

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1147 (PCB SA 04-10) Public Records/Reorganization of Chapter 119, F.S.
SPONSOR(S): State Administration
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>3 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill reorganizes the Public Records Act (Act) in order to topically group similar subjects. A definition of “exemption” and “redact” is created and inserted into the definitions section of the Act. Various sections of law are also updated to reflect changes in the timeframe for retaining specific public records.

This bill removes obsolete or superfluous language pertaining to public records, and makes editorial and conforming changes. It also removes public necessity statements that were inadvertently codified in the Florida Statutes.

This bill appears to have an insignificant fiscal impact on state government. See “FISCAL COMMENTS” section.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: February 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

The Public Records Act

Chapter 119, F.S., the Public Records Act (Act), contains: policy statements regarding public records; maintenance and custody requirements; inspection, copying, and fee standards; an exemption review process; and exemptions. The Act has been amended numerous times but has not undergone a comprehensive review and revision.

In 2002, the Florida Legislature created a 22-member Study Committee on Public Records (study committee).¹ The study committee was legislatively directed to address a broad scope of issues regarding court records, official records, privacy, and public access. On February 15, 2003, the study committee submitted recommendations to the Governor, Chief Justice of the Supreme Court, President of the Senate, and Speaker of the House of Representatives. Two legislative recommendations included reorganizing the Act and creating a statutory definition of redact.²

Records Retention

In addition to the Act, numerous other statutes require state and local agencies to retain and store records that have historical or other value. The statutes specify records retention periods of two years to 30 years and may authorize destruction following such periods. Other public records are to be permanently retained.

In 1999, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reviewed the state’s records management system and concluded that there was confusion regarding records retention and destruction. The OPPAGA report recommended that the Legislature review possible statutory changes to alleviate the confusion.³ As a result, the House Committee on Tourism reviewed the state’s records management system during the 2001 interim. Based upon the committee’s survey of state agencies and meetings with agencies and other House committee staff, the committee’s report recommended statutory changes to alleviate the confusion.⁴

¹ See chapter 2002-302, L.O. F. The term of the Study Committee expired June 30, 2003.

² See STUDY COMMITTEE ON PUBLIC RECORDS Examination of the Effects of Advanced Technologies on Privacy and Public Access to Court Records and Official Records FINAL REPORT, February 15, 2003.

³ OPPAGA Justification Review: Library, Archives, and Information Program, Report 99-05, August 1999.

⁴ During the 2002 regular session, HB 539 by the Committee on Tourism and Representative Trovillion was introduced. That bill reflected OPPAGA’s suggested changes as well as reorganized the Act.

Public Necessity Statements

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. More specifically, every person has the right to inspect or copy any public record or to attend any public meeting of any collegial public body. The only exception to this constitutional requirement is a legislatively created public records or public meetings exemption.

The Florida Constitution further provides that a legislatively created public records or public meetings exemption must contain a statement of public necessity. The public necessity statement provides specific justification for creating a public records or public meetings exemption, in case the exemption is challenged in court. The public necessity statement is codified in the Laws of Florida; it is not included in the Florida Statutes.

Effect of Bill

This bill reorganizes the Act in order to topically group similar subjects. Also, at the recommendation of the study committee, a definition of "redact" is created and inserted into the definitions section of the Act. A definition of "exemption" is also created. No other changes are made to definitions or requirements in the Act, except to conform to Article I, s. 24 of the Florida Constitution.

This bill amends various sections of law regarding the reduction of timeframes for or elimination of retention of specific records if: the current retention requirements are no longer relevant to the respective agency's statutory requirements; the records are no longer being maintained by the originating agency; the retention timeframe is inordinate; the records are required to be maintained in outdated formats; or the records are retained in a format or timeframe contrary to state records retention laws. It clarifies that laws containing the phrase "permanent record" or "permanent file" do not require indefinite retention of those records.

Section 257.36, F.S., is amended to clarify that the receiving agency or entity becomes the records custodian when an agency's duty or responsibility is transferred to another agency or entity. The receiving entity is responsible for payment of the storage service charge for the records received. When an agency or entity is dissolved, the Cabinet becomes the official records custodian.

Additionally, this bill corrects numerous cross-references necessitated by the renumbering of sections in the Act; deletes superfluous language referencing the Code of Federal Regulations (C.F.R.) because these provisions are no longer necessary; and makes editorial changes.

Finally, this bill removes public necessity statements that were inadvertently codified in the Florida Statutes.

C. SECTION DIRECTORY:

Section 1 creates s. 39.2021, F.S., relocating s. 119.07(7), F.S., the provision allowing a person or organization to petition the court for access to records of the Department of Children and Family Services (DCFS).

Section 2 amends s. 119.01, F.S., compiling all of the existing policy statements contained in the Act into one general state policy section.

Section 3 amends s. 119.011, F.S., compiling and alphabetizing definitions distributed throughout the Act into a designated definitions section. Creates a definition of the terms "exemption" and "redact".

