

STORAGE NAME: h3053s1.cp

DATE: February 4, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3053

RELATING TO: Public Records

SPONSOR(S): Representatives Stafford, Heyman & Sanderson

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS (W/D)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill amends s. 945.10, F.S., to provide an exemption from the public records requirements for information identifying a person administering a lethal injection during execution of a death sentence.

The bill provides for future review and repeal of the exemption, unless the legislature reenacts the exemption within 5 years of its creation.

The bill provides that it shall take effect on the same date as HB 3033 (Execution by Lethal Injection) becomes law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

Article I, Section 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records 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.

Article I, Section 24, Florida Constitution, however, permits the Legislature to provide by general law for the exemption of records from the requirements of Section 24 of the Florida Constitution. The general law exempting the records must state the public necessity justifying the exemption and the exemption can be no broader than necessary to accomplish the purpose of the law.

Public policy regarding access to government records is also addressed in the Section 119.07, F.S., which provides:

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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without 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;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such

individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or information that:

Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

See, Section 119.15(4)(b)(3), F.S.

Confidential Information Law

Pursuant to the foregoing procedures for exempting certain records from the public records law, s. 945.10, F.S., identifies the Department of Corrections records which are not available to the public. Among those listed is subparagraph (g) of subsection (1) which states:

(g) The identify of an executioner.

This law prevents anyone from obtaining Department of Corrections records which identify the executioner of a death sentence. However, it is not settled whether a person who administers a lethal injection in execution of a death sentence would also qualify as an "executioner."

B. EFFECT OF PROPOSED CHANGES:

The bill only provides for the confidentiality of the person who actually administers the poison. Section 945.10(1)(g) which provides for certain exemptions from the public records law is amended as follows:

(g) The identity of an executioner or a person administering a lethal injection pursuant to s. 922.10.

The bill creates this exemption to the public records laws subject to the provisions of s. 119.15, F. S. (Open Government Sunset Review Act of 1995), which declares that the exemption will be automatically repealed, within 5 years, unless the legislature reenacts it.

The bill, also, provides the legislative finding of public necessity that this information be kept confidential and exempt from disclosure under public records law. Art. I, s. 24(c), Fla. Const.

Finally, because the bill is an adjunct to HB 3033 (Execution by Lethal Injection), it provides an effective date to coincide with HB 3033 becoming a law. This exemption is created apart from HB 3033 because Art. I, s. 24(c) requires such exemptions to contain only one subject.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. Arguably, the exemption which already protects the identity of an executioner would apply, equally, to protect the identity of the person who administers a lethal injection in execution of a death sentence. The bill is passed only as a precaution, in the event a person administering a lethal injection would not be covered by this exemption. Consequently, the bill does not actually expand the number, or types of public records which are already confidential. It merely clarifies the Legislature's intent that these records are included within this exemption.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 945.10

E. SECTION-BY-SECTION RESEARCH:

Section 1: Provides that the exemption is created subject to the Open Government Sunset Review Act of 1995.

Section 2: Amends s. 945.10 to exempt information identifying a person who administers a lethal injection from the public records laws.

Section 3: Provides a legislative finding of public necessity for the exemption to exist.

Section 4: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, FISCAL COMMENTS

2. Recurring Effects:

See, FISCAL COMMENTS

3. Long Run Effects Other Than Normal Growth:

See, FISCAL COMMENTS

4. Total Revenues and Expenditures:

See, FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, FISCAL COMMENTS

2. Recurring Effects:

See, FISCAL COMMENTS

3. Long Run Effects Other Than Normal Growth:

See, FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Any costs which were previously associated with the confidentiality of the identity of the executioner would be the same, not additional costs, as for protecting the identity of the person administering the lethal injection. This is so because, theoretically, they are the same person. The Criminal Justice Estimating Conference estimates there will be no fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because the bill concerns a criminal statute, it is not subject to the provisions of Art. VII, s. 18.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The following language of Section 1 could be improved to clarify its intent:

This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and **shall stand repealed on October 2,**

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of the year, 5 years after the year of enactment, unless reviewed and saved from repeal through reenactment by the Legislature.

This language was chosen to avert the need for an amendment of the repealing date, should this bill not pass until the next legislative session. Perhaps the bill should be amended to provide for a date certain for whichever legislative session it may pass. The amendment for this session would change the language to read, as follows:

This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and **shall stand repealed on October 2, 2003**, unless reviewed and saved from repeal through reenactment by the Legislature.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed through the Crime & Punishment committee favorably with one amendment, on February 3, 1998. The bill was amended as suggested in the Comments section, above.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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