

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-18 Public Record Exemption/Complaint of Discrimination  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2484

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	14 Y, 0 N	Williamson/Dykes	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Current law provides a public record exemption for all complaints and other records, in the custody of an executive branch state agency, which relate to a complaint of discrimination in connection with hiring practices. It also provides a public record exemption for all complaints and other records, in the custody of any unit of local government, that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing. A general exemption applicable to all agencies does not exist.

The bill expands the current exemption for discrimination complaints, which is applicable only to executive branch state agencies, by making it applicable to all agencies. The exemption expires when a probable cause finding is made, the investigation becomes inactive, or the complaint is made part of the official record of a hearing or court proceeding. This bill provides for future review and repeal of the exemption, provides a public necessity statement, reorganizes the exemption, and makes a conforming change.

**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 decreases access to public records.

### B. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

##### Public Records Law

Article I, s. 24(a) of the 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) of the 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.<sup>1</sup>

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 and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting 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:

- 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.

##### Public Record Exemption for Complaints of Discrimination

Current law provides a public record exemption for all complaints and other records, in the custody of an executive branch state agency, which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status, in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities.<sup>3</sup> The exemption is applicable until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

Current law also provides a public record exemption for all complaints and other records in the custody of any unit of local government that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing.<sup>4</sup> The exemption is applicable until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

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<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.0711(1), F.S.

<sup>4</sup> Section 119.0713(1), F.S.

A general exemption applicable to *all* agencies<sup>5</sup> does not exist.

## **EFFECT OF BILL**

The bill expands the current exemption for discrimination complaints, which is applicable only to executive branch state agencies, by making it applicable to *all* agencies. The exemption expires when a probable cause finding is made, the investigation becomes inactive, or the complaint is made part of the official record of a hearing or court proceeding.

The bill provides for future review and repeal of the exemption on October 2, 2013. It provides a public necessity statement as required by the State Constitution. The bill also reorganizes the exemption and makes a conforming change.

### **C. SECTION DIRECTORY:**

Section 1 transfers and redesignates s. 119.0711(1), F.S., to s. 119.071(2), F.S., and amends the section to reenact and expand the public record exemption for complaints of discrimination.

Section 2 provides a public necessity statement.

Section 3 amends s. 338.223, F.S., to make a conforming change.

Section 4 provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See "FISCAL COMMENTS."

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See "FISCAL COMMENTS."

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

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<sup>5</sup> Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

### 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:

###### 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:

None.

#### D. STATEMENT OF THE SPONSOR

Not applicable.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.