numbers. It also makes editorial changes.

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[1] Section 119.071(4)(d)5., F.S.
[2] Section 119.071(4)(a)(2), F.S.
[3] Section 119.15, F.S.
[4] Staff surveyed and interviewed officers as part of the review process.
[5] Section 119.071(5)(a), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reenact and narrow the public records exemption for officers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding code enforcement officers;
4 amending s. 119.071, F.S.; narrowing the public records
5 exemption for personal identifying information of current
6 and former code enforcement officers and the spouses and
7 children of such officers; removing the scheduled repeal
8 of the exemption under the Open Government Sunset Review
9 Act; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (d) of subsection (4) of section
14 119.071, Florida Statutes, is amended to read:
15 119.071 General exemptions from inspection or copying of
16 public records.--
17 (4) AGENCY PERSONNEL INFORMATION.--
18 (d)1. The home addresses, telephone numbers, social
19 security numbers, and photographs of active or former law
20 enforcement personnel, including correctional and correctional
21 probation officers, personnel of the Department of Children and
22 Family Services whose duties include the investigation of abuse,
23 neglect, exploitation, fraud, theft, or other criminal
24 activities, personnel of the Department of Health whose duties
25 are to support the investigation of child abuse or neglect, and
26 personnel of the Department of Revenue or local governments
27 whose responsibilities include revenue collection and
28 enforcement or child support enforcement; the home addresses,

29 telephone numbers, social security numbers, photographs, and
30 places of employment of the spouses and children of such
31 personnel; and the names and locations of schools and day care
32 facilities attended by the children of such personnel are exempt
33 from s. 119.07(1). The home addresses, telephone numbers, and
34 photographs of firefighters certified in compliance with s.
35 633.35; the home addresses, telephone numbers, photographs, and
36 places of employment of the spouses and children of such
37 firefighters; and the names and locations of schools and day
38 care facilities attended by the children of such firefighters
39 are exempt from s. 119.07(1). The home addresses and telephone
40 numbers of justices of the Supreme Court, district court of
41 appeal judges, circuit court judges, and county court judges;
42 the home addresses, telephone numbers, and places of employment
43 of the spouses and children of justices and judges; and the
44 names and locations of schools and day care facilities attended
45 by the children of justices and judges are exempt from s.
46 119.07(1). The home addresses, telephone numbers, social
47 security numbers, and photographs of current or former state
48 attorneys, assistant state attorneys, statewide prosecutors, or
49 assistant statewide prosecutors; the home addresses, telephone
50 numbers, social security numbers, photographs, and places of
51 employment of the spouses and children of current or former
52 state attorneys, assistant state attorneys, statewide
53 prosecutors, or assistant statewide prosecutors; and the names
54 and locations of schools and day care facilities attended by the
55 children of current or former state attorneys, assistant state
56 attorneys, statewide prosecutors, or assistant statewide

57 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
58 the State Constitution.
59 2. The home addresses, telephone numbers, social security
60 numbers, and photographs of current or former human resource,
61 labor relations, or employee relations directors, assistant
62 directors, managers, or assistant managers of any local
63 government agency or water management district whose duties
64 include hiring and firing employees, labor contract negotiation,
65 administration, or other personnel-related duties; the names,
66 home addresses, telephone numbers, social security numbers,
67 photographs, and places of employment of the spouses and
68 children of such personnel; and the names and locations of
69 schools and day care facilities attended by the children of such
70 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
71 the State Constitution. This subparagraph is subject to the Open
72 Government Sunset Review Act in accordance with s. 119.15 and
73 shall stand repealed on October 2, 2006, unless reviewed and
74 saved from repeal through reenactment by the Legislature.
75 3. The home addresses, telephone numbers, social security
76 numbers, and photographs of current or former United States
77 attorneys and assistant United States attorneys; the home
78 addresses, telephone numbers, social security numbers,
79 photographs, and places of employment of the spouses and
80 children of current or former United States attorneys and
81 assistant United States attorneys; and the names and locations
82 of schools and day care facilities attended by the children of
83 current or former United States attorneys and assistant United
84 States attorneys are exempt from s. 119.07(1) and s. 24(a), Art.

