

1985

Session Law 85-301

Florida Senate & House of Representatives

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BILL ACTION REPORT

(C3-75: File with Secretary of Senate)

COMMITTEE ON GOVERNMENTAL OPERATIONS

DATE May 14, 1985

TIME 2:00 - 5:00 pm

PLACE Room H, Senate Office Building

OTHER COMMITTEE REFERENCES:
(In order shown)

R & C

Series 18 Carton 1537

Date Reported May 15, 1985

FINAL ACTION:

Favorably with amendments

Favorably w/Committee Substitute

Unfavorably

OTHER: Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	Amendment #1 by Girardeau		Amendment #2 by Girardeau		Amendment #3 by Girardeau		Amendment #4 by Girardeau		Amendment #5 by Girardeau	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		CHILDERS, W. D.										
		FRANK, Pat										
		GERSTEN, Joseph M.										
X		HAIR, Mattqx	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION	
X		JOHNSON, Robert M.	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION	
X		KISER, Curtis	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION	
		STUART, George, Jr.	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION	
X		GIRARDEAU, Arnett E., V. Chm.										
X		VOGT, John W., Chairman										
6	0	TOTAL	X		X		X		X		X	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete:	The key sponsor appeared	(X)
	A Senator appeared	()
	Sponsor's aide appeared	()
	Other appearance	()

BILL ACTION REPORT

(C3-75; File with Secretary of Senate)

(S) ~~HR~~ BILL NO. 1320

COMMITTEE ON GOVERNMENTAL OPERATIONS

DATE May 14, 1985

Date Reported _____

TIME 2:00 - 5:00 p.m.

FINAL ACTION:

PLACE Room H, Senate Office Building

Favorably with _____ amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

Favorably w/Committee Substitute

R & C

Unfavorably

OTHER: Temporarily Passed
 Reconsidered
 Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	#1 by Girardeau		#2 by Girardeau		#3 by Girardeau		#4 by Girardeau		#5 by Girardeau	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
<input checked="" type="checkbox"/>		CHILDERS, W. D.										
		FRANK, Pat										
		GERSTEN, Joseph M.										
<input checked="" type="checkbox"/>		HAIR, Mattox										
<input checked="" type="checkbox"/>		JOHNSON, Robert M.										
<input checked="" type="checkbox"/>		KISER, Curtis										
		STUART, George, Jr.								w/o		
<input checked="" type="checkbox"/>		GIRARDEAU, Arnett E., V. Chm.			w/o			w/o				
<input checked="" type="checkbox"/>		VOGT, John W., Chairman										w/o
6	0	TOTAL	X		X			X		X		X
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (X)
 A Senator appeared (X)
 Sponsor's aide appeared ()
 Other appearance ()

The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

1 Amendment
 2
 3 On page2....., line13.....,
 4
 5
 6
 7 before the period (.)
 8
 9 If amendment is text from another bill insert:
 10 Bill No. _____ Draft No. _____ With Changes? Yes No
 11 insert:
 12 and the criteria are demonstrated by legislative review in
 13 connection with the particular exemption to be significant
 14 enough to override the strong public policy of open government
 15
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The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

1 Amendment

2

3 On page3....., line10.....,

4

5

6

7 after law

8

9 If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes
10				

11 ~~_____~~ insert:

12 included in titles

13

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 Series 18 Carton 1537

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.14, F.S.; providing for application of the
 4 policy of open government to the public records
 5 and public meetings law to exemptions from such
 6 laws; providing legislative intent; repealing
 7 exemptions in the chapters of law included in
 8 the titles of the Florida Statutes in
 9 accordance with a 10-year schedule; requiring
 10 the Division of Statutory Revision of the Joint
 11 Legislative Management Committee to annually
 12 certify to the President of the Senate and
 13 Speaker of the House of Representatives the
 14 language and citation of exemptions;
 15 establishing criteria for the review of
 16 exemptions; defining identifiable public
 17 purpose; establishing criteria for the creation
 18 of future exemptions; requiring uniform
 19 language; providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Section 119.14, Florida Statutes, 1984
 24 Supplement, is amended to read:
 25 119.14 Periodic legislative review of exemptions from
 26 public meeting and public record requirements.--
 27 (1) This section may be cited as the "Open Government
 28 Sunset Review Act."
 29 (2) This act provides for the periodic automatic
 30 application of the policy of open government as provided in s.
 31 119.01 and s. 286.011 ~~policy~~ to certain exemptions from s.

