

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 6, 1998 Revised: _____

Subject: Public Records

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The confidentiality of information that would identify an “executioner” would be maintained and would also apply to a person or persons who would administer an intravenous lethal injection pursuant to §922.10, Florida Statutes, which would be a specific exemption from Florida’s public records law under §119.07(1), Florida Statutes, and Section 24(a), Article I of the Florida Constitution. The Open Government Sunset Review Act of 1995 would apply to this exemption in accordance with §119.15, Florida Statutes, and will be repealed on October 2, 2002, unless the exemption is reviewed and saved from repeal by the Legislature.

The bill would be effective on the same effective date as House Bill 3033 (similar to SB 196) or similar legislation that would provide a choice of the method of execution for those inmates who are currently on death row and were sentenced to death in the electric chair or would make lethal injection the sole method of execution in Florida. The bill’s effect is contingent upon the passage of any aforementioned or described lethal injection-related bills that pass in the 1998 Legislative Session or any extension of the 1998 Legislative Session.

This bill would substantially amend the following sections of the Florida Statutes: 922.10 and 945.10, and section 24 (a), Article 1 of the Florida Constitution.

II. Present Situation:

In November 1992, the citizens of Florida voted to adopt a constitutional amendment that would guarantee the public’s access to governmental records and meetings which was designated as section 24 of Article I of the Florida Constitution. The pertinent parts of section 24 read as follows:

(a) 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.

(c) This section shall be self-executing. The legislature, however, may provide by general law for the exemption of records from the requirements of subsection (a) . . . provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. Laws enacted pursuant to this subsection shall contain only exemptions for the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Section 119.01, Florida Statutes, reiterates the initial general state policy on public records, which was later guaranteed under the Florida Constitution by amendment in 1992. Section 119.01, Florida Statutes, states that it is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

Section 119.07(1)(a), Florida Statutes, establishes a right of access to public records in plain and unequivocal terms:

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. . . and for all other copies, upon payment of the actual cost of duplication of the record.

Public records kept by a state agency are deemed to be “open” and able to be inspected by any person without a demonstration of a special interest in the information requested unless certain records, regardless of the records form, are specifically exempted by statute from being openly inspected by the public. A state agency may not, on its own initiative or authority, exclude information from being public record.

However, the Legislature may specifically exempt certain information, state, county, or municipal records, from public record because of the sensitivity of the information or privileged status of the information that requires public access be limited as subjectively determined by the Legislature. Section 119.15(2), Florida Statutes, which is the Open Government Sunset Review Act of 1995, states that it is the intent of the Legislature that exemptions to s. 119.07(1), F.S., may be created or maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Thus, the maintenance or creation of an exemption must be compelled as measured by these criteria. The statute also states that “[t]o strengthen the policy of open government, the Legislature shall consider the criteria in this section before enacting future exemptions.” §119.15(2), Florida Statutes.

Section 119.011(1), Florida Statutes, defines “public records” 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 official business by any agency.

Section 945.10, Florida Statutes, specifically provides for the confidentiality of information that would identify the person who administers the death penalty in Florida, which currently is electrocution in the electric chair at the Florida State Prison in Starke, Florida. Section 945.10(1)(g), Florida Statutes, states:

- (1) Except as otherwise provided by law or in this section, the following records and information of the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- (g) The identity of an executioner.

Section 945.10, Florida Statutes, is the enabling statute, or the statute that grants power to the Department of Corrections to promulgate a rule that would govern the confidentiality of certain records kept by the department. Rule 33-6.006, Florida Administrative Code, pertaining to “Confidential Records” specifically excludes the identity of an executioner from being released for inspection. The administrative rule reads as follows:

- (6) The following records or information contained in department files shall be confidential and shall be released for inspection only as authorized in this rule:

- (g) The identity of an executioner.

The rule does not provide for any circumstances in which information may be released to the public related to the identity of an executioner administering a state-sanctioned death sentence;

thus, it is kept entirely confidential. The term “executioner” may not be inclusive of a person who administers a lethal injection.

III. Effect of Proposed Changes:

This bill contains the single-subject of providing a statutory exemption to the public records law.

The confidentiality of information that would identify an “executioner” would be maintained and would also apply to a person who would administer an intravenous lethal injection pursuant to §922.10, Florida Statutes. Because the term “executioner” has traditionally been associated with the person who administers the electricity to electrocute a person in Florida’s electric chair, this bill specifies that a person or persons who would *administer* a lethal intravenous injection would also be included for purposes of confidentiality. Thus, information which would identify a person or persons who would administer a lethal injection to carry out the death penalty would be specifically exempted from Florida’s public records law under §119.07(1), Florida Statutes, and Section 24(a), Article I of the Florida Constitution. Legislative intent language relating to the importance of this type of information being kept from public disclosure would also be provided in chapter law.

The Open Government Sunset Review Act of 1995 would apply to this exemption in accordance with §119.15, Florida Statutes, and would be repealed on October 2, 2002, unless the exemption is reviewed and saved from repeal by the Legislature.

The bill is effective on the same effective date as House Bill 3033 (similar to SB 196) or similar legislation that would authorize lethal injection as a choice for those inmates who are currently on death row and were sentenced to death in the electric chair or would require lethal injection as the method of execution in Florida . This bill’s effect is contingent on the passage of the aforementioned or described similar legislation relating to lethal injection. Thus, only if House Bill 3033 is passed, or an equivalent bill that authorizes death by lethal injection for the death penalty is passed, would this bill, SB 198, be effective if it also is passed by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill would maintain the public records exemption for an executioner or a person who administers the death penalty by lethal injection, should the death penalty by lethal injection be authorized by legislative passage of HB 3033, or similar legislation. See the body of this analysis for further detail.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It appears that the criteria necessary to create, modify, or maintain a public records exemption, which are set out in the Florida Constitution and Florida Statutes, have been met.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It appears that the bill's reference to HB 3033 was a mistake and that the intent of the bill was to instead name SB 196, which is similar to HB 3033.

VII. Related Issues:

It is important to note that the person who "prepares" the drugs for a lethal injection and inserts the intravenous needle, may not necessarily be the person who is deemed to "administer" the injection which may simply involve opening the solution port valve. The Legislature may want to also provide confidentiality to persons who "prepare" as well as administer a lethal injection.

VIII. Amendments:

None.