State Administration Council

Wednesday, April 05, 2006
1:00 PM – 1:45 PM
MORRIS HALL (17 HOB)

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, April 05, 2006 01:00 pm
End Date and Time:	Wednesday, April 05, 2006 01:45 pm
Location:	Morris Hall (17 HOB)
Duration:	0.75 hrs

Consideration of the following bill(s):

HB 285 Emergency Management by Needelman
HB 1129 Florida State Employees' Charitable Campaign by Henriquez
HB 7045 Review under the Open Government Sunset Review Act regarding Supplemental Rebate Agreements by Governmental Operations Committee
HB 7085 Succession to the Office of Governor by Domestic Security Committee
HB 7111 CS Review Under the Open Government Sunset Review Act regarding Interference with Custody by Governmental Operations Committee
HB 7113 Review under the Open Government Sunset Review Act regarding the Public Records Exemption for the Interference with Custody Statute by Governmental Operations Committee
HB 7127 Disturbance of Assemblies by Military & Veteran Affairs Committee
HB 7243 Custodial Requirements for Public Records by Governmental Operations Committee

NOTICE FINALIZED on 04/03/2006 15:42 by ELLINOR.MARTHA

HB 285

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 285 Emergency Management
SPONSOR(S): Needelman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 568, SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	8 Y, 0 N	Newton	Newton
2) Judiciary Committee	9 Y, 0 N	Hogge	Hogge
3) State Administration Council		Newton	Bussey
4)			
5)			

SUMMARY ANALYSIS

In New Orleans, following Hurricane Katrina, a number of legally owned weapons were reportedly confiscated by law enforcement agencies. This practice was subsequently halted.

This bill amends s. 252.36, F.S., to provide that nothing in the Florida Emergency Management Act and the Florida Emergency Planning and Community Right to Know Act shall be construed as authorizing the "seizure, taking, or confiscation" of lawfully possessed weapons. Currently, under the Florida Emergency Management Act, the Governor has broad authority to act during a declared state of emergency. The Governor may "issue executive orders, proclamations, and rules" which "shall have the force and effect of law." Specifically, within that act, the Governor may, "in addition to any other powers conferred upon the Governor," suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles during a state of emergency. That same section of current law does not, however, expressly authorize the Governor to order the confiscation of lawfully possessed weapons.

This bill also amends s. 870.044, F.S., to provide that nothing in Chapter 870, F.S., relating to "Affrays; Riots; Routs; Unlawful Assemblies," shall be construed as authorizing the "seizure, taking, or confiscation" of lawfully possessed firearms. Currently, under s. 870.041, F.S., local officers are empowered to declare a state of emergency, generally for a period of 72 hours. Within that Chapter, s. 870.044, F.S., prohibits the sale and intentional display of ammunition and guns or other firearms during a locally declared state of emergency. That section further permits only authorized law enforcement officials or persons in military service acting in the official performance of their duties to display or have firearms in their possession.

Finally, this bill reenacts s. 377.703(3)(a), F.S., which outlines the authority of the governor to impose energy restrictions when energy shortages are anticipated and to carry out the state's energy emergency contingency plan.

This bill does not appear to have a fiscal impact on state and local governments.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government: The bill prohibits a construction of certain existing sections of law as permitting government confiscation of firearms during a state of emergency.

Safeguards individual liberty: The bill prohibits a construction of certain existing sections of law as permitting government confiscation of firearms during a state of emergency, thereby enabling individuals to retain their firearms in these circumstances.

Maintain public security: The bill may adversely affect the ability of law enforcement agencies to protect public safety and security. By limiting the ability of law enforcement to be flexible in their responses to emergency conditions, the safety and security of the public may be degraded under certain conditions.

B. EFFECT OF PROPOSED CHANGES:

The Constitution of the United States and the Florida Constitution both guarantee citizens the right to keep and bear arms. This right has been reaffirmed by the decisions of the courts to varying degrees over the course of history. However, some limitations on this right exist in regard to convicted felons and the sale and ownership of certain prohibited weapons. Currently, there are no express statutory provisions prohibiting public officials from confiscating legally owned firearms from law-abiding citizens. However, there are several statutory provisions related to the sale, display, or possession of firearms during a state of emergency.

In New Orleans, following Hurricane Katrina, a number of legally owned weapons were reportedly confiscated by law enforcement agencies. This practice was subsequently halted when concerns were voiced over these actions and a lawsuit was filed by the National Rifle Association.[1] The *New York Times* quoted the superintendent of police as stating that "only law enforcement (is) allowed to have weapons."[2] Legislation has since been introduced in eight states, including Louisiana, to address this issue.[3]

Effects of the Bill

The bill amends s. 252.36, F.S., to provide that nothing in the Florida Emergency Management Act[4] and the Florida Emergency Planning and Community Right to Know Act[5] shall be construed as authorizing the "seizure, taking, or confiscation" of lawfully possessed weapons.

> [Currently, under the Florida Emergency Management Act, the Governor has broad authority to act during a declared state of emergency. A state of emergency generally is limited to 60 days, but may be extended or terminated before 60 days. The Governor may "issue executive orders, proclamations, and rules" which "shall have the force and effect of law."[6] Specifically, within that act, the Governor may, "in addition to any other powers conferred upon the Governor," suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles during a state of

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[1] http://www.nraila.org
[2] *New York Times*, September 8, 2005, "New Orleans Begins Confiscating Firearms as Water Recedes."
[3] Alaska: HB 400; Kentucky: HB 290; Mississippi: HB 1141; New Hampshire: HB 1639; Oklahoma: HB 2696; Virginia: HB 1265; also Idaho and Louisiana (unknown).
[4] Sections 252.31-252.60, F.S.
[5] Sections 252.81-252.90, F.S.
[6] Section 252.36(1)(b), F.S.

emergency.[7] That same section of current law does not, however, expressly authorize the Governor to order the confiscation of lawfully possessed weapons.]

The bill also amends s. 870.044, F.S., to provide that nothing in Chapter 870, F.S., relating to "Affrays; Riots; Routs; Unlawful Assemblies," shall be construed as authorizing the "seizure, taking, or confiscation" of lawfully possessed firearms.

[Currently, under s. 870.041, F.S., local officers are empowered to declare a state of emergency, generally for a period of 72 hours. Elsewhere within that Chapter, s. 870.044, F.S., prohibits the sale and intentional display of ammunition and guns or other firearms during a locally declared state of emergency. That section further permits only authorized law enforcement officials or persons in military service acting in the official performance of their duties to display or have firearms in their possession.]

Finally, the bill reenacts s. 377.703(3)(a), F.S., which outlines the authority of the governor to impose energy restrictions when energy shortages are anticipated and to carry out the state's energy emergency contingency plan.

C. SECTION DIRECTORY:

Section 1. Amends s. 252.36, F.S., to provide that certain sections shall not be construed as authorizing lawfully possessed firearms to be seized, taken, or confiscated.

Section 2. Amends s. 870.044, F.S., to provide that certain sections shall not be construed as authorizing lawfully possessed firearms to be seized, taken, or confiscated.

Section 3. Re-enacts s. 377.703(3)(a), F.S., which outlines the authority of the governor to impose energy restrictions when energy shortages are anticipated and to carry out the state's energy emergency contingency plan.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[7] S. 252.36(5)(h), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

The bill implicates constitutional considerations under both the United States and Florida Constitutions, including the interplay between the right to keep and bear arms and the emergency powers of the State and local governments. The constitutionality of confiscating legally owned firearms from private citizens for the protection of the common good is open to argument. The State Constitution prohibits any infringement on the right to keep and bear arms while providing for its regulation in the manner by which the State shall choose.

It has been argued in the courts that the right to keep and bear arms is a collective rather than an individual right. In United States v. Miller,[8] the court implied that the rights contained in the Second Amendment of the United States Constitution are only limits on the powers of the federal government and not on the powers of the states. In four Florida cases, the courts held that the right to bear arms is not absolute and the state, through the legislative process, may enact valid police regulations to promote the safety of the general public.[9]

In two recent federal cases, courts have applied opposite precedent, that the right to keep and bear arms is an individual right rather than a collective right. In United States v. Verdugo-Urquirdez, the court held that the term "the people" in the Second Amendment of the United States Constitution had the same meaning as in the Preamble, First, Fourth and Ninth Amendments.[10] Although this case was a Fourth Amendment case, it has applicability to this issue. In Gilbert Equipment Co., Inc. v. Higgins, the court held that the right to keep and bear arms was guaranteed to all Americans.[11]

The Governor has the express statutory authority to issue executive orders, proclamations, and rules and may amend or rescind them as necessary. These executive orders, proclamations, and rules have the force and effect of law during the declared emergency.[12] To the extent this authority, in the context of a state of emergency, emanates from the Governor's "supreme executive power" in Article IV, s. 1 of the Florida Constitution, attempts to statutorily limit the emergency power of the Governor to temporarily suspend rights as granted under the Constitution, one constitutional authority bumps up against another.

