

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.)

BILL: SB 1110

SPONSOR: Senator Sebesta

SUBJECT: Public Records and Public Meetings/Ethics Code

DATE: January 27, 2000

REVISED: 2/8/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 1110 creates a public records and public meetings exemption for records and proceedings relating to a determination by the Ethics Commission to investigate an alleged breach of public trust based upon receipt of reliable and publicly disseminated information or upon receipt of a written referral from a specified official. The records and proceedings would be confidential and exempt from public records and public meetings requirements until the alleged violator requests that the investigation and records become public or until the preliminary investigation is completed and probable cause is determined.

This bill substantially amends s. 112.324, Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹

Article I, s. 24, Florida Constitution, provides:

- (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

¹Article I, s. 24 of the Florida Constitution.

each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law² specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

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 Public Records Law states that, unless specifically exempted, all agency³ records are to be available for public inspection. The term "public record" is broadly defined to mean:

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.⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

²Chapter 119, F.S.

³The word "agency" is defined in s. 119.011(2), F.S., 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."

⁴Section 119.011(1), F.S.

⁵*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁷Art. I, s. 24(c) of the Florida Constitution.

The Open Government Sunset Review Act of 1995⁸ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁹

Article I, s. 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Public Meetings Law

Article I, s. 24(b), Florida Constitution, expresses Florida's public policy regarding access to public meetings. This section provides that:

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which

⁸Section 119.15, F.S., 1998 Supp.

⁹Section 119.15(4)(b), F.S., 1998 Supp.

official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public . . .

Article I, s. 24(c), Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in s. 24(b) if such law states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Ethics Complaints

Article II, section 8, Florida Constitution and Chapter 112, Florida Statutes, provide for a Florida Commission on Ethics to serve as guardian of the standards of conduct of public officers and employees and to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers and employees. The Commission on Ethics may not conduct an investigation of an alleged violation unless a sworn complaint is filed.

Once a complaint is filed, a determination of legal sufficiency is made. If the complaint is not found to be legally sufficient, the Commission orders the complaint to be dismissed without investigation and all records relating to the complaint become public. If the complaint is found to be legally sufficient, a preliminary investigation is undertaken. Following completion of the preliminary investigation, the Commission determines whether there is probable cause to believe that there has been a violation of the ethics laws. Once probable cause is determined, the complaint and all records relating to the complaint become public. Records relating to a complaint may also become public if the alleged violator requests that the records be made public.

III. Effect of Proposed Changes:

This bill provides for exemptions to the public records provisions of s. 119.07(1), F.S., Art. I, sec. 24(a), Florida Constitution and the public meeting requirements of s. 286.011, F.S., and Art. I, sec. 24(b), Florida Constitution.

Governor Bush established the Public Corruption Study Commission in September 1999 to review current laws, policies and procedures related to Florida's response to public corruption, and to prepare recommendations on how Florida could better respond to and prevent acts of public corruption. There are several bills addressing the recommendations of the Public Corruption Study Commission. Senate Bill 368 contains a number of specific recommendations of the Commission revising Chapter 112, Florida Statutes, the Code of Ethics for Public Officers

and Employees. It is anticipated that the remaining ethics recommendations will be offered in the form of amendments to SB 368.

One of the Public Corruption Study Commission's recommendations gives the Commission on Ethics the authority to initiate investigations upon receipt of reliable and publicly disseminated information or a written referral from a specified official, which at least seven of the nine members of the Ethics Commission deem sufficient to indicate a breach of the public trust. In the event that this recommendation becomes a part of SB 368, a public records and a public meetings exemption will be created.

Pursuant to SB 1110, if the Commission receives information or a referral indicating a breach of the public trust, all proceedings and other records of the Ethics Commission relating to the information or referral would be confidential and exempt from public records and public meetings requirements until either the alleged violator requests that the records become public or until the preliminary investigation is complete and a probable cause determination is made. These provisions would be consistent with provisions relating to sworn complaints under current law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A public records and public meetings exemption would be created by the bill. The bill relates only to exemptions and it includes a statement of the public necessity that justifies the exemptions. For these reasons, the bill appears to comply with the provisions of Art. I, sec. 24(c), Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

A title amendment should be adopted which clearly specifies that the bill creates a public meetings exemption.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Ethics and Elections:

Title Amendment clarifies that the bill creates both a public records and a public meetings exemption.