

STORAGE NAME: h0327.sgc.doc
DATE: February 25, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HJR 327
RELATING TO: Public Records & Meetings Exemptions
SPONSOR(S): Representative Carassas & Others
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT (CSG) YEAS 8 NAYS 0
- (2) RULES, ETHICS & ELECTIONS (PRC) YEAS 12 NAYS 1
- (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 8 NAYS 4
- (4)
- (5)

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

I. SUMMARY:

The Florida Constitution provides for a general presumption that meetings of state and local governmental decision-making bodies are open to the public, and that records of state and local governments are open to public inspection and copying. General law may provide for exemptions from this presumption. Under current law, a bill creating an exemption from Florida's open records or open meetings requirement must be by separate bill, but may be passed by a simple majority vote.

This joint resolution proposes a constitutional amendment to require a 2/3 vote of each house to pass a general law creating an exemption from Florida's open records or open public meetings requirements.

In order for a proposed constitutional amendment to be placed on the ballot, each house of the Legislature must pass the joint resolution by a three-fifths majority. This joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November of 2002.

The non-recurring fiscal impact to the state is estimated at \$58,767. There is no apparent fiscal impact to local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Laws

Article I, s. 24(a), Fla. Const., expresses Florida's public policy regarding access to government records as follows:

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.

In regard to public meetings, art. I, s. 24(b), Fla. Const. 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 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), Fla. Const., provides that the Legislature may, by general law, provide exemptions from these requirements. The general law must state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish its purpose. No specific vote is specified, thus a bill providing for an exemption need only pass by a simple majority of each house.

Section 119.01(1), F.S., provides:

It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

With regard to public meetings, s. 286.011, F.S., provides that

[a]ll 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.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, cannot be accomplished without the exemption, and the exemption meets one of the following purposes:

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 provision, only information that would identify the individuals may be exempted; 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 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.

Constitutional Amendments

Article XI, s. 1, Fla. Const., provides for amendment to the state constitution by the legislative process. The Legislature proposes amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office; alternatively, the amendment may be voted on at a special election held for that purpose.

Article XI, s. 5, Fla. Const., provides:

A proposed amendment . . . shall be submitted to the electors at the next general election held more than ninety days after the joint resolution . . . proposing it is filed with the secretary of state. (Art. XI, s. 5(a), Fla. Const.)

If the proposed amendment . . . is approved by vote of the electors, it shall be effective as an amendment to . . . the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment . . . (Art. XI, s. 5(c), Fla. Const.)

C. EFFECT OF PROPOSED CHANGES:

HJR 327 amends art. I, s. 24, Fla. Const., to require a two-thirds vote of each house in order to enact an exemption to the requirement that public meetings be open to the public or that a public record be open to copying and inspection.

Providing that the amendment is successfully approved during the general election, the amendment will take effect in January of 2003, consistent with the constitutional provision providing for an effective date.

This joint resolution specifies that the proposed amendment to the Constitution be placed on the statewide ballot during the general election in November of 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5, Fla. Const. requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections estimates that the cost of compliance would be approximately \$58,767.¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹ Telephone conference with Secretary of State, Division of Elections, on November 11, 2001.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

A mandate analysis is not applicable to a proposed constitutional amendment.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

A mandate analysis is not applicable to a proposed constitutional amendment.

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

A mandate analysis is not applicable to a proposed constitutional amendment.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article XI, s. 1, Fla. Const., provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house; passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, art. XI, s. 5, Fla. Const. provides that the proposed amendment would be placed before the electorate at the 2002 General Election.² Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.³

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The vast majority of Public Records Exemptions since 1983 have passed both houses with a 2/3-majority vote. For example during the 2001 Session, including special sessions, all public records exemptions that passed the Legislature passed both houses by a 2/3-majority vote.

² The 2002 General Election is on November 5, 2002.

³ The first Tuesday after the first Monday in January after the election is Tuesday, January 7, 2003.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 19, 2002, the Council for Smarter Government adopted one amendment that changed the ballot summary to explain to voters when this amendment would become effective. The Council then adopted a council substitute that incorporated all amendments. The bill was then reported favorably, as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Noelle M. Melanson

Staff Director:

Nathan L. Bond J.D.

AS REVISED BY THE COMMITTEE ON RULES, ETHICS & ELECTIONS:

Prepared by:

Emmett Mitchell, IV

Staff Director:

Richard Hixson

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Noelle M. Melanson

Council Director:

Don Rubottom