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[8] 307 U.S. 174 (1939).

[9] *State of Florida v. Astore, Fla.*, 258 So.2d 33 (Fla. 2d DCA 1972); *Nelson v. State*, 195 So.2d 853 (Fla. 1967); *Davis v. State*, 146 So.2d 892 (Fla. 1962); and *Carlton v. State*, 63 Fla. 1, 58 So. 486 (Fla. 1912).

[10] 110 S.Ct. 3039 (1990).

[11] 709 F. Supp. 1071 (S.D. Ala. 1989), aff'd, 894 F.2d 412 (11th Cir. 1990).

[12] Section 252.36(1)(a) and (5)(a), F.S.

The bill also highlights the question of the rights of the individual verses that of the State to exercise limitations on such rights in protecting the welfare and security of the public at large during a state of emergency. It should be anticipated, if the bill is enacted, that it could be subject to legal scrutiny well beyond the depth of this analysis.

B. RULE-MAKING AUTHORITY:

No additional grant of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill indicates that nothing in Chapter 870, F.S., which includes provisions limiting the sale, display, or possession of lawfully possessed firearms, shall be construed to authorize the confiscation of firearms that are lawfully possessed, it does not necessarily mean, as drafted, that it necessarily prohibits restrictions on possession. "Possession" and "confiscation" are different actions. If the intent of the sponsor is to also prohibit restrictions on possession, then the sponsor may consider revising the proposal.

Additionally, the bill states that nothing in this "Chapter" shall be construed in a certain manner, and includes this statement in a specific "section."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to emergency management; amending s.
3 252.36, F.S.; providing construction with respect to the
4 authority of the Governor to seize, take, or confiscate
5 firearms in the event of an emergency beyond local
6 control; amending s. 870.044, F.S.; providing construction
7 with respect to the seizure, taking, or confiscation of
8 firearms during a state of emergency; reenacting s.
9 377.703(3)(a), F.S., relating to the authority of the
10 Governor to utilize specified emergency management powers
11 to carry out emergency actions required by a serious
12 shortage of energy sources under the energy emergency
13 contingency plan of the Department of Environmental
14 Protection, for the purpose of incorporating the amendment
15 to s. 252.36, F.S., in a reference thereto; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (h) of subsection (5) of section
21 252.36, Florida Statutes, is amended to read:
22 252.36 Emergency management powers of the Governor.--
23 (5) In addition to any other powers conferred upon the
24 Governor by law, she or he may:
25 (h) Suspend or limit the sale, dispensing, or
26 transportation of alcoholic beverages, firearms, explosives, and
27 combustibles. <u>However, nothing contained in ss. 252.31-252.90</u>

28 shall be construed to authorize the seizure, taking, or
29 confiscation of firearms that are lawfully possessed.
30 Section 2. Section 870.044, Florida Statutes, is amended
31 to read:
32 870.044 Automatic emergency measures.--Whenever the public
33 official declares that a state of emergency exists, pursuant to
34 s. 870.043, the following acts shall be prohibited during the
35 period of said emergency throughout the jurisdiction:
36 (1) The sale of, or offer to sell, with or without
37 consideration, any ammunition or gun or other firearm of any
38 size or description.
39 (2) The intentional display, after the emergency is
40 declared, by or in any store or shop of any ammunition or gun or
41 other firearm of any size or description.
42 (3) The intentional possession in a public place of a
43 firearm by any person, except a duly authorized law enforcement
44 official or person in military service acting in the official
45 performance of her or his duty.
46
47 Nothing contained in this chapter shall be construed to
48 authorize the seizure, taking, or confiscation of firearms that
49 are lawfully possessed.
50 Section 3. For the purpose of incorporating the amendment
51 made by this act to section 252.36, Florida Statutes, in a
52 reference thereto, paragraph (a) of subsection (3) of section
53 377.703, Florida Statutes, is reenacted to read:

54 377.703 Additional functions of the Department of
55 Environmental Protection; energy emergency contingency plan;
56 federal and state conservation programs.--
57 (3) DEPARTMENT OF ENVIRONMENTAL PROTECTION; DUTIES.--The
58 Department of Environmental Protection shall, in addition to
59 assuming the duties and responsibilities provided by ss. 20.255
60 and 377.701, perform the following functions consistent with the
61 development of a state energy policy:
62 (a) The department shall assume the responsibility for
63 development of an energy emergency contingency plan to respond
64 to serious shortages of primary and secondary energy sources.
65 Upon a finding by the Governor, implementation of any emergency
66 program shall be upon order of the Governor that a particular
67 kind or type of fuel is, or that the occurrence of an event
68 which is reasonably expected within 30 days will make the fuel,
69 in short supply. The department shall then respond by
70 instituting the appropriate measures of the contingency plan to
71 meet the given emergency or energy shortage. The Governor may
72 utilize the provisions of s. 252.36(5) to carry out any
73 emergency actions required by a serious shortage of energy
74 sources.
75 Section 4. This act shall take effect upon becoming a law.

HB 1129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129 Florida State Employees' Charitable Campaign
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:** SB 2026

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

SUMMARY ANALYSIS

The bill changes the distribution formula for undesignated contributions made by state employees participating in the Florida State Employees' Charitable Campaign. It requires that the distribution of undesignated funds in each local fiscal agent area be shared proportionately by the participating charitable organizations based upon their percentage of designations in each fiscal agent area.

There is no fiscal impact to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The Florida State Employees' Charitable Campaign (FSECC) is the only statutorily-recognized comprehensive giving program[1] that provides state employees with a payroll deduction system for their voluntary donations to qualified charitable non-profit organizations. There are five criteria that determine inclusion and exclusion in the campaign, as follows:[2]

Participation Criteria for the Florida State Employees' Charitable Campaign

Eligible	Ineligible
Public health and welfare	Fund raising/administrative expenses greater than 25%
Education	Primarily political, religious, professional, or fraternal societies
Environmental restoration and conservation	Organizations with prohibited discriminatory practices
Civil and human rights	Unregistered charitable organizations
Relief of human suffering and poverty	Organizations without 26 U.S.C. 501(c)(3) tax qualified status

The Department of Management Services (DMS) and the Department of Financial Services (DFS) provide administrative support for the campaign. The DMS competitively selects a fiscal agent for the processing of contributions to the designated charities and the DFS, as paymaster, provides the deduction codes through the state payroll system. The approved fiscal agent is permitted reasonable costs for the conduct of the campaign and must reimburse the DMS for the costs of coordinating the campaign, not to exceed one percent (1%) of gross pledges. All financial records associated with the fiscal intermediary duties and operations are open for inspection to the public upon reasonable notice. In each fiscal agent area, local steering committees, composed of state employees selected by the fiscal agent, assist in conducting the campaign and direct the distribution of undesignated funds. A total of $4.6 million was collected by the 2004 campaign and distributed to some 1300 participating organizations statewide.[3]

The current fiscal agent is the United Way of Florida, Incorporated.

Changes

The bill removes from the local steering committee the duty of directing the distribution of undesignated funds. Directing the distribution of undesignated funds currently is the only statutorily-defined duty of the local steering committee. The bill also removes from the fiscal agent the responsibility of selecting state employees for the local steering committees.

The bill requires that the distribution of undesignated funds in each local fiscal agent area be shared proportionately by the participating charitable organizations, based upon their percentage of

[1] Section 110.181, F.S.
[2] The rules administering the FSECC are found in Chapter 60L-39, F.A.C.
[3] Information taken from DMS website for FSECC, located here: http://dms.myflorida.com/workforce/workforce_quick_links/state_employees_charitable_campaign.

designations in each fiscal agent area. The payment of shares of undesignated funds to each charity must be made in the same manner as the designations. This method of distribution is similar to the practices relating to distribution of undesignated funds with Title 5, Code of Federal Regulations, Part 950.501, for the Combined Federal Campaign for employees of federal agencies. Those federal regulations direct the proportional distribution of undesignated funds to charities in the same proportion that they received designations in the campaign.

