

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1001 CS

Public Records

SPONSOR(S): Adams

TIED BILLS: HB 151 CS

IDEN./SIM. BILLS: SB 2292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Williamson</u>	<u>Williamson</u>
2) <u>State Administration Council</u>	<u>7 Y, 0 N</u>	<u>Williamson</u>	<u>Bussey</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a public records exemption for biometric identification information. It provides for retroactive application of the exemption, provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Current law provides public records exemptions for fingerprints under limited circumstances:

- Fingerprints collected under chapter 447, F.S., relating to labor organizations are confidential and exempt^{1, 2}.
- Fingerprints collected for identifying a child, in the event that the child becomes missing, are exempt.³
- Fingerprints of a child charged with or who committed certain offenses are confidential and exempt.⁴

A general public records exemption for fingerprints, applicable to all agencies in all circumstances, does not exist.

This bill creates a public records exemption for biometric identification information, which includes fingerprints, held by an agency. Biometric identification information means “any record of friction ridge detail, fingerprints, palm prints, and footprints.

The bill provides for retroactive application of the exemption and provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for biometric identification information.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date that is contingent upon the passage of HB 151 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

² Section 447.045, F.S.

³ Section 937.028(1), F.S.

⁴ Section 985.212(1), F.S.

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt biometric identification information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record

of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Governmental Operations Committee adopted a strike-all amendment to HB 1001 and reported the bill favorably with committee substitute. The strike-all amendment:

- Placed the exemption in chapter 119, Florida Statutes, which is the Public Records Act.
- Created a public records exemption for "biometric identification information" in lieu of "fingerprint identification information." Biometric identification information only includes the information made confidential and exempt in the bill – any record of friction ridge detail, fingerprints, palm prints, and footprints.
- Corrected a cross-reference.
- Conformed the public necessity statement to the public records exemption.

⁵ Section 119.15, F.S.