

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Current law provides public records exemptions for fingerprints under limited circumstances:

- Fingerprints collected under chapter 447, F.S., relating to labor organizations are confidential and exempt^{1,2}
- Fingerprints collected for identifying a child, in the event that the child becomes missing, are exempt.³
- Fingerprints of a child charged with or who committed certain offenses are confidential and exempt.⁴

A general public records exemption for fingerprints, applicable to all agencies in all circumstances, does not exist.

This bill creates a public records exemption for fingerprint identification information held by an agency; however, the bill does not define the term “agency”. It appears that the sponsor is attempting to create a public records exemption for such information that is applicable to all agencies.

The bill defines “fingerprint identification information” to mean “any record of friction ridge detail, including, but not limited to, fingerprints, palm prints, and footprints”.

The bill provides for retroactive application of the exemption and provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 943.05, F.S., to create a public records exemption for fingerprint identification information.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date that is contingent upon the passage of HB 151 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *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). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

² Section 447.045, F.S.

³ Section 937.028(1), F.S.

⁴ Section 985.212(1), F.S.

1. Revenues:

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

2. Expenditures:

See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

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 Florida 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 creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Use of the term “agency”

The public records exemption applies to fingerprint identification information held by an agency. The term “agency” is not a defined term in chapter 943, F.S. Based on a review of the public necessity statement, it appears that the term is intended to mean an “agency” as defined in s. 119.011, F.S.

Drafting Issues - Placement

The bill places the public records exemption in chapter 943, F.S., relating to the Department of Law Enforcement. The exemption, however, is not applicable only to the department. Placement of the exemption in chapter 119, F.S., might be more appropriate as that chapter typically houses exemptions applicable to all agencies.

Drafting Issues – Cross-reference

The fingerprint identification information is made exempt from s. 119.071(1), F.S. This subsection contains general public records exemptions related to agency administrative duties. The appropriate reference is s. 119.07(1), F.S. An amendment is needed to correct this cross-reference.

Drafting Issues – Fingerprint identification information

The bill defines “fingerprint identification information” to include footprints. It is unclear how a footprint qualifies as “fingerprint identification information.” Furthermore, the need to protect a footprint is unclear.

Other Comments – 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 further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

⁵ Section 119.15, F.S.