HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085   PCB GAP 10-07   OGSR/Commission on Ethics
SPONSOR(S): Governmental Affairs Policy Committee and K. Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2170

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2010, if this bill does not become law. It also reorganizes the exemption for clarity.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act
The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:
- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Commission on Ethics

The Commission on Ethics (Commission) is a non-paid, appointed body consisting of nine members.[4] The Commission serves as guardian of the standards of conduct for officers and employees of the state and of a county, city, or other political subdivision of the state.[5]

Current law establishes the duties and powers of the Commission.[6] Chief among these responsibilities is the duty to receive and investigate sworn complaints of violation of the code of ethics and of any other breach of the public trust,[7] including investigation of all facts and parties materially related to the complaint.

A county or municipality also has the authority to create a Commission on Ethics and Public Trust.

Exemptions under Review

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission or a Commission on Ethics and Public Trust established by a county or a municipality. The complaint and associated records are confidential and exempt from public records requirements.[8] In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements. Such exemptions no longer apply when the:

- Complaint is dismissed as legally insufficient;
- Alleged violator requests in writing that the records and proceedings be made public; or
- Commission or Commission on Ethics and Public Trust determines whether probable cause exists to believe that a violation has occurred.[9]

In 2005, the Legislature applied the public record and public meeting exemptions to a Commission on Ethics and Public Trust established by a municipality.[10] As such, pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions. It also reorganizes the exemptions for clarity.

B. SECTION DIRECTORY:

Section 1 amends s. 112.324, F.S., to reenact the public record and public meeting exemptions for the Commission or a Commission on Ethics and Public Trust established by a county or a municipality.

Section 2 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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[4] Section 112.321(1), F.S.

[5] Section 112.320, F.S.

[6] *See* s. 112.322, F.S.

[7] As provided in s. 8(f), Art. II of the State Constitution.

[8] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *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 a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

[9] Section 112.324(2)(a), F.S.

[10] Chapter 2005-185, L.O.F.

A. FISCAL IMPACT ON STATE GOVERNMENT:

   1. Revenues:
      None.

   2. Expenditures:
      None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

   1. Revenues:
      None.

   2. Expenditures:
      None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   None.

D. FISCAL COMMENTS:
   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

   1. Applicability of Municipality/County Mandates Provision:

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

   2. Other:
   None.

B. RULE-MAKING AUTHORITY:
   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
   None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.