Section 4 repeals ss. 119.0115, 119.012, and 119.02, F.S. (The provisions are relocated to other sections.)

Section 5 substantially rewords s. 119.021, F.S., relating to the designation of a custodian of public records. Includes custodial requirements relating to the maintenance, preservation, and retention of public records.

Section 6 repeals ss. 119.031, 119.041, 119.05, and 119.06, F.S. (The provisions are relocated to other sections.)

Section 7 amends s. 119.07, F.S., topically co-locating current requirements relating to inspection and copying of records, photographing records, and fees from other sections of the Act.

Section 8 repeals s. 119.08, F.S. (The provision is relocated to another section.)

Section 9 amends s. 119.084, F.S., compiling all of the provisions relating to copyright of data processing software created by governmental agencies; sale price; and licensing fees.

Section 10 repeals ss. 119.085 and 119.09, F.S. (The provisions are relocated to other sections.)

Section 11 amends s. 119.10, F.S., compiling all of the penalties listed in the Act into one general penalty section.

Section 12 amends s. 119.105, F.S., removing the reference to “general or special law”.⁵

Section 13 amends s. 119.12, F.S., making a conforming change.

Section 14 amends s. 120.55(1)(a), F.S., removing language relating to publishing in a permanent compilation entitled “Florida Administrative Weekly”. Adds language relating to a continuous revision system, compiling, and publishing the “Florida Administrative Code”.

Section 15 amends s. 257.36(2)(b), F.S., providing that when an agency’s duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. When an agency or entity is dissolved, the Executive Office of the Governor becomes the official records custodian.

Section 16 amends s. 328.15(5), F.S., removing the word “permanent” regarding recorded liens.

Section 17 amends s. 372.5717(4), F.S., removing the word “permanent” regarding hunter safety certification cards issued by the Florida Fish and Wildlife Conservation Commission.

Section 18 creates s. 415.1071, F.S., relocating s. 119.07(7), F.S., the provision allowing a person or organization to petition the court for access to records of DCFS.

Section 19 amends s. 560.121(2), F.S., reducing the retention of examination reports, investigatory records, and applications from 10 years to three years. Provides for at least two year retention by the Department of Banking and Finance (DBF) of application records and related information it compiles or photocopies.

Section 20 amends s. 560.123(6), F.S., reducing from five to three calendar years the retention of DBF reports of transactions involving currency or monetary instruments.

⁵ This language is removed because under Article I, s. 24 of the State Constitution, an exemption cannot be created by special law.

Section 21 amends s. 560.129(4), F.S., reducing from 10 to three years DBF's retention of examination reports, investigatory records, and applications. Provides at least two year retention of application records and related information compiled or photocopied by DBF.

Section 22 amends s. 624.311(3), F.S., allowing the Department of Insurance to provide for electronic recordkeeping. Removes language requiring that each page be reproduced in exact conformity with the original.

Section 23 amends s. 624.312(1), F.S., requiring that reproductions from an electronic recordkeeping system, before October 1, 1982, be admissible in evidence as originals. After October 1, 1982, certified reproductions from an electronic recordkeeping system are admissible in evidence as originals.

Section 24 amends s. 633.527(2), F.S., reducing from five to two years the retention period for all examination test questions, answer sheets, and grades administered under the State Fire Marshal.

Section 25 amends s. 655.50(8), F.S., removing the 10 year retention requirement and providing a five year retention requirement, as contained in 31 C.F.R., parts 103.33 and 103.34,⁶ of certain DBF reports.⁷

Section 26 amends s. 945.25, F.S., removing the word "permanent" and making editorial changes. Removes s. 945.25(2), F.S., regarding permanent records of persons placed on probation and every person who may be subject to pardon and commutation of sentence.⁸

Section 27 amends s. 985.31(4)(e), F.S., removing the word "permanent" as it relates to the retention of a child's medical record.

Section 28 repeals s. 212.095(6)(d), F.S., removing a provision that is no longer utilized or applicable to current business practices.⁹

Section 29 repeals s. 238.03(9), F.S., removing antiquated language regarding a system that is no longer utilized.¹⁰

Sections 30 through 52 make conforming changes.

Section 53 repeals s. 430.015, F.S., removing a public necessity statement for a Department of Elderly Affairs public records exemption.

Section 54 amends s. 440.132(2), F.S., removing a public necessity statement for an Agency for Health Care Administration public records exemption.

Section 55 repeals s. 723.0065, F.S., removing a public necessity statement for a Division of Florida Land Sales, Condominiums, and Mobile Homes public records exemption, and repeals s. 768.301, F.S., removing a public necessity statement for a public records and public meetings exemption for state administered risk management programs.

⁶ This is the minimum federal retention schedule contained in the federal code, with the exception of trust companies, which are state regulated.

⁷ DBF no longer receives paper copies of currency transaction report forms. Those reports are electronically filed with the federal government and maintained in a database that can be accessed by DBF's Investigations Office.

⁸ This section is being removed due to the statutory elimination of parole for most offenses committed on or after October 1, 1983, and all remaining cases for commitments committed on or after October 1, 1995.