85 I of the State Constitution. This subparagraph is subject to the
86 Open Government Sunset Review Act in accordance with s. 119.15
87 and shall stand repealed on October 2, 2009, unless reviewed and
88 saved from repeal through reenactment by the Legislature.
89 4. The home addresses, telephone numbers, social security
90 numbers, and photographs of current or former judges of United
91 States Courts of Appeal, United States district judges, and
92 United States magistrate judges; the home addresses, telephone
93 numbers, social security numbers, photographs, and places of
94 employment of the spouses and children of current or former
95 judges of United States Courts of Appeal, United States district
96 judges, and United States magistrate judges; and the names and
97 locations of schools and day care facilities attended by the
98 children of current or former judges of United States Courts of
99 Appeal, United States district judges, and United States
100 magistrate judges are exempt from s. 119.07(1) and s. 24(a),
101 Art. I of the State Constitution. This subparagraph is subject
102 to the Open Government Sunset Review Act in accordance with s.
103 119.15 and shall stand repealed on October 2, 2009, unless
104 reviewed and saved from repeal through reenactment by the
105 Legislature.
106 5. The home addresses, telephone numbers, ~~social security~~
107 ~~numbers,~~ and photographs of current or former code enforcement
108 officers; the names, home addresses, telephone numbers, ~~social~~
109 ~~security numbers, photographs,~~ and places of employment of the
110 spouses and children of such <u>personnel</u> ~~persons~~; and the names
111 and locations of schools and day care facilities attended by the
112 children of such <u>personnel</u> ~~persons~~ are exempt from s. 119.07(1)

113 and s. 24(a), Art. I of the State Constitution. ~~This~~
114 ~~subparagraph is subject to the Open Government Sunset Review Act~~
115 ~~in accordance with s. 119.15 and shall stand repealed on October~~
116 ~~2, 2006, unless reviewed and saved from repeal through~~
117 ~~reenactment by the Legislature.~~
118 6. The home addresses, telephone numbers, places of
119 employment, and photographs of current or former guardians ad
120 litem, as defined in s. 39.820, and the names, home addresses,
121 telephone numbers, and places of employment of the spouses and
122 children of such persons, are exempt from s. 119.07(1) and s.
123 24(a), Art. I of the State Constitution, if the guardian ad
124 litem provides a written statement that the guardian ad litem
125 has made reasonable efforts to protect such information from
126 being accessible through other means available to the public.
127 This subparagraph is subject to the Open Government Sunset
128 Review Act in accordance with s. 119.15 and shall stand repealed
129 on October 2, 2010, unless reviewed and saved from repeal
130 through reenactment by the Legislature.
131 7. An agency that is the custodian of the personal
132 information specified in subparagraph 1., subparagraph 2.,
133 subparagraph 3., subparagraph 4., subparagraph 5., or
134 subparagraph 6. and that is not the employer of the officer,
135 employee, justice, judge, or other person specified in
136 subparagraph 1., subparagraph 2., subparagraph 3., subparagraph
137 4., subparagraph 5., or subparagraph 6. shall maintain the
138 exempt status of the personal information only if the officer,
139 employee, justice, judge, other person, or employing agency of

140 the designated employee submits a written request for
141 maintenance of the exemption to the custodial agency.
142 Section 2. This act shall take effect October 1, 2006.

HB 7013

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB GO 06-06 OGSR Copyright of Data Processing Software
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) State Administration Council		Williamson	Bussey
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Data processing software is a public record under Florida law. As a result, the general authority permitting agencies to copyright and sell their software based upon market considerations is, in effect, an exemption from public records requirements.

The bill retains the authority for an agency to copyright data processing software and to sell that software based upon market conditions. It also makes editorial changes. This authority will repeal on October 2, 2006, if the bill does not become law.

The bill may have a limited fiscal impact on state and local governments.

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:

Background

Copyright Authority

The Federal Copyright Act of 1976[1] protects "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." To be subject to copyright, a work must be original, an independent creation of the author, and "fixed in any tangible medium," such as the written word, sound recordings, and visual images. Copyright protection is available only for an expression of an idea and not for the idea itself.[2]

Works created by an officer or employee of the United States government, as part of his or her duties, are in the public domain and cannot be copyrighted.[3] Federal law, however, does not prohibit copyright of works produced by other governmental entities.[4] As a result, state and local governments may copyright their works depending upon the law of the jurisdiction.[5] As state governments do not come under the federal prohibition,[6] Florida law determines whether an agency may obtain a copyright.[7]

