

# 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 368  
 SPONSOR: Senator Wise  
 SUBJECT: Library Records  
 DATE: March 1, 2002      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION    |
|----|---------|----------------|-----------|-----------|
| 1. | Rhea    | Wilson         | GO        | Favorable |
| 2. | _____   | _____          | _____     | _____     |
| 3. | _____   | _____          | _____     | _____     |
| 4. | _____   | _____          | _____     | _____     |
| 5. | _____   | _____          | _____     | _____     |
| 6. | _____   | _____          | _____     | _____     |

## I. Summary:

Current law makes public library registration and circulation records confidential and exempt from public records requirements. Exceptions to the exemption include judicial orders, municipal or county law enforcement officials and judicial officers for the purpose of recovering overdue books and other library materials or collecting fines. In the case of a public library patron under the age of 16, a public library may only release confidential information relating to the parent or guardian of the person under 16. The bill maintains those exceptions to the exemption, but revises the statutory language in order to clarify the exceptions. Further, it authorizes a business entity that may be operating a public library to disclose exempt information to the parent or guardian of a public library patron under the age of 16 for the purpose of collecting fines or recovering overdue books or other library materials.

This bill amends section 257.261 of the Florida Statutes.

## II. Present Situation:

**Public Records Requirements** - Florida has a long history of granting public access to governmental records. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.<sup>1</sup> Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.<sup>2</sup> The act has been amended numerous times since its enactment.

<sup>1</sup> Section 1, ch. 5942, 1909; RGS 424; CGL 490.

<sup>2</sup> Chapter 67-125 (1967 L.O.F.).

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.<sup>3</sup>

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.<sup>4</sup>

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24 (c) of the State Constitution authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. An exemption may be no broader than necessary to comport with the stated public necessity. Further, a law that creates a public record exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

The Open Government Sunset Review Act of 1995<sup>5</sup> provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after the creation of, or substantial modification to, an exemption. The repeal cycle began in 2001. The 1995 act also specifies the conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only if the exemption:

- 1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

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<sup>3</sup> Article I, s. 24 of the State Constitution.

<sup>4</sup> Article I, s. 24(d) of the State Constitution.

<sup>5</sup> Sections 119.15 and 286.0111, F.S.

- 2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace. (See s. 119.15(4)(b), F.S.)

Thus, under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

**Public Records Exemption** - Section 257.261, F.S., makes library registration records and circulation records confidential and exempt from the requirements of Article I, s. 24 of the State Constitution, except in accordance with a proper judicial order. That section defines “library registration records” to mean “. . . any information that a library requires a patron to provide in order to become eligible to borrow books and other materials . . . .” Section 257.261, F.S., defines “circulation records” to include “. . . all information that identifies the patrons who borrow particular books and other materials.”

Statistical reports of registration and circulation are expressly excluded from the exemption.

Under the exemption, library registration records and circulation records may be made available to any business, municipal or county law enforcement officials or to judicial officials for the purpose of “. . . recovering overdue books, documents, films, or other items or materials owned or otherwise belonging to the library.” Further, those officials are permitted access to the records for the purpose of “. . . collecting fines or overdue books, documents, films, or other items of materials.” If a patron is under the age of 16, confidential information can be released relating to the minor’s parent or guardian.

A person who violates s. 257.261, F.S., is guilty of a misdemeanor of the second degree, as punishable in ss. 775.082 and 775.083, F.S. Section 775.082(3)(b), F.S., provides for a prison term not exceeding 60 days. Section 775.083(1)(e), F.S., provides for a \$500 fine.

According to the Department of State (DOS), s. 257.261, F.S., is interpreted differently among local communities. The DOS states that currently some libraries allow parental access to their children’s records and some prohibit this access.

### III. Effect of Proposed Changes:

The bill maintains those exceptions to the exemption, but revises the statutory language in order to clarify the exceptions. Further, it authorizes a business entity that may be operating a public library or working on behalf of a library to disclose exempt information to the parent or guardian of a public library patron under the age of 16 for the purpose of collecting fines or recovering

overdue books or other library materials. The bill does not, however, grant a parent or guardian access to his or her child's library records for the purpose of monitoring or discovering what books that child checks out at the library.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create an exemption to public records requirements, but expands an exception to an existing exemption.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By authorizing a business entity to disclose exempt information to a parent or guardian of a patron under the age of 16 for the purpose of collecting fines or retrieving overdue books or materials, a business entity operating a library or working on behalf of a library may collect more fees and retrieve more materials.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.