C. SECTION DIRECTORY:

Section 1 amends s. 110.181 to change the distribution of undesignated funds in each fiscal area of the FSECC.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no effect on the amount of gross pledges but there will be a redistribution of pledge amounts to charitable organizations that do not receive a proportionate share of funds relative to their share today. The deduction codes are processed on a calendar year basis. As a result, the impact of the bill should not be felt until the next deduction cycle begins in the year 2007.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the Florida State Employees' Charitable
3 Campaign; amending s. 110.181, F.S.; requiring that
4 undesignated campaign funds be shared proportionally by
5 the participating charitable organizations based on the
6 percentage of designations in each fiscal agent area;
7 removing the fiscal agent's right to select the steering
8 committee members; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (d) of subsection (2) of section
13 110.181, Florida Statutes, is amended to read:
14 110.181 Florida State Employees' Charitable Campaign.--
15 (2) SELECTION OF FISCAL AGENTS; COST.--
16 (d) A local steering committee shall be established in
17 each fiscal agent area to assist in conducting the campaign. ~~and~~
18 ~~to direct~~ The distribution of undesignated funds in each local
19 fiscal agent's area shall be shared proportionately by the
20 participating charitable organizations based on the percentage
21 of designations in each fiscal agent area. The payment of each
22 charity's share of undesignated funds shall be distributed in
23 the same manner as the designations. The committee shall be
24 composed of state employees ~~selected by the fiscal agent~~.
25 Section 2. This act shall take effect July 1, 2006.

HB 7045

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7045 PCB GO 06-16 OGSR Supplemental Rebate Agreements
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 0 N	Williamson	Williamson
1) Health Care Regulation Committee	8 Y, 0 N	Bell	Mitchell
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 exemption relating to supplemental rebate agreements. It narrows the exemption by removing the public records exemption for trade secrets. It reenacts the public meetings exemption for the Medicaid Pharmaceutical and Therapeutics Committee. In addition, it requires that a record be made of each portion of an exempt meeting. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

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. The bill requires the Medicaid Pharmaceutical and Therapeutics Committee to make a record of each portion of an exempt meeting.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2001 Florida Legislature significantly expanded its efforts to control pharmaceutical costs in the state's Medicaid program by enacting a program called the preferred drug list (PDL).[1] Under this law, Medicaid prescribing practitioners are required to prescribe the medications on the PDL, or must obtain prior authorization from the Agency for Health Care Administration (AHCA) to prescribe a medication not on the PDL, in order for Medicaid to pay for the prescription.

In order for a drug manufacturer to have its medications considered for inclusion on the PDL, it must agree to provide the state both federally mandated rebates and state-mandated supplemental rebates. Since rebate negotiations involve disclosure by pharmaceutical manufacturers of proprietary information regarding the elements of their wholesale pricing, federal law prohibits disclosure of information received by Medicaid agencies from manufacturers that discloses identities of manufacturers or wholesalers or the prices charged by these manufacturers or wholesalers.[2] The federal prohibition applies to the U.S. Secretary of the Department of Health and Human Services, the U.S. Secretary of Veterans Affairs, or a state agency or contractor.

To address the federal confidentiality requirements and to ensure the use of this pricing information for negotiating state supplemental rebate agreements, the 2001 Legislature enacted a public records and public meetings exemption related to rebate negotiations.[3] Trade secrets, rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebates with respect to supplemental rebate negotiations are confidential and exempt[4] from public records requirements.

According to Senate interim project report 2006-219, the state supplemental rebate negotiation process has been facilitated by this exemption and has been successful in benefiting the people of Florida. Since its implementation in 2002, the PDL program has generated over $262 million in state supplemental rebates, with $292 million in additional costs savings projected for Fiscal Year 2005-2006, a significant portion of which will be derived from supplemental rebate negotiations.

Current law also provides a public meetings exemption applicable in limited circumstances. Portions of meetings of the Medicaid Pharmaceutical and Therapeutics Committee are exempt from public meetings requirements if the aforementioned confidential and exempt records are discussed.[5]

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[1] Chapter 2001-104, L.O.F.
[2] 42 U.S.C. 1396r 8
[3] Chapter 2001 216, L.O.F.; codified in s. 409.91196, F.S.
[4] 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).
[5] Section 409.91196(2), F.S.

Pursuant to the Open Government Sunset Review Act,[6] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.[7] House staff reviewed the public records and public meetings exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.[8] Based on AHCA's survey response, it appeared that the public records exemption for trade secrets was unnecessary because AHCA stated that rebate agreements and supplemental rebate amounts were trade secrets for purposes of the exemption. Such information is protected under the current public records exemption.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions. It narrows the public records exemption by removing the exemption for trade secrets.

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is created within AHCA,[9] to make a record of each portion of an exempt meeting. The record must include the time of commencement and termination, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The record of the exempt portion of a meeting is a public record; however, the rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate included in the record is confidential and exempt from public disclosure because of the public records exemption already afforded AHCA.[10]

Finally, the bill makes editorial changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 409.91196, 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:

   The 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:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate local expenditures.

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[6] Section 119.15, F.S.
[7] Section 409.91196(3), F.S.
[8] Staff surveyed and interviewed AHCA staff.
[9] Section 409.91195, F.S.
[10] *See* s. 409.91196(1), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is a part of AHCA, to maintain a record of exempt portions of meetings. This could create a negative fiscal impact; however, the committee already hires a court reporter to keep a record of the open portion of the meeting. As such, additional expenditures should be 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 supplemental rebate
4 agreements; amending s. 409.91196, F.S., which provides an
5 exemption from public records requirements for the rebate
6 amount, percent of rebate, manufacturer's pricing, and
7 supplemental rebate held by the Agency for Health Care
8 Administration relative to a preferred drug list
9 established by the agency and an exemption from public
10 meetings requirements for that portion of a meeting of the
11 Medicaid Pharmaceutical and Therapeutics Committee at
12 which such rebate amounts, percent of rebates,
13 manufacturer's pricing, and supplemental rebates are
14 discussed; making editorial changes; removing superfluous
15 language; requiring that a record of an exempt portion of
16 a meeting be made and maintained; removing the scheduled
17 repeal of the exemption; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 409.91196, Florida Statutes, is amended
22 to read:
23 409.91196 Supplemental rebate agreements; public
24 ~~confidentiality of~~ records and public meetings exemption.--
25 (1) The ~~Trade secrets,~~ rebate amount, percent of rebate,
26 manufacturer's pricing, and supplemental rebate held by ~~rebates~~
27 ~~which are contained in records of~~ the Agency for Health Care
28 Administration under s. 409.912(39)(a)7. ~~and its agents with~~

29 ~~respect to supplemental rebate negotiations and which are~~
30 ~~prepared pursuant to a supplemental rebate agreement under s.~~
31 ~~409.912(40)(a)7.~~ are confidential and exempt from s. 119.07(1)
32 and s. 24(a), Art. I of the State Constitution.
33 (2) That portion of a meeting ~~Those portions of meetings~~
34 of the Medicaid Pharmaceutical and Therapeutics Committee at
35 which the ~~trade secrets,~~ rebate amount, percent of rebate,
36 manufacturer's pricing, and supplemental rebate ~~rebates~~ are
37 discussed is ~~disclosed for discussion or negotiation of a~~
38 ~~supplemental rebate agreement under s. 409.912(40)(a)7. are~~
39 exempt from s. 286.011 and s. 24(b), Art. I of the State
40 Constitution. A record shall be made of each exempt portion of a
41 meeting. Such record must include the times of commencement and
42 termination, all discussions and proceedings, the names of all
43 persons present at any time, and the names of all persons
44 speaking. No exempt portion of a meeting may be held off the
45 record.
46 ~~(3) Subsections (1) and (2) are subject to the Open~~
47 ~~Government Sunset Review Act of 1995 in accordance with s.~~
48 ~~119.15, and shall stand repealed on October 2, 2006, unless~~
49 ~~reviewed and saved from repeal through reenactment by the~~
50 ~~Legislature.~~
51 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 PCB DS 06-03 Succession to the Office of Governor
SPONSOR(S): Domestic Security Committee, Adams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	9 Y, 0 N	Wiggins	Newton
1) Governmental Operations Committee	6 Y, 0 N	Mitchell	Williamson
2) State Administration Council		Wiggins	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill revises the statutory succession to the office of Governor. In the event of a vacancy in the office of Governor and the office of Lieutenant Governor, the bill provides for the following officers/persons to become Governor: Attorney General, then Chief Financial Officer, then Commissioner of Agriculture, and ultimately a person elected by a majority vote in a joint session of the Legislature if there are vacancies in all of the other offices.