1 286.011 and chapter 119. It is the intent of the Legislature
2 that exemptions to s. 286.011 and chapter 119 shall be
3 maintained only if the exempted record or meeting is of a
4 sensitive, personal nature concerning individuals, the
5 exemption is necessary for the effective and efficient
6 administration of a governmental program, or the exemption
7 affects confidential information concerning an entity. Thus,
8 the maintenance or creation of an exemption must be compelled
9 as measured by these criteria. Further, the Legislature finds
10 that the public has a right to have access to governmental
11 meetings and records unless the criteria in this act for
12 restricting such access to a public meeting or public record
13 are met and the criteria are demonstrated by legislative
14 review in connection with the particular exemption to be
15 significant enough to override the strong public policy of
16 open government. To strengthen the policy of open government,
17 the Legislature shall consider the criteria in this act before
18 enacting future exemptions, and all such exemptions shall
19 contain a statement of their identifiable public purpose as
20 defined in this act.

21 (3)(a) On the dates specified in this subsection with
22 respect to the chapters of law included in the titles of the
23 Florida Statutes specified in this subsection, the provisions
24 of ss. 119.01, 119.07(1), and 286.011 shall fully apply,
25 notwithstanding any provisions in such chapters of law
26 included in the titles of the Florida Statutes to the
27 contrary, unless the application of this subsection to such
28 chapters of law has been modified by subsequent law passed by
29 the Legislature. The repeal applicable dates and titles of
30 the Florida Statutes chapters are as follows:
31

- 1 1. October 1, 1986, and at the end of each 10-year
2 period thereafter, with respect to chapters of law included in
3 titles I through V 1-through-99.
- 4 2. October 1, 1987, and at the end of each 10-year
5 period thereafter, with respect to chapters of law included in
6 titles VI through XI, 100-through-199 except chapter 119 and
7 ss. 106.24, 106.25, 106.26, through 106.27, and 112.320,
8 112.321, 112.322, and through 112.324.
- 9 3. October 1, 1988, and at the end of each 10-year
10 period thereafter, with respect to chapters of law included in
11 titles XII through XVI 200-through-299.
- 12 4. October 1, 1989, and at the end of each 10-year
13 period thereafter, with respect to chapters of law included in
14 titles XVII through XXVIII 300-through-399.
- 15 5. October 1, 1990, and at the end of each 10-year
16 period thereafter, with respect to chapters of law included in
17 title XXIX 400-through-499.
- 18 6. October 1, 1991, and at the end of each 10-year
19 period thereafter, with respect to chapters of law included in
20 titles XXX through XXXII 500-through-599.
- 21 7. October 1, 1992, and at the end of each 10-year
22 period thereafter, with respect to chapters of law included in
23 titles XXXIII through XXXVI and title XXXVIII 600-through-699.
- 24 8. October 1, 1993, and at the end of each 10-year
25 period thereafter, with respect to chapters of law included in
26 title XXXVII 700-through-799.
- 27 9. October 1, 1994, and at the end of each 10-year
28 period thereafter, with respect to chapters of law included in
29 titles XXXIX through XLVII 800-through-899.
- 30 10. October 1, 1995, with respect to exemptions in
31 chapter 119 which have not been reviewed in prior years

1 because such exemption was not contained in those titles or
 2 because the exemption is generic in character and language and
 3 consequently applies to records created, maintained, or
 4 stored, by substantive language in two or more such titles and
 5 with respect to exemptions which are identified as being in
 6 two or more titles of the Florida Statutes by the Division of
 7 Statutory Revision, and at the end of each 10-year period
 8 ~~thereafter, with respect to chapters 900 through 999.~~

9 ~~(b) Records created prior to the date specified in~~
 10 ~~paragraph (a) with respect to any particular section of law~~
 11 ~~shall be governed by the provisions of law in effect on the~~
 12 ~~date the records were created, unless otherwise provided by~~
 13 ~~law.~~

14 (b)(4)(a) In the year prior to the repeal of an
 15 exemption pursuant to this section, the Division of Statutory
 16 Revision of the Joint Legislative Management Committee shall
 17 certify to the President of the Senate and the Speaker of the
 18 House of Representatives, by August 1 of each year, the
 19 language and statutory citation of each exemption scheduled
 20 for repeal the following year which meets the criteria of an
 21 exemption as defined in this act. Any exemption which is not
 22 identified and certified to the President of the Senate and
 23 the Speaker of the House of Representatives shall not be
 24 subject to legislative review and repeal under this act. If
 25 the division fails to certify an exemption which it
 26 subsequently determines should have been certified, it shall
 27 include such exemption in the following year's certification
 28 after such determination. the Legislature shall conduct a
 29 review of the exemption, considering the following criteria:

30 ~~1. The nature and scope of the exemption, in theory~~
 31 ~~and in practice;~~

1 ~~2.--The rationale, purpose, or justification for the~~
2 ~~exemption;~~

3 ~~3.--The nature and weight of the alleged compelling~~
4 ~~interest, if any, in maintaining the exemption;~~

5 ~~4.--The balance between the policy of open government~~
6 ~~as a means of building public confidence and as a tool of~~
7 ~~accountability and the alleged compelling justification, if~~
8 ~~any, in the existence of the exemption.~~

9 (c) An "exemption" is defined as: A provision of the
10 Florida Statutes which creates an exception to s. 119.01, s.
11 119.07(1), or s. 286.011, and which applies to the executive
12 branch of state government or to local government, but shall
13 not include any provision of a special or local law.

14 (d) No exemption which is required by Federal Law
15 shall be subject to repeal.

16 (4)(a) The Legislature shall conduct a review of the
17 exemption prior to its scheduled repeal and shall consider as
18 part of the review process the following:

19 1. What specific records or meetings are affected by
20 the exemption?

21 2. Whom does the exemption uniquely affect, as opposed
22 to the general public?

23 3. What is the identifiable public purpose or goal of
24 the exemption?

25 4. Can the information contained in the records or
26 discussed in the meeting be readily obtained by alternative
27 means? If so, how?

28 (b) An exemption shall be maintained only if it serves
29 an identifiable public purpose. An identifiable public
30 purpose is served when the exemption meets one of the
31 following purposes and such purpose is demonstrated by

1 legislative review in connection with the particular exemption
 2 being considered to be significant enough to override the
 3 strong public policy of open government:

4 1. Allows the state or its political subdivisions to
 5 effectively and efficiently administer a governmental program,
 6 which administration would be significantly impaired without
 7 the exemption, or

8 2. Protects information of a sensitive personal nature
 9 concerning individuals, and its release would be defamatory to
 10 such individuals or cause unwarranted damage to the good name
 11 or reputation of such individuals, or its release would
 12 jeopardize the safety of such individuals, or

13 3. Protects information of a confidential nature
 14 concerning entities; including but not limited to, a formula,
 15 pattern, device, combination of devices, or compilation of
 16 information which is used to protect or further a business
 17 advantage over those who do not know or use it, and its
 18 disclosure would injure the affected entity in the
 19 marketplace.

20 (c) All records made prior to the date of a repeal of
 21 an exemption under this act shall be made public unless there
 22 is specific legislative action to keep the record closed. In
 23 deciding whether such records shall be made public the
 24 Legislature shall consider: whether the damage or loss to
 25 persons or entities uniquely affected by the exemption, of the
 26 type specified in subparagraph (b)2. or subparagraph (b)3.,
 27 would occur if the records were made public.

28 (d) Legislation which creates an exemption which is
 29 scheduled for repeal in the year it is enacted, or the year
 30 following enactment, shall not be subject to this act until
 31 the next review cycle for that title.

1 (e) An exemption that is created or revived and
 2 reenacted shall contain uniform language which clearly states
 3 the section in the Florida Statutes from which it is exempt,
 4 chapter 119 or s. 286.011. The uniform language shall also
 5 provide for the maximum public access to the meetings and
 6 records as is consistent with the purpose of the exemption.
 7 Each exemption shall also contain the statement: "This
 8 exemption is subject to the 'Open Government Sunset Review
 9 Act' in accordance with s. 119.14."

10 (f) In the year prior to the 1995 Regular Session, the
 11 Legislature shall consider the necessity of conducting further
 12 reviews of exemptions.

13 (g) Notwithstanding the provision of s. 768.28, or any
 14 other law, neither the state of Florida, its political
 15 subdivisions, nor any other public body shall be made party to
 16 any suit in any court or incur any liability for the repeal or
 17 revival and reenactment of any exemption pursuant to this act.

18 ~~(b) --An exemption shall be maintained only if reenacted~~
 19 ~~by law after the legislative review demonstrates a compelling~~
 20 ~~interest in such exemption.~~

21 Section 2. Section 286.0111, Florida Statutes reads:
 22 286.0111 Legislative review of certain exemptions from
 23 requirements for public meetings and recordkeeping by
 24 governmental entities.--The provisions of s. 119.14, the Open
 25 Government Sunset Review Act, apply to the provisions of law
 26 which provide exemptions to s. 286.011, as provided in s.
 27 119.14.