In Florida, an agency may not copyright its works without specific statutory authority.[8] The Legislature has provided general copyright authority for data processing software only.[9]

Data Processing Software

Data processing software[10] is a public record under Florida law. As a result, the general authority permitting agencies[11] to copyright and sell their software based upon market considerations is, in effect,

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[1] 17 U.S.C. 2. 102(a).
[2] *Circular 1, Copyright Protection*, U.S. Copyright Office.
[3] 17 U.S.C. s. 5.
[4] *See, Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); *and see, County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).
[5] The U.S. Copyright Office states in *The Compendium of Copyright Office Practices* that legislative enactments, judicial opinions, and administrative rulings, whether federal or state, are ineligible for federal copyright protection for public policy reasons. Some states have permitted agencies to copyright agency-created software. Examples include California (s. 6254.9 *Cal. Gov. Code*), Alaska (sec. 44.99.400, *Alaska Statutes*), Minnesota (sec. 13.03, *Minnesota Statutes*), Oregon (sec. 291.042, *Oregon Revised Statutes*), and North Dakota (sec. 44-04-18.5, *North Dakota Statutes*).
[6] *Ibid. See also, Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); *and see, County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).
[7] *Microdecisions, Inc., supra at* 874.
[8] *See, Microdecisions, Inc. v. Skinner*, 889 So.2d 871 at 875 (2nd DCA 2005), noting that no statute authorizes a county property appraiser to hold a copyright. *See also*, AGO 2003-42, noting no statute generally authorizes counties or county agencies to secure copyrights. *See also*, AGO 2000-13 holding that "a state agency is not authorized to secure or hold a trademark in the absence of specific statutory authority to do so."
[9] Section 119.084, F.S.
[10] "Data processing software" means "the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs." Section 119.011(6), F.S.

an exemption from public records requirements.[12] As such, the law enacting this authority contained a statement of public necessity in support of the authority delegated.[13]

An agency has authority to acquire and hold a copyright for data processing software created by the agency, and to enforce its copyright.[14] The agency may sell or license the software to a public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of the software based on market considerations. However, if the software is required by a user solely for access to information maintained or generated by the agency, pricing for the software defaults to the general fee structure for public records[15] because that information is a public record and must be accessible.[16]

Pursuant to the Open Government Sunset Review Act,[17] the authority for agencies to copyright data processing software will expire October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review Questionnaire

Agencies that responded to the Open Government Sunset Review questionnaire did not indicate a high level of use of the authority to copyright data processing software. Of the 20 state agencies that responded,[18] only the Department of Juvenile Justice[19] and the Florida Department of Law Enforcement (FDLE)[20] indicated they had obtained copyrights for agency produced data processing software. Only FDLE stated that it had sold or licensed its copyrighted software.[21] Of the 11 counties that responded to the questionnaire,[22] only one indicated that it had acquired a copyright for data processing software. Sarasota County indicated it had acquired three copyrights. In fiscal year 2005, Sarasota County received $200,000 for software sales and in fiscal year 2006, it received $500,000 in sales. None of the 37 cities that responded to the questionnaire indicated that they had acquired a copyright for agency created software. Thus, only four percent of state agency and local government respondents indicated that they had obtained copyrights for data processing software.

No agency indicated that it had received a request from a user for a copy of the copyrighted software for the standard public record fee.

Given the small percentage of respondents who have actually obtained copyrights for agency-created data processing software and the smaller number who have actually sold copyrighted data processing

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[11] For purposes of granting authority to copyright data processing software, the term "agency" does not include a private agency, person, partnership, corporation, or business entity. Section 119.084(1), F.S.
[12] *Microdecisions, Inc.,* supra at 876.
[13] Chapter 2001-251, Laws of Florida.
[14] Section 119.084(2), F.S.
[15] Section 119.07(4), F.S., provides that if the law prescribes a specific fee, then the custodian must furnish a copy upon payment of that fee. If no fee is prescribed, an agency may not charge more than 15 cents per one-sided copy for a 14"x 8½" page. For all other copies, an agency may charge for the "actual cost of duplication." The "actual cost of duplication" means the cost of material and supplies used to duplicate the record, but that does not include labor. Section 119.011(1), F.S. A special service charge is permitted in addition to the actual cost if the nature or volume of the records requested requires extensive use of information technology resources or extensive clerical or supervisory assistance.
[16] Section 119.084(2)(a), F.S.
[17] Section 119.15, F.S.
[18] The following state agencies responded to the questionnaire: Agriculture & Consumer Services; Legal Affairs; State Board of Administration; of Business and Professional Regulation; of Children and Families Services; of Education; Elderly Affairs; Environmental Protection; Financial Services; Fish & Wildlife Conservation Commission; Health; Highway Safety and Motor Vehicles; Juvenile Justice; Law Enforcement; Lottery; Management Services; Revenue; State; Workforce Innovation; Florida Parole Commission.
[19] The Department of Juvenile Justice indicated that it had obtained one copyright.
[20] FDLE responded that it had obtained two copyrights.
[21] FDLE indicated that it sold or licensed one sale of copyrighted software for $75,000.
[22] Of the 67 counties, the following responded to the questionnaire: Dixie; Franklin; Hernando; Lake; Levy; Manatee; Marion; Osceola; Pinellas; Putnam; Sarasota. This is a response rate of 16.4 percent.