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

This bill does not appear to have a fiscal impact on state government revenues or expenditures. This bill does not appear to have an impact on local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill revises the line of succession for the office of Governor in the event of a vacancy in the office of Governor and the office of Lieutenant Governor.

B. EFFECT OF PROPOSED CHANGES:

Succession to the Office of Governor

Article IV, section 3(a) of the Florida Constitution provides that the Lieutenant Governor becomes Governor upon a vacancy in the office of Governor. This section requires further succession to the office of Governor be prescribed by law, provided any successor must serve for the remainder of the term.

Section 14.055, Florida Statutes, was created in 1970 to fulfill the constitutional requirement of further succession provided by law. This section mirrors the Florida Constitution in providing for the Lieutenant Governor to become Governor upon a vacancy in the Office of the Governor.

This section, as amended by the Legislature in 2003, then provides for a vacancy in the office of Lieutenant Governor and allows the Governor to appoint a successor to serve for the remainder of the term. This successor is prohibited, however, from becoming Governor if there is a vacancy in the office of Governor with more than 28 months remaining in the term; instead, this section requires a Governor and Lieutenant Governor to be determined at the next statewide general election.

If there is a vacancy in the office of the Governor and the office of Lieutenant Governor, this section currently sets forth the following succession:

- Secretary of State
- Attorney General
- Comptroller
- Treasurer
- Commissioner of Education
- Commissioner of Agriculture
- Person elected by a majority vote in a joint session of the Legislature within 15 days.

Each of the designated positions was previously a statewide elected office and a member of the Florida Cabinet. In November 1998, however, voters approved Revision Number 8, which was proposed by the 1997-1998 Constitutional Revision Commission. Effective January 7, 2003,[1] this revision merged the Cabinet offices of Treasurer and Comptroller into one Chief Financial Officer and removed the Secretary of State and Commissioner of Education as elected Cabinet offices. Thus, the Cabinet now consists of the Chief Financial Officer, the Attorney General, and the Agriculture Commissioner.[2]

This bill amends the line of succession in the event of a vacancy in the office of Governor and the office of Lieutenant Governor:

- Attorney General
- Chief Financial Officer
- Commissioner of Agriculture

[1] Fla. Const., art. XII, § 24.
[2] Fla. Const., art. IV, § 4.

- Person elected by a majority vote in a joint session of the Legislature within 15 days.

These changes appear consistent with the original statutory succession enacted by the Legislature; that is, it follows the original ordering to provide for statewide, elected officers and members of the Cabinet to become Governor and removes positions which are now appointed.

C. SECTION DIRECTORY:

Section 1: Amends section 14.055, Florida Statutes, to change the succession to the office of Governor.

Section 2: Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

   <u>Succession to Office of Governor</u>

   Article IV, section 3(a) of the Florida Constitution requires succession to the office of Governor to be prescribed by law with the successor serving the remainder of the term. The changes in this bill do

not appear to violate this provision. The provision of existing law which prohibits a Lieutenant Governor, who was appointed by a Governor to fill a vacancy in the office of Lieutenant Governor, from becoming Governor if there is more than 28 months remaining in the term may violate the provisions of this section.[3]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[3] *But see* Fla. Const., art. IV, § 1(f) (which authorizes the Governor to fill any vacancy, not otherwise provided for in the Florida Constitution, for the remainder of the term of office if less than twenty-eight months or otherwise until the next general election); *cf.* Fla. Const., art. IV, sec. 5(a) (requiring joint candidacies for the offices of Governor and Lieutenant Governor).

1 A bill to be entitled
2 An act relating to succession to the office of Governor;
3 amending s. 14.055, F.S.; revising the provision of law
4 specifying the authorized successors to the office of
5 Governor and their order or succession; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 14.055, Florida Statutes, is amended to
11 read:
12 14.055 Succession to office of Governor.--Upon vacancy in
13 the office of Governor, the Lieutenant Governor shall become
14 Governor. Upon vacancy in the office of Lieutenant Governor, the
15 Governor shall appoint a successor who shall serve for the
16 remainder of the term, provided that if after the ~~such~~
17 appointment a vacancy occurs ~~shall occur~~ in the office of
18 Governor with more than 28 months remaining in the term, then at
19 the next statewide general election the electors shall choose a
20 Governor and Lieutenant Governor to fill the remainder of the
21 term in the manner provided in s. 5, Art. IV of the State
22 Constitution. Upon vacancy in the office of Governor and in the
23 office of Lieutenant Governor, ~~the Secretary of State shall~~
24 ~~become Governor; or if the office of Secretary of State be~~
25 ~~vacant, then~~ the Attorney General shall become Governor; ~~or~~ if
26 the office of Attorney General is ~~be~~ vacant, ~~then the~~
27 ~~Comptroller shall become Governor; or if the office of~~
28 ~~Comptroller be vacant, then~~ the Chief Financial Officer

29 ~~Treasurer~~ shall become Governor; or if the office of Chief
30 Financial Officer is ~~Treasurer be~~ vacant, ~~then the Commissioner~~
31 ~~of Education shall become Governor; or if the office of~~
32 ~~Commissioner of Education be vacant, then~~ the Commissioner of
33 Agriculture shall become Governor. Except as otherwise provided
34 in this section with respect to an appointed successor to the
35 office of Lieutenant Governor, a successor under this section
36 shall serve for the remainder of the term and shall receive all
37 the rights, privileges, and emoluments of the Governor. In case
38 a vacancy occurs ~~shall occur~~ in the office of Governor and
39 provision is not made in this section ~~herein~~ for filling the
40 ~~such~~ vacancy, ~~then~~ the Speaker of the House of Representatives
41 and the President of the Senate shall convene the Legislature by
42 joint proclamation within 15 days for the purpose of choosing a
43 person to serve as Governor for the remainder of the term. A
44 successor shall be elected by a majority vote in a joint session
45 of both houses.
46 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7111 CS PCB GO 06-22 OGSR Interference with Custody
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: HB 7113 **IDEN./SIM. BILLS:** CS/SB 708

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

SUMMARY ANALYSIS

During the 2005 Regular Session, the Legislature reenacted and saved from repeal the public records exemption that accompanies the interference with custody statute. Because the statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.

The bill revises the interference with custody statute. It broadens an existing exception to the statute making the exception available to any person having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

The bill also revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the child or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill clarifies existing language to specify that the exception to prosecution applies to the specific offenses of interference with custody.

The interference with custody statute will repeal on October 2, 2006, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

Empower Families – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception also applies to the taking of an incompetent person.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

There are three statutory defenses to the offense of interference with custody:

- The defendant reasonably believes that his or her action was necessary to protect the child or incompetent person from danger to his or her welfare.
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe that his or her action was necessary to protect himself or herself from an act of domestic violence.
- The child or incompetent person was taken at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.[3]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[4]

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(4)(a)-(c), F.S.
[4] Section 787.03(6)(a), F.S.

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[5] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[6]

Public Records Exemption

The name of the person taking the child and the current address and telephone number of that person and the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act. During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[8]

Effect of Bill

The bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor and reports their whereabouts to the sheriff or state attorney. The bill broadens the exception by making it available to *any person* having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a minor but also to the taking of an incompetent person.

The bill revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the minor or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill makes the offense of interference with custody applicable to the taking of a minor, replacing the term "child 17 years of age of under" with the term "minor," in order to avoid ambiguity over whether the law covers the taking of a child in the months between his or her 17th and 18th birthdays.

The bill clarifies existing language in s. 787.03(6)(a), F.S., to specify that the exception to prosecution provided in the statute applies to the specific offenses of interference with custody. As currently worded, the statute provides that "this section does not apply" in certain circumstances, which creates ambiguity about the effect of this provision on the application of related provisions in s. 787.03, F.S., such as the public records exemption.

C. SECTION DIRECTORY:

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[5] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[6] Section 787.03(6)(b), F.S.
[7] Section 787.03(6)(c), F.S.
[8] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

Section 1 amends s. 787.03, F.S., regarding interference with custody.