28 Section 3. This act shall take effect upon becoming a
 29 law.

30
 31

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BILL NO. PCB 4

DATE: April 23, 1985

Page 1

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Series 1532
~~SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT~~

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Smawley</u>	<u>Swindell</u>	1. _____	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

BILL NO. AND SPONSOR:

Open Government Sunset
Review Act

PCB 4 by
Governmental Operations

I. SUMMARY:

A. Present Situation:

Sections 8 and 9 of ch. 84-298, L.O.F., created the "Open Government Sunset Review Act" which is now codified as ss. 119.14 and 286.0111, F.S. The act repeals exemptions to the Public Records Act (ch. 119, F.S.) and Public Meetings Law (s. 286.011, F.S.) over the 10-year span 1986 through 1995 by grouping the chapters 1-99, 100-199, etc.

In reviewing exemptions prior to the scheduled repeal, the Legislature is to consider each exemption in light of its nature and scope, rationale, purpose or justification, nature and weight in light of the alleged compelling justification for maintaining the exemption, and the balance between the policy of open government and the compelling justification advanced for preserving the exemption. Certain exemptions applicable to the Ethics and the Elections Commission are exempted from the act. If the Legislature does not reenact exemptions to the Public Records Act and Public Meetings Law prior to their year of scheduled repeal, the exemptions will Sunset on October 1 of the given year. Exemptions are neither identified nor defined in the act. No legislative intent is explicitly set forth in the present law.

B. Effect of Proposed Changes:

The bill would amend the Open Government Sunset Review Act to provide legislative intent that exemptions would be maintained only if the exempted record or meeting is of a sensitive personal nature concerning individuals, is necessary for the effective and efficient administration of a governmental program, or affects confidential information concerning an entity. Further, the bill would provide that the public has a right of access to government records and meetings unless the criteria for restricting access contained in the bill is met. The bill would also require the Legislature to consider the criteria before enacting future exemptions.

The bill would alter the schedule of the repeal of exemptions. Instead of repeals being grouped by chapters of the statutes, they would be grouped by titles of the Florida Statutes, i.e., by subject. The schedule of repeals would be from October 1, 1986 through October 1, 1995.

The Division of Statutory Revision of the Joint Legislative Management Committee would certify to the President of the Senate and the Speaker of the House of Representatives, by August 1 of each year, the language and statutory citation of each exemption scheduled for repeal on October 1 of the following year which met the criteria of an exemption as

defined in the act. Any exemption which was not certified would not be subject to legislative review and repeal under the act.

An exemption would be defined as, "A provision of the Florida Statutes which creates an exception to ss. 119.01, 119.07(1), or 286.011, and which applies to the executive branch of state government." Exemptions required by federal law would not be subject to repeal under the act nor would exemptions contained in special or local acts.

The Legislature would be required to consider, as part of the review process, the following:

- 1) What specific records or meetings are affected by the exemption?
- 2) Whom does the exemption uniquely affect?
- 3) What is the identifiable public purpose or goal of the exemption?
- 4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Exemptions would be maintained only if they served an identifiable public purpose. Such a purpose would be served when 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, and its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or jeopardize the safety of such individuals; or
- 3) Protects information of a confidential nature concerning entities, i.e., a trade secret, and its release would impair a business advantage.

Records which were made prior to the date of repeal of an exemption would be made public unless specifically closed by an act of the Legislature. In deciding whether to close such records, the Legislature would consider the damage or loss which would occur, of the type specified in 2 and 3 immediately above, if the records became public.

Legislation which created an exemption which was scheduled for repeal in the year of, or the year following the year of, enactment would not be reviewed and repealed until the next review cycle for that title. Exemptions which were created or revived and reenacted would contain uniform language which stated that the exemption was from ch. 119 or s. 286.011, F.S., and provide for maximum public access consistent with the exemption. In addition, a statement that "This exemption is subject to the 'Open Government Sunset Review Act' in accordance with s. 119.14" would be included when the exemption was reenacted. In the year prior to the 1995 regular session, the Legislature would consider the necessity of conducting further reviews. Finally, express sovereign immunity would be given from suits or liability for repeals or revival and reenactment of exemptions.

