

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 09-10 OGSR Archival Materials
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting 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 Florida State Archives is created within the Division of Library and Information Services (Division) of the Department of State for the preservation of public records, manuscripts, and other archival material. Current law provides a public record exemption for certain nonpublic manuscripts or other archival material provided to the Division under special terms and conditions.

Current law also provides a public record exemption for archival material held by a local government. A manuscript or other archival material donated to and held by an official archive of a city or county contingent upon special terms and conditions that limit the right to inspect or copy such manuscript or other material is confidential and exempt from public records requirements. Such manuscript or archival material is available for public inspection 50 years after the date of its creation, at an earlier date specified in the special terms or conditions, or upon a showing of good cause before a court of competent jurisdiction.

The bill reenacts the public record exemption for local government archival material, which will repeal on October 2, 2009, if this bill does not become law. It also colocates the public record exemption for materials held by the Florida State Archives with the public record exemption under review.

The bill creates a definition for "nonpublic manuscript or other archival material", reorganizes the exemption, makes editorial changes, and makes conforming changes.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting 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 record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects 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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

The Florida State Archives

The Florida State Archives is created within the Division of Library and Information Services (Division) of the Department of State for the preservation of public records, manuscripts, and other archival material.⁴ Current law provides a public record exemption for the Florida State Archives. Any public

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 257.35(1), F.S.

record transferred to the Division and that is provided by law to be confidential or prohibited from being inspected must be made accessible only after a period of 50 years from the date of the creation of the record. In addition, any nonpublic manuscript or other archival material placed in the keeping of the Division under special terms and conditions is accessible only in accordance with those terms and conditions and is exempt from public records requirements.⁵

Public Record Exemption under Review

Current law also provides a public record exemption for archival material held by a local government.⁶ A manuscript or other archival material donated to and held by an official archive of a city or county contingent upon special terms and conditions that limit the right to inspect or copy such manuscript or other material is confidential and exempt⁷ from public records requirements. Such manuscript or archival material is available for public inspection 50 years after the date of its creation, at an earlier date specified in the special terms or conditions, or upon a showing of good cause before a court of competent jurisdiction.

The exemption does not apply to a manuscript or archival material made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.⁸

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption for certain local government archival material. It also moves the public record exemption for materials held by the Florida State Archives from s. 257.35(1)(b), F.S., to s. 257.38, F.S. Thus, s. 257.38, F.S., will provide the public record exemptions for both the state and local government archives.

The bill defines “nonpublic manuscript or other archival material” to mean “a manuscript or archival material that is not otherwise made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.” Finally, the bill reorganizes the exemption, makes editorial changes, and makes conforming changes.

B. SECTION DIRECTORY:

Section 1 renumbers and amends s. 257.35, F.S., to transfer the public record exemption for all public records transferred to the custody of the Division of Library and Information Services; amends s. 257.38, F.S., to create a definition and to make conforming changes.

Section 2 amends s. 257.35, F.S., to reorganize provisions.

Section 3 provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵ Section 257.35(1)(b), F.S.

⁶ Section 257.38(1), F.S.

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*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) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985)

⁸ Section 257.38(1), F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.