Sections 2, 3, and 4 republish ss. 61.45(6)(b), 933.18(7)(a), and 921.022(3)(d), F.S., respectively, for the purpose of incorporating the amendments to s. 787.03, F.S., made by this bill.

Section 5 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a local expenditure.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 7113 addresses the public records exemption that accompanies the interference with custody statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Civil Justice Committee adopted one amendment to the bill, removing an unnecessary requirement that a person taking an incompetent person must timely file a custody proceeding. The reference was unnecessary in that custody proceedings are not conducted regarding incompetent persons, only minor children. The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

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1 The Civil Justice 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 a review under the Open Government
7 Sunset Review Act regarding the offense of interference
8 with custody; amending s. 787.03, F.S.; specifying that
9 the offense of interference with custody applies to the
10 taking of a minor; providing a penalty; revising a defense
11 to the offense of interference with custody for a
12 defendant who is a victim of actual or imminent domestic
13 violence to provide that the defendant's reasonable belief
14 that the interference was necessary to escape from, or
15 protect himself or herself from, domestic violence or to
16 preserve a minor or incompetent person from exposure to
17 domestic violence constitutes a defense; revising a
18 defense to the offense of interference with custody when a
19 minor or incompetent person instigates his or her own
20 taking to require a showing that it was reasonable for the
21 defendant to rely upon the instigating acts; broadening an
22 exception to the offense of interference with custody;
23 specifying that the offense is inapplicable to cases

24 involving certain persons who have a legal right to
25 custody of a minor or an incompetent person who take the
26 minor or incompetent person and follow prescribed
27 procedures; including the taking of an incompetent person
28 within provisions governing the exception to the offense;
29 making editorial changes; reenacting s. 61.45(6)(b), F.S.,
30 relating to a court order of visitation or custody, and s.
31 933.18(7)(a), F.S., relating to instances in which a
32 warrant may be issued for search of private dwelling, for
33 the purpose of incorporating the amendment to s. 787.03,
34 F.S., in references thereto; reenacting and amending s.
35 921.0022(3)(d), F.S.; revising a reference to the offense
36 of interference with custody within the offense severity
37 ranking chart of the Criminal Punishment Code to conform;
38 providing an effective date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsections (1), (2), (4), and (5) and
43 paragraphs (a) and (b) of subsection (6) of section 787.03,
44 Florida Statutes, are amended to read:
45 787.03 Interference with custody.--
46 (1) Whoever, without lawful authority, knowingly or
47 recklessly takes or entices, or aids, abets, hires, or otherwise
48 procures another to take or entice, any minor ~~child 17 years of~~
49 ~~age or under~~ or any incompetent person from the custody of the
50 minor's ~~child~~ or incompetent person's parent, his or her
51 guardian, a public agency having the lawful charge of the minor

52 ~~child~~ or incompetent person, or any other lawful custodian
53 commits the offense of interference with custody and commits a
54 felony of the third degree, punishable as provided in s.
55 775.082, s. 775.083, or s. 775.084.
56 (2) In the absence of a court order determining rights to
57 custody or visitation with any minor ~~child 17 years of age or~~
58 ~~under~~ or with any incompetent person, any parent of the minor
59 ~~child~~ or incompetent person, whether natural or adoptive,
60 stepparent, legal guardian, or relative of the minor ~~such child~~
61 or incompetent person who has custody thereof and who takes,
62 detains, conceals, or entices away that minor ~~child~~ or
63 incompetent person within or without the state~~,~~ with malicious
64 intent to deprive another person of his or her right to custody
65 of the minor ~~child~~ or incompetent person~~,~~ commits a felony of
66 the third degree, punishable as provided in s. 775.082, s.
67 775.083, or s. 775.084.
68 (4) It is a defense that:
69 (a) The defendant had reasonable cause to believe
70 ~~reasonably believes~~ that his or her action was necessary to
71 preserve the minor ~~child~~ or the incompetent person from danger
72 to his or her welfare.
73 (b) The defendant was the victim of an act of domestic
74 violence or had reasonable cause to believe that he or she was
75 about to become the victim of ~~his or her action was necessary to~~
76 ~~protect himself or herself from~~ an act of domestic violence as
77 defined in s. 741.28, and the defendant had reasonable cause to
78 believe that the action was necessary in order for the defendant
79 to escape from, or protect himself or herself from, the domestic

80 violence or to preserve the minor or incompetent person from
81 exposure to the domestic violence.
82 (c) The minor ~~child~~ or incompetent person was taken away
83 at his or her own instigation without enticement and without
84 purpose to commit a criminal offense with or against the minor
85 ~~child~~ or incompetent person, and the defendant establishes that
86 it was reasonable to rely on the instigating acts of the minor
87 or incompetent person.
88 (5) Proof that a person has not attained the age of 18
89 years ~~child was 17 years of age or under~~ creates the presumption
90 that the defendant knew the minor's ~~child's~~ age or acted in
91 reckless disregard thereof.
92 (6)(a) The offenses prescribed in subsections (1) and
93 (2) do ~~This section does~~ not apply in cases in which ~~where~~ a
94 person having a legal right to custody of a minor or incompetent
95 person ~~spouse who~~ is the victim of any act of domestic violence,
96 ~~or who~~ has reasonable cause to believe he or she is about to
97 become the victim of any act of domestic violence, as defined in
98 s. 741.28, or believes that his or her action was necessary to
99 preserve the minor ~~child~~ or the incompetent person from danger
100 to his or her welfare and seeks shelter from such acts or
101 possible acts and takes with him or her the minor or incompetent
102 person ~~any child 17 years of age or younger~~.
103 (b) In order to gain the exception ~~exemption~~ conferred by
104 paragraph (a), a person who takes a minor or incompetent person
105 under ~~child pursuant to~~ this subsection must:
106 1. Within 10 days after taking the minor or incompetent
107 person ~~child~~, make a report to the sheriff's office or state

108 attorney's office for the county in which the minor or
109 incompetent person ~~child~~ resided at the time he or she was
110 taken, which report must include the name of the person taking
111 the minor or incompetent person ~~child~~, the current address and
112 telephone number of the person and minor or incompetent person
113 ~~child~~, and the reasons the minor or incompetent person ~~child~~ was
114 taken.
115 2. Within a reasonable time after taking a minor ~~the~~
116 ~~child~~, commence a custody proceeding that is consistent with the
117 federal Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A,
118 or the Uniform Child Custody Jurisdiction and Enforcement Act,
119 ss. 61.501-61.542.
120 3. Inform the sheriff's office or state attorney's office
121 for the county in which the minor or incompetent person ~~child~~
122 resided at the time he or she was taken of any change of address
123 or telephone number of the person and the minor or incompetent
124 person ~~child~~.
125 Section 2. For the purpose of incorporating the amendment
126 made by this act to section 787.03, Florida Statutes, in a
127 reference thereto, paragraph (b) of subsection (6) of section
128 61.45, Florida Statutes, is reenacted to read:
129 61.45 Court order of visitation or custody; risk of
130 violation; bond.--
131 (6)
132 (b) This section, including the requirement to post a bond
133 or other security, does not apply to a parent who, in a
134 proceeding to order or modify child custody or visitation, the
135 court determines is a victim of an act of domestic violence or

136 has reasonable cause to believe he or she is about to become the
137 victim of an act of domestic violence, as defined in s. 741.28.
138 An injunction for protection against domestic violence issued
139 pursuant to s. 741.30 for a parent as the petitioner which is in
140 effect at the time of the court proceeding shall be one means of
141 demonstrating sufficient evidence that the parent is a victim of
142 domestic violence or is about to become the victim of an act of
143 domestic violence, as defined in s. 741.28, and shall exempt the
144 parent from this section, including the requirement to post a
145 bond or other security. A parent who is determined by the court
146 to be exempt from the requirements of this section must meet the
147 requirements of s. 787.03(6) if an offense of interference with
148 custody is committed.
149 Section 3. For the purpose of incorporating the amendment
150 made by this act to section 787.03, Florida Statutes, in a
151 reference thereto, paragraph (a) of subsection (7) of section
152 933.18, Florida Statutes, is reenacted to read:
153 933.18 When warrant may be issued for search of private
154 dwelling.--No search warrant shall issue under this chapter or
155 under any other law of this state to search any private dwelling
156 occupied as such unless:
157 (7) One or more of the following misdemeanor child abuse
158 offenses is being committed there:
159 (a) Interference with custody, in violation of s. 787.03.
160
161 If, during a search pursuant to a warrant issued under this
162 section, a child is discovered and appears to be in imminent
163 danger, the law enforcement officer conducting such search may