REVISED: _____

BILL NO. PCB 4

DATE: April 23, 1985

Page 3

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

The Legislature will incur significant costs for implementation of the existing law especially at the committee staff level. Since reviews of exemptions are not to occur until the 1985 interim, the impact of these costs has not yet occurred. The amount of staff time and resources should be reduced by the proposed changes because of the clarifying language. The Division of Statutory Revision may find it necessary to hire an additional attorney to conduct the identification and certification process. Substantive committees may also require additional staff to conduct reviews. The amount of these costs are not readily determinable.

III. COMMENTS:

The existing law, by grouping repeals by chapter, divides subject matter between 2 years in many instances and also malapportions the workload of reviewing exemptions for the same reason.

The review criteria in the current law lacks clarity and fails to define "exemption," thereby creating problems with their identification. This may lead to inconsistencies in the review process.

The present law does not speak to the effect of the repeal of exemptions on past records.

The present law includes exemptions contained in special or local laws, thereby necessitating a manual examination of such laws from 1909 to the year of scheduled repeal.

The present law does not exempt judicial exemptions, thereby creating a potential separation of powers problem.

The law appears to apply to the Legislature, which may create a conflict with the Senate and House rules.

IV. AMENDMENTS:

None

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BILL NO. CS/SB 1320
Page 1

Series 12 Carton 1537

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Smawley</u>	Swindell <i>PTS</i>	1. <u>GO</u>	Fav/CS
2. _____	_____	2. <u>RC</u>	_____
3. _____	_____	3. _____	_____

SUBJECT:

Open Government Sunset
Review Act

BILL NO. AND SPONSOR:

CS/SB 1320 by
Governmental Operations

I. SUMMARY:

A. Present Situation:

Sections 8 and 9 of ch. 84-298, L.O.F., created the "Open Government Sunset Review Act" which is now codified as ss. 119.14 and 286.0111, F.S. The act repeals exemptions to the Public Records Act (ch. 119, F.S.) and Public Meetings Law (s. 286.011, F.S.) over the 10-year span 1986 through 1995 by grouping the chapters 1-99, 100-199, etc.

In reviewing exemptions prior to the scheduled repeal, the Legislature is to consider each exemption in light of its nature and scope, rationale, purpose or justification, nature and weight in light of the alleged compelling justification for maintaining the exemption, and the balance between the policy of open government and the compelling justification advanced for preserving the exemption. Certain exemptions applicable to the Ethics and the Elections Commission are exempted from the act. If the Legislature does not reenact exemptions to the Public Records Act and Public Meetings Law prior to their year of scheduled repeal, the exemptions will sunset on October 1 of the given year. Exemptions are neither identified nor defined in the act. No legislative intent is explicitly set forth in the present law.

B. Effect of Proposed Changes:

The bill would amend the Open Government Sunset Review Act to provide legislative intent that there is a strong public policy of open government and that exemptions would be maintained only if the exempted record or meeting is of a sensitive personal nature concerning individuals, is necessary for the effective and efficient administration of a governmental program, or affects confidential information concerning an entity. Further, the bill would provide that the public has a right of access to government records and meetings unless the criteria for restricting access contained in the bill is met. The bill would also require the Legislature to consider the criteria before enacting future exemptions.

The bill would alter the schedule of the repeal of exemptions. Instead of repeals being grouped by chapters of the statutes, they would be grouped by titles of the Florida Statutes, i.e., by subject. The schedule of repeals would be from October 1, 1986 through October 1, 1995.

The Division of Statutory Revision of the Joint Legislative Management Committee would certify to the President of the Senate and the Speaker of the House of Representatives, by August 1 of each year, the language and statutory citation of each exemption scheduled for repeal on October 1 of the

REVISED: _____

BILL NO. CS/SB 1320

DATE: May 14, 1985

Page 2

following year which met the criteria of an exemption as defined in the act. Any exemption which was not certified would not be subject to legislative review and repeal under the act, unless it was improperly omitted, in which case it would be reviewed the following year.

An exemption would be defined as, "A provision of the Florida Statutes which creates an exception to ss. 119.01, 119.07(1), or 286.011, and which applies to the executive branch of state government, or to local government, but shall not include any provision of a special or local law." Exemptions required by federal law would not be subject to repeal under the act.

The Legislature would be required to consider, as part of the review process, the following:

- 1) What specific records or meetings are affected by the exemption?
- 2) Whom does the exemption uniquely affect?
- 3) What is the identifiable public purpose or goal of the exemption?
- 4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Exemptions would be maintained only if they served an identifiable public purpose. Such a purpose would be served when the exemption met one of the following purposes and this purpose is demonstrated by legislative review, in connection with the exemption, to override the strong public policy of open government:

- 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, and its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or jeopardize the safety of such individuals; or
- 3) Protects information of a confidential nature concerning entities, i.e., a trade secret, and its release would impair a business advantage.