⁹ Tourism Committee Records Management for State Agencies, November 2001.

¹⁰ *Id.*

Section 56 amends s. 943.031(7)(a)2., F.S., removing a public necessity statement for a public records and public meetings exemption for the Florida Violent Crime and Drug Control Council.

Section 57 provides an October 1, 2004, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "FISCAL COMMENTS" section.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

There are costs associated with a complete revision to a statute, including printing costs. It would be expected that over time, as exemptions are consolidated and their number reduced, printing costs will be reduced. Further, as it becomes less difficult for staff to find agency specific exemptions that are applicable to requested public records, records request research and production time will be reduced thereby lowering costs associated with public records requests.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill was introduced during the 2002 and 2003 regular Legislative Sessions.

CROSS-REFERENCE CHART

CURRENT LAW	HB 1147
119.01(1) (2) (3) (4)	No change Provision relocated to 119.01(2)(e); replaced with 119.01(3) Provision relocated to 119.01(2)(a); replaced with 119.012 Repealed; provision relocated to 119.021(2)(c)
119.011(1) (2) (3) (4)	Provision relocated to 119.011(11); replaced with 119.07(1)(a) No change No change No change
119.0115	Repealed; provision relocated to 119.07(6)(hh)
119.012	Repealed; provision relocated to 119.01(3)
119.02	Repealed; provision relocated to 119.10(1)(b)
119.021	Provision relocated to 119.011(5); replaced with 119.031, 119.041(1), 119.041(2), 119.05, 119.06, and 119.09
119.031	Repealed; provision relocated to 119.021(1)
119.041 (1) (2)	Repealed Provision relocated to 119.021(2)(c) Provision relocated to 119.021(3)
119.05	Repealed; provision relocated to 119.021(4)(a)
119.06	Repealed; provision relocated to 119.021(4)(b)

CURRENT LAW	HB 1147
<p>119.07(1)(a)</p> <p>(b)</p> <p>(c)</p> <p>(2)(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(3)</p> <p>(o)1.</p> <p>(o)2.</p> <p>(4)</p> <p>(5)</p> <p>(6)</p> <p>(7)</p> <p>(8)</p>	<p>Partial provision unchanged; other provisions relocated to 119.011(1), 119.011(8), 119.07(4), 119.07(4)(a)-(c)</p> <p>Provision relocated to 119.011(9) and 119.07(4)(d); replaced with 119.07(2)(a)</p> <p>Provision relocated to 119.07(5); replaced with 119.07(2)(a)</p> <p>Provision relocated to 119.07(1)(b), (c), and (d); replaced with 119.085</p> <p>Provision relocated to 119.07(1)(e); replaced with 119.085</p> <p>Provision relocated to 119.07(1)(f); replaced with 119.085</p> <p>Repealed; provision relocated to 119.07(1)(g)</p> <p>Provision relocated to 119.07(6); replaced with 119.08(1)(a), 119.08(1)(b), 119.08(2), and 119.08(3)</p> <p>Repealed; provision relocated to 119.011(6)</p> <p>Repealed; provision relocated to 119.011(13)</p> <p>Provision relocated to 119.07(7); replaced with 119.07(1)(a), 119.07(1)(b), and 119.08(3)</p> <p>Provision relocated to 119.07(9); replaced with 119.07(1)(c)</p> <p>Provision relocated to 119.07(8); replaced with 119.07(3)</p> <p>Provision relocated to 39.2021 and 415.1071; replaced with 119.07(4)</p> <p>Provision relocated to 119.07(10); replaced with 119.07(6)</p>
<p>119.08</p> <p>(1)(a)</p> <p>(b)</p> <p>(2)</p> <p>(3)</p>	<p>Repealed</p> <p>Provision relocated to 119.07(3)(a)</p> <p>Provision relocated to 119.07(3)(b)</p> <p>Provision relocated to 119.07(3)(c) and (d)</p> <p>Provision relocated to 119.07(3)(d) and 119.07(4)(e)</p>

CURRENT LAW	HB 1147
119.084(1)(a) (b) (c) (2) (3) (4) (5) (6) (7)	Repealed; provision relocated to 119.084(1) Repealed; provision relocated to 119.011(6) Repealed; provision relocated to 119.011(10) No change Provision relocated to 119.01(2)(d); replaced with 119.084(7) Repealed; provision relocated to 119.01(2)(b) Repealed; provision relocated to 119.01(2)(f) Repealed; provision relocated to 119.01(2)(c) Repealed; provision relocated to 119.084(3)
119.085	Repealed; provision relocated to 119.07(2)
119.09	Repealed; provision relocated to 119.021(2)(d)
119.10(1) (2) (3)	Provision relocated to 119.10(1)(a) Provision relocated to 119.10(2)(a) Repealed; provision relocated to 119.10(2)(b)
119.105	No change

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2004, the Committee on State Administration reported PCB SA 04-10 favorable with two amendments. The amendments conformed cross-references and clarified the definition of "redact".