164 remove the child from the private dwelling and take the child
165 into protective custody pursuant to chapter 39. The term
166 "private dwelling" shall be construed to include the room or
167 rooms used and occupied, not transiently but solely as a
168 residence, in an apartment house, hotel, boardinghouse, or
169 lodginghouse. No warrant shall be issued for the search of any
170 private dwelling under any of the conditions hereinabove
171 mentioned except on sworn proof by affidavit of some creditable
172 witness that he or she has reason to believe that one of said
173 conditions exists, which affidavit shall set forth the facts on
174 which such reason for belief is based.
175 Section 4. Paragraph (d) of subsection (3) of section
176 921.0022, Florida Statutes, is reenacted and amended to read:
177 921.0022 Criminal Punishment Code; offense severity
178 ranking chart.--
179 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
180	(d) LEVEL 4	
181 316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

182

	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
183	499.0051(2)	3rd	Failure to authenticate pedigree papers.
184	499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
185	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
186	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
187	784.075	3rd	Battery on detention or commitment facility staff.
188	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
189	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
190	784.081(3)	3rd	Battery on specified official or employee.
191	784.082(3)	3rd	Battery by detained person on visitor

			or other detainee.
192	784.083(3)	3rd	Battery on code inspector.
193	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
194	787.03(1)	3rd	Interference with custody; wrongly takes minor ~~child~~ from appointed guardian.
195	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
196	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
197	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
198	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
199	790.115(2)(c)	3rd	Possessing firearm on school property.

200	800.04(7)(d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
201	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
202	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
203	810.06	3rd	Burglary; possession of tools.
204	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
205	812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
206	812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
207	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
208	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon,

			excluding s. 893.03(5) drugs.
209	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
210	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
211	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
212	837.02(1)	3rd	Perjury in official proceedings.
213	837.021(1)	3rd	Make contradictory statements in official proceedings.
214	838.022	3rd	Official misconduct.
215	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
216	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
217	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
218	843.025	3rd	Deprive law enforcement, correctional, or correctional

		probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

Section 5. This act shall take effect October 1, 2006.

HB 7113

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB GO 06-23 OGSR Public Records Exemption/Interference with Custody
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: HB 7111 CS **IDEN./SIM. BILLS:** CS/SB 710

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Civil Justice Committee	5 Y, 0 N	Bond	Bond
2) State Administration Council		Williamson	Busse
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.

Current law provides a third-degree felony for the offense of "interference with custody"; however, a spouse who flees with a child because he or she is the victim of domestic violence or believes the welfare of the child is in danger does not commit a felony of the third degree. The fleeing spouse must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. The report must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.

In order to conform to changes proposed in HB 7111, this bill reenacts and expands the public records exemption for the current address and telephone number of the person fleeing with a child and of the child. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person.

The bill provides for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution, and provides a contingent effective date.

The bill may have a minimal non-recurring fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the public records exemption that accompanies the interference with custody statute thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[3]

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[4] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[5]

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(6)(a), F.S.
[4] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[5] Section 787.03(6)(b), F.S.

Public Records Exemption

The current address and telephone number of the person taking the child and of the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt[6] from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act.[8] During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[9] As a result, the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

HB 7113

This bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor, and reports their whereabouts to the sheriff or state attorney. It provides that the exception is applicable not only to the taking of a minor but also to the taking of an incompetent person. As such, it is recommended that the public records exemption be amended to reflect this change.

Effect of Bill

The bill reenacts and expands the public records exemption to conform to the recommended changes to the interference with custody statute made in HB 7111. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person. The sheriff or state attorney may allow an agency, as defined in the Public Records Act, to inspect and copy such records in the furtherance of that agency's duties and responsibilities.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution, and provides a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., to reenact and expand the public records exemption regarding the interference with custody.

Section 2 provides a public necessity statement.

Section 3 provides an October 1, 2006, effective date contingent upon the passage of additional legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[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).

[7] Section 787.03(6)(c), F.S.

[8] Section 119.15, F.S.

[9] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

1. Revenues:

   The 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:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are 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 employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

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:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

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

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 the public records exemption
4 for the interference with custody statute; amending s.
5 787.03, F.S.; expanding the public records exemption for
6 specified information contained in a report made to a
7 sheriff or state attorney as part of a statutory exception
8 to the offense of interference with custody; providing
9 that the address and telephone number of a minor or
10 incompetent person contained in such report is
11 confidential and exempt from public records requirements;
12 providing an exception to the exemption; providing for
13 review and repeal; providing a statement of public
14 necessity; providing a contingent effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraph (c) of subsection (6) and subsection
19 (7) of section 787.03, Florida Statutes, are amended to read:
20 787.03 Interference with custody.--
21 (6)
22 (c)1. ~~The name of the person taking the child and~~ The
23 current address and telephone number of the person and the minor
24 or incompetent person which are ~~child that are~~ contained in the
25 report made to a sheriff or state attorney under paragraph (b)
26 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
27 I of the State Constitution.
28 2. A sheriff or state attorney may allow an agency, as

29 defined in s. 119.011, to inspect and copy records made
30 confidential and exempt under this paragraph in the furtherance
31 of that agency's duties and responsibilities.
32 3. ~~(7)(a)~~ This paragraph ~~section~~ is subject to the Open
33 Government Sunset Review Act ~~of 1995~~ in accordance with s.
34 119.15 and is repealed on October 2, 2011 ~~2006~~, unless reviewed
35 and saved from repeal through reenactment by the Legislature.
36 ~~(b) Pursuant to s. 119.15, the Division of Statutory~~
37 ~~Revision is directed to certify this section, in its entirety,~~
38 ~~in the list of Open Government Sunset Review exemptions to be~~
39 ~~certified by June 1, 2005.~~
40 Section 2. The Legislature finds that it is a public
41 necessity to expand the public records exemption for certain
42 information contained in a report to a sheriff or state attorney
43 made by a person who takes a minor in order to escape domestic
44 violence, avoid domestic violence, or preserve the welfare of
45 the minor. If an alleged perpetrator of domestic violence were
46 able to obtain the address and telephone information contained
47 in a report to the sheriff or state attorney under s. 787.03,
48 Florida Statutes, he or she could locate or contact the minor
49 and the person who removes the minor from a situation of actual
50 or imminent domestic violence or jeopardized welfare, thus
51 exposing them to potential additional harm. Keeping the address
52 and telephone number of that person and the minor confidential
53 and exempt protects their safety. For the same reasons, the
54 Legislature finds that it is a public necessity to expand this
55 public records exemption to include the taking of an incompetent
56 person within the coverage of the exemption. The underlying

57 offense of interference with custody applies to the taking of an
58 incompetent person as well as to the taking of a person younger
59 than 18 years of age. In addition, the safety of an incompetent
60 person and the person seeking shelter with an incompetent person
61 is as vital as the safety of a minor and a person seeking
62 shelter with a minor. The underlying offense of interference
63 with custody envisions that an incompetent person is as
64 vulnerable as a minor. Therefore, the Legislature finds that the
65 public records exemption should apply to the address and
66 telephone number of the incompetent person and the person who
67 removes the incompetent person from a situation of actual or
68 imminent domestic violence or jeopardized welfare contained in a
69 report submitted to a sheriff or state attorney as prescribed in
70 s. 787.03, Florida Statutes. If persons seeking shelter with
71 minors or incompetent persons to escape domestic violence knew
72 that their addresses or telephone numbers could be obtained
73 through the reports to the sheriff or state attorney, they would
74 fear for their safety and would most likely refrain from making
75 the required reports, thereby thwarting the public policy of
76 encouraging the resolution of allegations of interference with
77 custody while also protecting individuals from harm. The public
78 records exemption, therefore, principally protects the safety of
79 individuals but also promotes the effective and efficient
80 administration of the interference with custody statute.
81 Section 3. This act shall take effect October 1, 2006, if
82 House Bill 7111 or similar legislation amending section 787.03,
83 Florida Statutes, is adopted in the same legislative session or
84 an extension thereof and becomes law.

HB 7127

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7127 PCB MVA 06-01 Disturbance of Assemblies
SPONSOR(S): Military & Veteran Affairs Committee, Jordan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Military & Veteran Affairs Committee	8 Y, 0 N	Marino	Cutchins
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) State Administration Council		Marino	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 7127 amends Florida's current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran.