Records which were made prior to the date of repeal of an exemption would be made public unless specifically closed by an act of the Legislature. In deciding whether to close such records, the Legislature would consider the damage or loss which would occur, of the type specified in 2 and 3 immediately above, if the records became public.

Legislation which created an exemption which was scheduled for repeal in the year of, or the year following the year of, enactment would not be reviewed and repealed until the next review cycle for that title. Exemptions which were created or revived and reenacted would contain uniform language which stated that the exemption was from ch. 119 or s. 286.011, F.S., and provide for maximum public access consistent with the exemption. In addition, a statement that "This exemption is subject to the 'Open Government Sunset Review Act' in accordance with s. 119.14" would be included when the exemption

was reenacted. In the year prior to the 1995 regular session, the Legislature would consider the necessity of conducting further reviews. Finally, express sovereign immunity would be given from suits or liability for repeals or revival and reenactment of exemptions.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

The Legislature will incur significant costs for implementation of the existing law especially at the committee staff level. Since reviews of exemptions are not to occur until the 1985 interim, the impact of these costs has not yet occurred. The amount of staff time and resources should be reduced by the proposed changes because of the clarifying language. The Division of Statutory Revision may find it necessary to hire an additional attorney to conduct the identification and certification process. Substantive committees may also require additional staff to conduct reviews. The amount of these costs are not readily determinable.

III. COMMENTS:

The existing law, by grouping repeals by chapter, divides subject matter between 2 years in many instances and also malapportions the workload of reviewing exemptions for the same reason.

The review criteria in the current law lacks clarity and fails to define "exemption," thereby creating problems with their identification. This may lead to inconsistencies in the review process.

The present law does not speak to the effect of the repeal of exemptions on past records.

The present law includes exemptions contained in special or local laws, thereby necessitating a manual examination of such laws from 1909 to the year of scheduled repeal.

The present law does not exempt judicial exemptions, thereby creating a potential separation of powers problem.

The law appears to apply to the Legislature, which may create a conflict with the Senate and House rules.

IV. AMENDMENTS:

None

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 1320

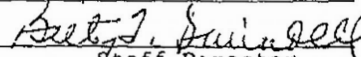
Provides that the criteria in the act, when applied to an exemption under review, must be significant enough to override the legislative finding of the strong public policy of open government.

Provides that the failure of the Division of Statutory Revision to correctly certify an exemption in the proper year will result in the review of the exemption the following year.

Provides that the identifiable public purpose of an exemption is served when the legislative review demonstrates that such purpose overrides the strong public policy of open government.

Committee on

Governmental Operations


Staff Director

SENATE INFORMATION SERVICES
ROOM 2, EXECUTIVE OFFICES

JUN 0 4 1985

GAINESVILLE SUN

(C) O P Y

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Bag this turkey, quick

If Gov. Bob Graham is looking for some easy legislative turkeys to kill following the just-completed session, he should consider the easy target presented by a bill that would considerably weaken the state's public records and open meetings laws.

As it was originally proposed, the bill was supposed to tighten procedures in the Open Government Sunset Review Act which became law last year. That act requires the Legislature to review all exemptions to the state's public records and open meeting laws adopted over a 10-year period and re-enact them, or they automatically are sunsetted.

However, the bill as it was approved by a 113-0 vote in the House and 35-0 vote in the Senate, had been extensively amended in such a way as to weaken what it would take to re-enact any exemption. For example, under current law, exemptions can be revived only if there is a compelling interest by the Legislature. As stated in the revision, an exemption can be re-enacted if there is an identifiable public purpose. Also, instead of demonstrating a compelling interest to re-enact an exemption, the

Legislature need only consider the exemption.

In those two instances, it is the degree of consideration and proof that is being tampered with when the Legislature decides what is subject to openness and what isn't. But another amendment states that once an exemption to public records or open government laws is done away with, the past records are closed to the public unless the Legislature approves otherwise. That is simply defacto secrecy and flies in the face of Florida's reputation of being one of the most open states in the nation.

Barry Richard, attorney and lobbyist with the Florida Press Association and the Florida Society of Newspaper Editors, sounded downright mild-mannered when he said "I'm disappointed" in reaction to passage of the bill. "I don't think it's a terrible bill. At least we still have a sunset bill."

We suggest Richard was being too kind, that the bill is sufficiently bad to signal use of the governor's veto pen to keep it out of Florida's statute book.