software, and given that the majority of respondents made no recommendation whether to retain the provision, it would appear that this general copyright authority has not been useful to most agencies. Nevertheless, some agencies are making use of the authority to copyright and sell agency-created data processing software. For this small group, substantial sums have been obtained and the agencies within this group have recommended retention of the authority. Further, one respondent noted that the ability of an agency to obtain a copyright might provide that agency with some advantage when negotiating with a vendor for the production of a software package for that entity. Thus, there are some practical benefits from this authority.

Effect of Bill

The bill removes the repeal date thereby retaining agency authority to copyright and sell data processing software. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 119.084, F.S., to remove the repeal date.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As most agencies do not produce or market software, the bill should result in minimal or no fiscal impact on the private sector.

D. FISCAL COMMENTS:

For most state and local governments, the bill will have limited fiscal impact because most did not report that they produce and market their software. In the few instances where state and local governments do produce and sell their software, the bill should have a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding copyright of data processing
4 software created by governmental agencies; amending s.
5 119.084, F.S., which authorizes an agency to acquire and
6 hold a copyright for data processing software created by
7 the agency and to enforce its rights pertaining to such
8 copyright; making editorial changes; removing the
9 scheduled repeal of the exemption under the Open
10 Government Sunset Review Act; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 119.084, Florida Statutes, is amended
15 to read:
16 119.084 Copyright of data processing software created by
17 governmental agencies; sale price and licensing fee.--
18 (1) As used in this section, "agency" has the same meaning
19 as in s. 119.011(2), except that the term does not include any
20 private agency, person, partnership, corporation, or business
21 entity.
22 (2) An ~~Any~~ agency is authorized to acquire and hold a
23 copyright ~~copyrights~~ for data processing software created by the
24 agency and to enforce its rights pertaining to such copyright
25 ~~copyrights~~, provided that the agency complies with the
26 requirements of this subsection ~~section~~.
27 (a) An ~~Any~~ agency that has acquired a copyright for data
28 processing software created by the agency may sell or license

29 the copyrighted data processing software to any public agency or
30 private person. The agency ~~and~~ may establish a price for the
31 sale and a licensing ~~license~~ fee for the use of such data
32 processing software that~~. Proceeds from the sale or licensing of~~
33 ~~copyrighted data processing software shall be deposited by the~~
34 ~~agency into a trust fund for the agency's appropriate use for~~
35 ~~authorized purposes. Counties, municipalities, and other~~
36 ~~political subdivisions of the state may designate how such sale~~
37 ~~and licensing proceeds are to be used. The price for the sale of~~
38 ~~and the fee for the licensing of copyrighted data processing~~
39 ~~software~~ may be based on market considerations. However, the
40 prices or fees for the sale or licensing of copyrighted data
41 processing software to an individual or entity solely for
42 application to information maintained or generated by the agency
43 that created the copyrighted data processing software shall be
44 determined pursuant to s. 119.07(4).
45 (b) Proceeds from the sale or licensing of copyrighted
46 data processing software shall be deposited by the agency into a
47 trust fund for the agency's appropriate use for authorized
48 purposes. Counties, municipalities, and other political
49 subdivisions of the state may designate how such sale and
50 licensing proceeds are to be used.
51 (c) The provisions of this subsection are supplemental to,
52 and shall not supplant or repeal, any other provision of law
53 that authorizes an agency to acquire and hold copyrights.
54 ~~(3) This section is subject to the Open Government Sunset~~
55 ~~Review Act of 1995 in accordance with s. 119.15 and shall stand~~

56 ~~repealed on October 2, 2006, unless reviewed and saved from~~
57 ~~repeal through reenactment by the Legislature.~~
58 Section 2. This act shall take effect October 1, 2006.

