

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 768

SPONSOR: Senator Sanderson

SUBJECT: Public records

DATE: April 6, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides exemptions from public records requirements for specified identifying information relating to local government or water management district human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers and their spouses and children.

This bill amends section 119.07 of the Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

In November 1992, the public affirmed its approval of Florida's tradition of "government in the sunshine" by enacting a constitutional amendment to guarantee the practice. Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The term public records has been defined by the Legislature in s. 119.011(1), F.S., to include:

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

This definition of *public records* has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The act also establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Personal Identifying Information of Public Employees

Section 119.07(3)(i), F.S., exempts certain personal identifying information associated with various classes of public employees from public disclosure. It provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, certain personnel of the Department of Children and Family Services and the Department of Revenue, judges, and state attorneys. Certain identifying information about the spouses and children of these personnel are also exempt. The public records exemption minimizes the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members.

An agency that is a custodian of such personal information, but which is not the employing agency of the person to whom the personal information pertains, is required to keep such information confidential only if the employee or his or her employing agency, submits a written request for confidentiality.

Violence in the Workplace

A representative from the Florida Public Employer Labor Relations Association reports that human resource managers are at greater risk than the general population for workplace violence. As evidence, he cites a July 1998 report (*Workplace Violence, 1992-96*) from the U.S. Department of Justice, Bureau of Justice Statistics. Of select occupations, sales workers experienced the highest number of workplace homicides – an average of 327 each year from 1992 through 1996. The second highest category is executive/manager occupation, which would include human resource officers, with over 150 homicides per year. In contrast, law enforcement officers averaged 70 homicides per year.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07(3)(i)1., F.S., to exempt from public records requirements of s. 24(a), Art. I of the State Constitution, identifying information relating to former or current local government or water management district human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers whose duties include hiring and

firing employees, labor contract negotiation, administration, or other personnel-related duties. This identifying information includes their home addresses, telephone numbers, social security numbers, and photographs. Also exempt are the names, home addresses, telephone numbers, social security numbers, photographs and places of employment of the employee's spouses and children, and the names and locations of schools and day care facilities attended by the employee's children.

This section specifies that this new exemption is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2006, unless reviewed and re-enacted by the Legislature.

Section 2 provides a statement of public necessity, stating that the exemption is necessary because the former or current employee or a member of the employee's family could be harmed or threatened with harm by persons affected by the employee's action.

Section 3 provides that the act will take effect on October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates an exemption from public records requirements of s. 24(a), Art. I of the State Constitution. The bill contains a statement of public necessity. The bill contains a single exemption to the public records law.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local government agencies and water management districts will incur costs associated with keeping the records or information exempt.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