Bag this turkey quickly, governor. The people of Florida will appreciate it.

5B 1320	
Senate Gov. Ops. Committee DATE REC'D	
JUN 5 1985	
Action	File

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PCB 04

04-29-85

CHAPTER 84-298, LAWS OF FLORIDA, CONTAINS THE "OPEN GOVERNMENT SUNSET REVIEW ACT" AND IS NOW CODIFIED INTO SS. 119.14 AND 286.0111, F.S. ONE OF OUR INTERIM PROJECTS, ASSIGNED BY THE PRESIDENT, WAS TO REVIEW THE ACT AND MAKE RECOMMENDATIONS FOR ITS IMPLEMENTATION. THE ACT REPEALS EXEMPTIONS TO THE PUBLIC RECORDS ACT AND PUBLIC MEETINGS LAW OVER THE 10-YEAR PERIOD FROM 1986-1995, AND EACH 10-YEAR PERIOD THEREAFTER. THE SCHEDULE OF REVIEW IS BY CHAPTER BEGINNING WITH CHS. 1-99.

THE LEGISLATIVE REVIEW OF EXEMPTIONS IS FOCUSED UPON DETERMINING WHETHER AN EXEMPTION IS COMPELLED BY THE FOLLOWING CRITERIA:

1. THE NATURE AND SCOPE OF THE EXEMPTION, IN THEORY AND IN PRACTICE;

2. THE RATIONALE, PURPOSE, OR JUSTIFICATION FOR THE EXEMPTION;

3. THE NATURE AND WEIGHT OF THE ALLEGED COMPELLING INTEREST IN
MAINTAINING THE EXEMPTION; AND

4. THE BALANCE BETWEEN THE POLICY OF OPEN GOVERNMENT AS A MEANS
OF BUILDING PUBLIC CONFIDENCE AND AS A TOOL OF ACCOUNTABILITY, AND THE
ALLEGED COMPELLING JUSTIFICATION, IF ANY, IN THE EXISTENCE OF THE
EXEMPTION.

ALTHOUGH THE ACT REPEALS "EXEMPTIONS," THAT TERM IS NOT DEFINED IN THE
ACT. IN ADDITION, EXEMPTIONS ARE NOT IDENTIFIED IN THE ACT. AS A
CONSEQUENCE, EACH YEAR A DETERMINATION MUST BE MADE WITH REGARD TO
WHAT IS BEING REPEALED, THAT IS, EXEMPTIONS MUST BE "IDENTIFIED."

AS AN EXAMPLE OF THE DIFFICULTIES PRESENTED BY THE PRESENT LAW WITH
RESPECT TO IDENTIFICATION, I INVITE YOUR ATTENTION TO PART II OF CH.
39, F.S., WHICH DEALS WITH THE COURT PROCEDURES RELATING TO JUVENILE
DELINQUENCY. SECTION 39.12(4), F.S., PROVIDES THAT ALL INFORMATION
OBTAINED PURSUANT TO THE CHAPTER BY ANY JUDGE, EMPLOYEE OF THE COURT,

PCB 04

04-29-85

SHOULD THE ACT BE LIBERALLY CONSTRUED BY THE LEGISLATURE TO INCLUDE GENERAL ACTS OF LOCAL APPLICATION, A MANUAL SEARCH OF EXEMPTIONS MUST EXTEND THROUGH THE LAWS OF FLORIDA AS FAR BACK AS 1909 WHEN THE GENERAL STATE POLICY ON PUBLIC RECORDS WAS FIRST ADOPTED.

ANOTHER THING, BECAUSE THERE IS NO DEFINITION OF "EXEMPTION" FOR THE PURPOSES OF THIS ACT, IT ENCOMPASSES ALL EXEMPTIONS IN THE STATUTES AND INCLUDES THOSE AFFECTING THE JUDICIAL BRANCH AND THOSE WHICH ARE REQUIRED BY FEDERAL LAW.

AS YOU KNOW, THE FLORIDA CONSTITUTION SAYS IN SECTION 3, ARTICLE II THAT NO PERSON BELONGING TO 1 BRANCH OF GOVERNMENT SHALL EXERCISE ANY POWERS PERTAINING TO EITHER OF THE OTHER BRANCHES UNLESS THIS IS EXPRESSLY PROVIDED. THERE HAVE BEEN SEVERAL NOTABLE CASES ADDRESSING THE LEGISLATURE'S RIGHT TO DELVE IN PROCEDURAL MATTERS OF THE JUDICIARY, PARTICULARLY WITH RESPECT TO THE PUBLIC RECORDS LAWS, AND DISPOSITION OF CERTAIN RECORDS. SO WHEN EXEMPTIONS CONCERNING THE

JUDICIAL BRANCH ARE ENCOUNTERED, GREAT CARE MUST BE TAKEN LEST WE UNWITTINGLY VIOLATE THE SEPARATION OF POWERS DOCTRINE.