HB 7015

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7015 PCB GO 06-08 OGSR Archaeological Sites
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Tourism Committee	7 Y, 0 N	McDonald	McDonald
2) State Administration Council		Brazzell/Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for any information identifying the location of archaeological sites contained in site files and records maintained by the Division of Historical Resources of the Department of State when that division finds that disclosure of such information will create a substantial risk of harm, theft, or destruction at the sites. The exemption will repeal on October 2, 2006, if this bill does not become law.

This bill does not appear to have a fiscal impact on local governments. This bill may have a minimal non-recurring positive fiscal impact on state government.

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:

Background

Section 267.061(1)(a), F.S., declares that

> [T]he rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment . . .

One element of the state's system of preserving historic properties is the maintenance of the Florida Master Site File ("site file"). The site file contains information on nearly 28,000 Florida archaeological sites in various formats, including electronic and paper.[1] The site file also contains information about other non-archaeological historic properties. The site file fulfills federal requirements contained in the National Historic Preservation Act of 1966, as amended through 2000, codified in 16 U.S.C. 470a(b)(3)(a) to "conduct a comprehensive survey of historic properties and maintain inventories of such properties". Various parties utilize the information in the site file, including local government staff, consultants charged with preserving archeological and other historic sites, and researchers.

There have been recent incidents involving looting of archaeological sites on state land:[2]

- In May 2004, Department of Environmental Protection agents arrested two individuals who were digging at Newnan's Lake, a site that has evidence of an archaic American Indian occupation. According to the division, the digging heavily damaged the site. The damage assessment was $8,960.56.
- In May 2004, two individuals were arrested for unauthorized excavation and for removing arrowheads and tools at Enclave B on Southwest Florida Water Management District lands in Pasco County. The estimated cost of site damage was $37,249.82.
- In June 2005, Department of Environmental Protection officers arrested one individual for removing artifacts from sites in the Tomoka State Park in Volusia County.
- In March 2005, Fish and Wildlife Conservation Commission officers arrested two individuals for digging at a site in the Lochloosa Wildlife Conservation Area. Based on information from the individuals, a subsequent review of other sites found widespread vandalism.

Current law provides a public records exemption for information identifying the location of an archaeological site contained in site files or other records maintained by the Division of Historical Resources of the Department of State if the division finds that disclosure of such information will create

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[1] Section 267.031(5)(n), F.S., names and establishes the site file.

[2] Section 267.13, F.S., prohibits certain actions, including removing or otherwise altering any archeological site, upon any land owned or controlled by the state or within the boundaries of a designated state archeological landmark or landmark zone. The section of statute also provides for penalties ranging from misdemeanor to felony and administrative fines as well as forfeiture of any materials removed.

a substantial risk of harm, theft, or destruction at such site. Pursuant to the Open Government Sunset Review Act,[3] the exemption will repeal on October 1, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 267.135, F.S., to remove the repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[3] Section 119.15, F.S.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding archaeological sites; amending
4 s. 267.135, F.S., which provides a public records
5 exemption for information identifying the location of an
6 archaeological site held by the Division of Historical
7 Resources of the Department of State; making editorial
8 changes; removing the scheduled repeal of the exemption
9 under the Open Government Sunset Review Act; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 267.135, Florida Statutes, is amended
15 to read:
16 267.135 Location of archaeological sites.--Any information
17 identifying the location of an archaeological site held ~~sites~~
18 ~~contained in site files or other records maintained~~ by the
19 Division of Historical Resources of the Department of State is
20 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a) of Art.
21 I of the State Constitution, if the Division of Historical
22 Resources finds that disclosure of such information will create
23 a substantial risk of harm, theft, or destruction at such site
24 ~~sites~~. ~~This section is subject to the Open Government Sunset~~
25 ~~Review Act in accordance with s. 119.15 and expires on October~~
26 ~~2, 2006, unless reviewed and reenacted by the Legislature.~~
27 Section 2. This act shall take effect October 1, 2006.