This bill also reenacts s. 871.02, F.S., which provides the mechanisms for prosecuting violators of s. 871.01, F.S.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – This bill serves to benefit families of certain deceased veterans by providing protection for a disturbance-free, dignified funeral service.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 871.01: Disturbances Statute Upheld

Section 871.01, F.S., reads, "Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree..." The Supreme Court of Florida upheld the law's constitutionality in S.H.B. v. State of Florida[1].

In this case, the appellant, a juvenile, caused a disturbance at his junior high school when he ran through the hallways and yelled obscenities at a teacher who confronted him. Other students crowded the doors in their classrooms to see the activity in the hallways. The Court noted that the appellant's acts caused a disturbance and that "a disruption of the school's functions did, in fact, occur."

The appellant, however, challenged the law's constitutionality on two points: 1) that the statute was overbroad; and 2) that the First Amendment to the U.S. Constitution protected the appellant's activity.

In its decision, before it spoke to the two points concerning constitutionality, the Court addressed another one of the appellant's arguments that s. 871.01, F.S., and 877.03, F.S.[2], the "breach of peace" statute, are analogous and that he should therefore be judged under the standards of s. 877.03, F.S.

The Court disagreed and said that s. 871.01, F.S., is supplementary to and not a rephrasing of s. 877.03, F.S. The Court noted that, "Section 871.01 is a more explicit statute dealing with a particular kind of disturbance, i.e., the disturbance of a lawful assembly. ... It recognizes and provides penalties for the deliberate disruption of a peaceful and lawful assembly."

The Court continued and described the special character of these assemblies and said, "These functions are fragile by their nature. They generally require a degree of restraint and cooperation to produce the harmony necessary for their effectiveness. Thus, they are highly vulnerable to disturbance. A single person may cause havoc in a situation in which hundreds of others have sought a common purpose." Therefore, certain acts that may be tolerable in the general public realm may not be tolerable in situations involving these assemblies or functions.

The Court then segued into the first point made by the appellant, that the statute is overbroad and should be constitutionally void. Although s. 871.01, F.S., is widely protective, the Court stated,

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[1] S.H.B. v. State of Florida, 355 So.2d 1176 (Fla. 1978)

[2] Section 877.03, F.S. -- Breach of the peace; disorderly conduct.—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upheld in White v. State of Florida, 330 So.2d 3 (Fla. 1976).

"Because of the innumerable situations and types of conduct involved, the question of what conduct [constitutes an interruption or disturbance] must be determined largely on a case-by-case basis[3]."

The Court further held that, "Since it is impossible to predict the type of behavior a person might use to cause a disruption, the statute cannot be more specific." The Court decided that a jury should make an initial determination, based on the facts of a case, whether or not s. 871.01, F.S., was violated, and it affirmed that the statute was not overbroad.

Regarding the First Amendment issue raised by the appellant, the Court said, "As the appellant notes, mere words, when used as a tool of communication, are constitutionally protected. But the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities." The Court noted the appellant's conduct consisted of loud obscenities, running though the junior high while school was in session, and disobedience of lawful and reasonable requests of school officials for the conduct to stop. The Court concluded that the First Amendment did not protect the appellant's activities and that he did in fact violate s. 871.01, F.S.

The Court upheld s. 871.01, F.S., against the argument that the statute is analogous to the "breach of peace" statute, and against the constitutional challenges that the statute is overbroad and violates the First Amendment.

Regarding certain functions that may currently fall under the protection of s. 871.01, F.S., funerals appear to fall under the provisions of this statute, and two considerations need to be addressed. First, since s. 871.01, F.S., protects "any assembly of people met...for any lawful purpose," it appears funerals fit this description. Second, in its decision in S.H.B. v. Florida, the Court noted the "fragile...nature" of such assemblages, and again, funerals appear to suit this consideration.

Military Funeral Honors for Any Veteran

The United States created a program that provides special recognition for veterans upon their death. The "Honoring Those Who Served" Program directs the Secretary of Defense to provide special Military Funeral Honors[4] for any[5] deceased veteran[6] upon his or her family's request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements[7] for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran's armed force[8]; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent's family.

The Department of Defense (DOD) has additional honors, such as, but not limited to, a firing party, which may augment the minimum requirements.

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[3] Next, the Court said that, generally, the case-by-case determination on whether or not a disturbance occurred would be made at the trial level.

[4] Title 10 U.S.C. s. 1491(a).

[5] Title 10 U.S.C. s. 985(a) provides certain exceptions to "any" veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

[6] Title 10 U.S.C. s. 1491(h) defines veteran under this section as "a decedent who – (1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38."

[7] Title 10 U.S.C. s. 1491(b) and (c).

[8] The other members of the funeral detail may be retired military persons or members of veterans organizations.

An eligible deceased veteran's family may request a funeral with military honors by contacting their funeral director or a local veterans organization. In addition, DOD maintains a website (www.militaryfuneralhonors.osd.mil) to assist the public with Military Funeral Honors.

Over the last few years, according to numerous news accounts, protestors have been targeting certain high-profile funerals with pickets and sloganeering. More recently, these protestors have been organizing their protests at funerals honoring the nation's fallen veterans. This has prompted many states, such as Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to name a few, to enact or propose legislation to address protests at funerals.

Effect of Proposed Changes:

House Bill 7127 amends Florida's current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran. This bill amends s. 871.01, F.S., by distinguishing funerals with military honors, as provided for in 10 U.S.C. s. 1491, in subsection (2) and by making it a first degree misdemeanor to willfully interrupt or disturb such a funeral.

A funeral conducted under Military Funeral Honors is provided for in 10 U.S.C. s. 1491. Due to the extraordinarily special nature of a deceased veteran's funeral, the federal government deemed it necessary to codify such honors for any[9] veteran in recognition of his or her defense of the nation. The provisions of this bill recognize that since such a funeral receives special recognition from the U.S. Government, it is more egregious to willfully interrupt or disturb such a funeral, and a higher penalty is warranted to deter such activity.

This bill also reenacts s. 871.02, F.S., which provides the mechanisms for prosecuting violators of s. 871.01, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 871.01, F.S., by distinguishing funerals with military honors, as provided for in 10 U.S.C. s. 1491, in subsection (2) and by making it a first degree misdemeanor to willfully interrupt or disturb such a funeral.

Section 2. Reenacts s. 871.02, F.S., to extend the prosecutorial mechanisms of this section to the amended version of s. 871.01, F.S., through the continuance of a reference.

Section 3. Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

   There are no known or expected fiscal impacts on state government expenditures.

[9] Title 10 U.S.C. s. 985(a) provides certain exceptions to "any" veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There are no known or expected economic impacts on the private sector.

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. 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 revenues.

2. Other:

Section 871.01, F.S., which this PCB amends, is constitutional according to the Florida Supreme Court's decision in S.H.B. v. Florida[10]. This bill does not appear to take the statute outside the constitutional parameters laid forth in the Court's decision.

B. RULE-MAKING AUTHORITY:

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[10] See Present Situation above.

1 A bill to be entitled
2 An act relating to the disturbance of assemblies; amending
3 s. 871.01, F.S.; providing a penalty for willfully
4 interrupting or disturbing an assembly of people met for
5 the purpose of acknowledging the death of an individual
6 with a military funeral honors detail; reenacting s.
7 871.02, F.S., relating to indictments or informations for
8 disturbing assembly, for the purpose of incorporating the
9 amendment to s. 871.01, F.S., in a reference thereto;
10 providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 871.01, Florida Statutes, is amended to
15 read:
16 871.01 Disturbing schools and religious and other
17 assemblies.--
18 (1) Whoever willfully interrupts or disturbs any school or
19 any assembly of people met for the worship of God or for any
20 lawful purpose commits ~~shall be guilty of~~ a misdemeanor of the
21 second degree, punishable as provided in s. 775.082 or s.
22 775.083.
23 (2) Whoever willfully interrupts or disturbs any assembly
24 of people met for the purpose of acknowledging the death of an
25 individual with a military funeral honors detail pursuant to 10
26 U.S.C. s. 1491 commits a misdemeanor of the first degree,
27 punishable as provided in s. 775.082 or s. 775.083.

