

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 660

SPONSOR: Governmental Oversight & Productivity Committee and Senator Garcia

SUBJECT: Public Records Exemption

DATE: March 11, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable/CS
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates an exemption for the complaint and all information obtained by the Commission for Independent Education in the course of an investigation under s. 246.111, F.S, for a maximum of 10 days after the probable-cause panel declares a finding of probable cause. It also exempts from public meetings requirements the proceedings of that probable cause panel until the panel declares a finding of probably cause.

This bill creates section 246.1112 of the Florida Statutes.

II. Present Situation:

Public Records Requirements - Florida has a long history of granting public access to governmental records. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.¹ Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.² The act has been amended numerous times since its enactment.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

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,

¹ Section 1, ch. 5942, 1909; RGS 424; CGL 490.

² Chapter 67-125 (1967 L.O.F.).

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.³

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.⁴

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24 (c) of the State Constitution authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. An exemption may be no broader than necessary to comport with the stated public necessity. Further, a law that creates a public record exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

The Open Government Sunset Review Act of 1995⁵ provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after the creation of, or substantial modification to, an exemption. The repeal cycle began in 2001. The 1995 act also specifies the conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only 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

³ Article I, s. 24 of the State Constitution.

⁴ Article I, s. 24(d) of the State Constitution.

⁵ Sections 119.15 and 286.0111, F.S.

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. (See s. 119.15(4)(b), F.S.)

Thus, under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

III. Effect of Proposed Changes:

This bill creates an exemption for the complaint and all information obtained by the Commission for Independent Education in the course of an investigation under s. 246.111, F.S, for a maximum of 10 days after the probable-cause panel declares a finding of probable cause. It also exempts from public meetings requirements the proceedings of that probable cause panel until the panel declares a finding of probably cause.

No statement of public necessity is provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates an exemption for the complaint and all information obtained by the Commission for Independent Education in the course of an investigation under s. 246.111, F.S, for a maximum of 10 days after the probable-cause panel declares a finding of probable cause. It also exempts from public meetings requirements the proceedings of that probable cause panel until the panel declares a finding of probably cause. The bill, however, does not contain a statement of public necessity for either the public records exemption or the public meetings exemption. As such, it is deficient under Art. I, s. 24 of the State 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:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