HB 7027

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7027 PCB GO 06-13 OGSR Long-term Care Facilities
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 2 N	Williamson	Williamson
1) Elder & Long-Term Care Committee	7 Y, 0 N	Walsh	Walsh
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records and public meetings exemptions regarding incident reports reported by a nursing home or assisted living facility. The exemptions will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

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:

Background

In 2001, the Legislature required nursing homes to implement an internal risk management and quality assurance program to investigate and analyze the frequency and cause of specific types of adverse incidents.[1] The Legislature also authorized assisted living facilities to voluntarily establish a risk management and quality assurance program.[2] Both are required to report adverse incidents to the Agency for Health Care Administration (AHCA).[3]

For purposes of reporting to AHCA, the term "adverse incident" means:

- An event over which facility personnel could exercise control and that is associated in whole or in part with the facility's intervention, and that results in:
  - Death;
  - Brain or spinal injury;
  - Permanent disfigurement;
  - Fracture or dislocation of bones or joints;
  - A limitation of neurological, physical, or sensory function;[4]
  - A condition that required medical attention to which the resident has not given his or her informed consent; or
  - Any condition that requires the transfer of the resident to a unit providing a more acute level of care due to the adverse incident;
- Abuse, neglect, or exploitation as defined in s. 415.102, F.S.;
- Abuse, neglect and harm as defined in s. 39.01, F.S.;[5]
- Resident elopement; or
- Events reported to law enforcement.[6]

Current law provides a public records and public meetings exemption with regards to incident reports.[7] Incident reports filed with a facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse incident reports are confidential and exempt[8] from public records

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[1] Every nursing home must establish an internal risk management and quality assurance program to assess resident care practices; review facility quality indicators, facility incident reports, deficiencies cited by the Agency for Health Care Administration (AHCA), and resident grievances; and develop plans of action to correct and quickly respond to identified quality deficiencies. The nursing home administrator is responsible for the program. Subsections (1) and (2) of section 400.147, F.S.

[2] The purpose of the program is to assess resident care practices, facility incident reports, deficiencies cited by AHCA, adverse incident reports, and resident grievances. Section 400.423(1), F.S.

[3] Sections 400.147(7), 400.147(8), 400.423(3), and 400.423(4), F.S.

[4] This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

[5] This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

[6] Sections 400.147(5) and 400.423(2), F.S.

[7] Section 400.119, F.S.

[8] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all

requirements. Confidential and exempt records are available to a regulatory board for purposes of disciplinary action[9] and to a law enforcement agency if criminal activity is suspected.[10]

Meetings of an internal risk management and quality assurance committee of a nursing home or assisted living facility are exempt from public meetings requirements.[11] Records of the exempt meetings are confidential and exempt from public records requirements.[12]

Pursuant to the Open Government Sunset Review Act,[13] the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions. It makes editorial changes and reorganizes the section.

C. SECTION DIRECTORY:

Section 1 amends s. 400.119, F.S., to remove the October 2, 2006, repeal date.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

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circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[9] Confidential and exempt records obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding; however, upon request, such records are available to the health care professional against whom probable cause has been found. Section 400.119(2), F.S.

[10] The law enforcement agency must maintain the confidential and exempt status of the records until criminal charges are filed. Section 400.119(3), F.S.

[11] Section 400.119(4), F.S.

[12] Section 400.119(1), F.S.

[13] Section 119.15, F.S.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state expenditures, as well as nursing homes and assisted living facilities. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government, as well as nursing homes and assisted living facilities, may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding long-term care facilities;
4 amending s. 400.119, F.S., which provides exemptions from
5 public records requirements for specified reports and
6 notifications with respect to long-term care facilities
7 licensed under pt. II or pt. III of ch. 400, F.S., and
8 which provides an exemption from public meeting
9 requirements for the meetings of an internal risk
10 management and quality assurance committee of a long-term
11 care facility and an exemption from public records
12 requirements for the records of such meetings;
13 reorganizing provisions and making editorial changes;
14 removing the scheduled repeal of the exemptions under the
15 Open Government Sunset Review Act; providing an effective
16 date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 400.119, Florida Statutes, is amended
21 to read:
22 400.119 Confidentiality of records and meetings of risk
23 management and quality assurance committees.--
24 (1) ~~Records of meetings of the risk management and quality~~
25 ~~assurance committee of a long-term care facility licensed under~~
26 ~~this part or part III of this chapter, as well as~~ Incident
27 reports filed with the ~~facility's~~ risk manager and administrator
28 of a long-term care facility licensed under this part or part