28 Section 2. For the purpose of incorporating the amendment
29 made by this act to section 871.01, Florida Statutes, in a
30 reference thereto, section 871.02, Florida Statutes, is
31 reenacted to read:
32 871.02 Indictments or informations for disturbing
33 assembly.--The several grand juries of this state in their
34 respective counties may return indictments or the several state
35 attorneys of the state in their respective circuits may file
36 information against all persons violating s. 871.01, and such
37 indictments or informations, when filed with the clerk of the
38 circuit court in the county where such offense is alleged to
39 have been committed, shall be forthwith certified by the clerk
40 to some court in the county having jurisdiction to try and
41 determine such charge, and said court to which such indictment
42 or information is certified shall proceed to try and determine
43 such charge upon such indictment or information, the same as if
44 affidavit had been made before such court charging the said
45 offense.
46 Section 3. This act shall take effect upon becoming a law.

HB 7243

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7243 PCB GO 06-35 Custodial Requirements for Public Records
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1438

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

SUMMARY ANALYSIS

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements cannot release such records, except as provided in statute or by court order. The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. These clarifications are the standard contained in case law. The bill makes it clear that the same standards apply to each record deemed confidential and exempt by expressly stating the standards in the Public Records Act.

This bill does not appear to have a fiscal impact on state or 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:

Public Records Law
Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record.

Confidential and Exempt Records
There is a difference between records that the Legislature designates as exempt from public disclosure and those the Legislature deems confidential and exempt. Records classified exempt from public disclosure are permitted to be disclosed under certain circumstances.[1] If the Legislature designates certain records confidential and exempt from public disclosure, such records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption.[2]

Definition of "Agency"
It should be noted that the definition of "agency" provided in the Public Records Act includes the phrase ". . . and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency.*"[3] [Emphasis added.] Agencies often are authorized, and in some instances are required, to "outsource" certain functions. Under the current case law standard, an agency is not required to have explicit statutory authority to release public records in its control to its agents. Its agents, however, are required to comply with the same public records custodial requirements with which the agency must comply.

Confidentiality Travels
In *Ragsdale v. State*,[4] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.[5]

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[1] *See WFTV, Inc. v. The School Board of Seminole,* 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).
[2] *See Attorney General Opinion 85-62*, August 1, 1985.
[3] Section 119.011, F.S.
[4] 720 So.2d 203 (Fla. 1998).
[5] *Id.* at 206, 207.

In *City of Riviera Beach v. Barfield*,[6] the court stated, "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[7]

Effect of Bill

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements, as opposed to records only made exempt, cannot release such records except as provided in statute or by court order. This clarification is the standard contained in case law.

The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. This clarification also is the standard contained in case law; however, some confusion exists because some statutes explicitly state that the receiving agency or other governmental entity must maintain the confidential and exempt status of the record received while other statutes do not. The bill makes it clear that the same standard applies to each record that is confidential and exempt by expressly stating this standard in the Public Records Act.

The bill reiterates that the provisions do not limit access to any record by an agency or entity acting on behalf of a custodian of public records; the Legislature; or pursuant to court order.

Finally, the bill creates subheadings for s. 119.021, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.021, F.S., to clarify agency custodial requirements for records deemed confidential and exempt.

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

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

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[6] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

[7] *Id.* at 1137.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to custodial requirements for public
3 records; amending s. 119.021, F.S.; organizing provisions
4 relating to the maintenance, preservation, and retention
5 of public records and the custodial requirements for
6 confidential and exempt records; providing requirements
7 with respect to the authority of a custodian of a public
8 record to release the record; providing requirements with
9 respect to retention of confidential and exempt records by
10 an agency or other governmental entity; authorizing a
11 custodian of confidential and exempt records to require an
12 agency or other governmental entity authorized to receive
13 such record to acknowledge in writing the confidential and
14 exempt status of such record; specifying that the act does
15 not limit access to any record by an agency or entity
16 acting on behalf of a custodian of public records, the
17 Legislature, or pursuant to court order; providing an
18 effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 119.021, Florida Statutes, is amended
23 to read:
24 119.021 Custodial requirements; maintenance, preservation,
25 and retention of public records.--
26 (1) MAINTENANCE AND PRESERVATION.--Public records shall be
27 maintained and preserved as follows:

28 (a) All public records should be kept in the buildings in
29 which they are ordinarily used.
30 (b) Insofar as practicable, a custodian of public records
31 of vital, permanent, or archival records shall keep them in
32 fireproof and waterproof safes, vaults, or rooms fitted with
33 noncombustible materials and in such arrangement as to be easily
34 accessible for convenient use.
35 (c)1. Record books should be copied or repaired,
36 renovated, or rebound if worn, mutilated, damaged, or difficult
37 to read.
38 2. Whenever any state, county, or municipal records are in
39 need of repair, restoration, or rebinding, the head of the
40 concerned state agency, department, board, or commission; the
41 board of county commissioners of such county; or the governing
42 body of such municipality may authorize that such records be
43 removed from the building or office in which such records are
44 ordinarily kept for the length of time required to repair,
45 restore, or rebind them.
46 3. Any public official who causes a record book to be
47 copied shall attest and certify under oath that the copy is an
48 accurate copy of the original book. The copy shall then have the
49 force and effect of the original.
50 (2) RETENTION SCHEDULES.--
51 (a) The Division of Library and Information Services of
52 the Department of State shall adopt rules to establish retention
53 schedules and a disposal process for public records.
54 (b) Each agency shall comply with the rules establishing
55 retention schedules and disposal processes for public records

56 which are adopted by the records and information management
57 program of the division.
58 (c) Each public official shall systematically dispose of
59 records no longer needed, subject to the consent of the records
60 and information management program of the division in accordance
61 with s. 257.36.
62 (d) The division may ascertain the condition of public
63 records and shall give advice and assistance to public officials
64 to solve problems related to the preservation, creation, filing,
65 and public accessibility of public records in their custody.
66 Public officials shall assist the division by preparing an
67 inclusive inventory of categories of public records in their
68 custody. The division shall establish a time period for the
69 retention or disposal of each series of records. Upon the
70 completion of the inventory and schedule, the division shall,
71 subject to the availability of necessary space, staff, and other
72 facilities for such purposes, make space available in its
73 records center for the filing of semicurrent records so
74 scheduled and in its archives for noncurrent records of
75 permanent value, and shall render such other assistance as
76 needed, including the microfilming of records so scheduled.
77 (3) INDEX OF AGENCY ORDERS.--Agency orders that comprise
78 final agency action and that must be indexed or listed pursuant
79 to s. 120.53 have continuing legal significance; therefore,
80 notwithstanding any other provision of this chapter or any
81 provision of chapter 257, each agency shall permanently maintain
82 records of such orders pursuant to the applicable rules of the
83 Department of State.

84 (4) ~~(a)~~ TRANSFER OF CUSTODY.--Whoever has custody of any
85 public records shall deliver, at the expiration of his or her
86 term of office, to his or her successor or, if there be none, to
87 the records and information management program of the Division
88 of Library and Information Services of the Department of State,
89 all public records kept or received by him or her in the
90 transaction of official business.
91 (5) ~~(b)~~ UNLAWFUL POSSESSION.--Whoever is entitled to
92 custody of public records shall demand them from any person
93 having illegal possession of them, who must forthwith deliver
94 the same to him or her. Any person unlawfully possessing public
95 records must within 10 days deliver such records to the lawful
96 custodian of public records unless just cause exists for failing
97 to deliver such records.
98 (6) CUSTODIAL REQUIREMENTS FOR CONFIDENTIAL AND EXEMPT
99 RECORDS.--
100 (a) A custodian of public records who holds a record that
101 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
102 I of the State Constitution may not release such record except
103 as provided in statute or pursuant to court order.
104 (b) An agency or other governmental entity that is
105 authorized to receive a confidential and exempt record pursuant
106 to statute shall retain the confidential and exempt status of
107 such record, except as otherwise provided by law.
108 (c) A custodian of public records is authorized to require
109 the agency or other governmental entity that is authorized to
110 receive a confidential and exempt record pursuant to statute to
111 acknowledge in a written release that:

112 1. Such record is confidential and exempt; and
113 2. The receiving agency or other governmental entity is
114 required by law to retain the confidential and exempt status of
115 such record.
116 (d) This subsection does not limit access to any record
117 by:
118 1. An agency or entity acting on behalf of a custodian of
119 public records;
120 2. The Legislature; or
121 3. Pursuant to court order.
122 Section 2. This act shall take effect July 1, 2006.