29 III of this chapter, notifications of the occurrence of an
30 adverse incident, and adverse incident reports from the facility
31 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
32 I of the State Constitution.
33 (2)(a) The meetings of an internal risk management and
34 quality assurance committee of a long-term care facility
35 licensed under this part or part III of this chapter are exempt
36 from s. 286.011 and s. 24(b), Art. I of the State Constitution.
37 (b) Records of those meetings are confidential and exempt
38 from s. 119.07(1) and s. 24(a), Art. I of the State
39 Constitution.
40 (3)(a) ~~However,~~ If the Agency for Health Care
41 Administration has a reasonable belief that conduct by a staff
42 member or employee of a facility is criminal activity or grounds
43 for disciplinary action by a regulatory board, the agency may
44 disclose ~~such~~ records made confidential and exempt pursuant to
45 this section to the appropriate law enforcement agency or
46 regulatory board.
47 (b) Records disclosed to a law enforcement agency remain
48 confidential and exempt until criminal charges are filed.
49 (4) ~~(2)~~ Records made ~~that are~~ confidential and exempt under
50 this section ~~subsection (1)~~ and that are obtained by a
51 regulatory board are not available to the public as part of the
52 record of investigation and prosecution in a disciplinary
53 proceeding made available to the public by the agency or the
54 appropriate regulatory board. However, the agency or the
55 appropriate regulatory board shall make available, upon request
56 by a health care professional against whom probable cause has

57 been found, any such records that form the basis of the
58 determination of probable cause.
59 ~~(3) Records disclosed to a law enforcement agency pursuant~~
60 ~~to subsection (1) remain confidential and exempt until criminal~~
61 ~~charges are filed.~~
62 ~~(4) The meetings of an internal risk management and~~
63 ~~quality assurance committee of a long-term care facility~~
64 ~~licensed under this part or part III of this chapter are exempt~~
65 ~~from s. 286.011 and s. 24(b), Art. I of the State Constitution~~
66 ~~and are not open to the public.~~
67 ~~(5) This section is subject to the Open Government Sunset~~
68 ~~Review Act of 1995 in accordance with s. 119.15, and shall stand~~
69 ~~repealed on October 2, 2006, unless reviewed and saved from~~
70 ~~repeal through reenactment by the Legislature.~~
71 Section 2. This act shall take effect October 1, 2006.

State Administration Council

Wednesday, March 15, 2006
2:30PM – 3:00PM
17 HOB

Addendum A

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: State Administration Council
2 Representative(s) Brutus offered the following:
3
4 **Amendment (with title amendment)**
5 Between line(s) 14 and 15, insert:
6 Section 1. Toussaint L'Ouverture Boulevard designated;
7 Department of Transportation to erect suitable markers; repeal
8 of prior designation.--
9 (1) That portion of State Road 944 on N.W. 54th Street
10 between U.S. Highway 1 and N.E. 2nd Avenue in Miami-Dade County
11 is designated as "Toussaint L'Ouverture Boulevard."
12 (2) The Department of Transportation is directed to erect
13 suitable markers designating Toussaint L'Ouverture Boulevard as
14 described in subsection (1).
15 (3) Section 6 of chapter 2003-296, Laws of Florida, is
16 repealed.
17 Section 2. Reverend Gerard Jean-Juste Boulevard
18 designated; Department of Transportation to erect suitable
19 markers.--

20 (1) That portion of State Road 944 on N.W. 54th Street
21 between N.E. 2nd Avenue and N.W. 7th Avenue in Miami-Dade County
22 is designated as "Reverend Gerard Jean-Juste Boulevard."
23 (2) The Department of Transportation is directed to erect
24 suitable markers designating Reverend Gerard Jean-Juste
25 Boulevard as described in subsection (1).
26
27
28 ========== T I T L E A M E N D M E N T ==========
29 Remove line 6 and insert:
30 An act relating to state facility designations; designating
31 Toussaint L'Ouverture Boulevard in Miami-Dade County; repealing
32 s. 6, ch. 2003-296, Laws of Florida, relating to a prior
33 designation of Toussaint L'Ouverture Boulevard; designating
34 Reverend Gerard Jean-Juste Boulevard in Miami-Dade County;
35 directing the Department of Transportation to erect suitable
36 markers; designating the