A LEGISLATIVE REVIEW OF FEDERAL EXEMPTIONS WOULD BE MEANINGLESS AS PRIMACY IN THESE CASES RESTS WITH THE FEDERAL AGENCY AND ITS REQUIREMENTS. ALSO, THE RIGHT OF PRIVACY, FOR INSTANCE, SEEMS TO HAVE A MORE PROTECTED STATUS IN FEDERAL COURTS AN ANOTHER IN THE STATE COURTS OF FLORIDA. THEREFORE, IF CERTAIN EXEMPTIONS WERE REPEALED, THEY WOULD BE PRIME SUBJECTS FOR CHALLENGE AS BEING IN VIOLATION OF THE DISCLOSURAL RIGHT TO PRIVACY WHICH EXISTS IN OUR FEDERAL CIRCUIT.

THERE IS A QUESTION AS TO WHEN AND HOW TO REVIEW THE MULTIPLE CROSS REFERENCES OF EXEMPTIONS SCATTERED THROUGHOUT THE STATUTES. FOR EXAMPLE, S. 119.07 SPECIFICALLY EXEMPTS ALL PUBLIC RECORDS REFERRED TO IN SS. 119.22, 228.093, 634.29, AND A NUMBER OF OTHER SECTIONS. INDIVIDUALLY, SUCH SECTIONS ALSO NOTE THEIR EXEMPTION FROM THE PUBLIC RECORDS LAW. SO . WILL THE EXEMPTIONS BE REVIEWED WHEN CHAPTER 119 IS SCHEDULED FOR REVIEW IN 1987, OR WILL THEY BE REVIEWED DURING

THE TIME FRAMES ESTABLISHED IN THE ACT . . . OR WILL THEY BE REVIEWED TWICE IN 10 YEARS? THE BLANKET SCHEDULE SEEMS TO INDICATE THAT EACH TIME AN EXEMPTION IS LISTED IN THE STATUTES, IT IS REPEALED AND MUST BE REVIEWED.

IF YOU CAN STAND TO HEAR ONE MORE PROBLEM, I WOULD TELL YOU THAT THERE IS NO DEFINITE COUNT OF EXEMPTIONS TO THE PUBLIC RECORDS LAWS . . . THE ORIGINAL HOUSE DRAFT OF THE OPEN GOVERNMENT SUNSET LAW ITEMIZED 224 EXEMPTIONS; THE 1984 ATTORNEY GENERAL'S OPEN GOVERNMENT HANDBOOK REFLECTS 270 EXEMPTIONS; AND A COUNT BY US IN 1983, INDICATED 241 SECTIONS WITH EXEMPTIONS. ABOUT 12 NEW EXEMPTIONS WERE ADDED DURING THE 1984 SESSION, 3 OF WHICH WERE IN THE BILL CREATING THE OPEN GOVERNMENT SUNSET REVIEW LAW. WHILE WE DON'T KNOW THE NUMBER OF EXEMPTIONS, WE DO KNOW THAT IN BREAKING THE REPEAL SCHEDULE INTO SEGMENTS OF 100 CHAPTERS OF THE STATUTES A YEAR, THERE WILL BE TIMES WHEN A TITLE IS DIVIDED IN A WAY THAT MAY CAUSE CONFUSION. FOR EXAMPLE, THE FIRST YEAR'S REPEAL SPLITS TITLE 4 RELATING TO ELECTORS

AND ELECTIONS. THE 1987 REPEAL DIVIDES TITLE 14 RELATING TO TAXATION AND FINANCE INTO 8 CHAPTERS OF THE TITLE THE FIRST YEAR AND 21 CHAPTERS IN 1988.

BASED UPON THESE FINDINGS, IT IS CONCLUDED THAT THE SYSTEM OF REVIEW CALLED FOR IN PRESENT LAW IS UNWORKABLE. THE GOAL OF REVIEWING PUBLIC RECORDS AND MEETINGS EXEMPTIONS IS A WORTHY ONE AND WE RECOMMEND THAT THE LAW BE AMENDED TO PROVIDE:

1. THAT EXEMPTIONS BE MAINTAINED ONLY IF THE RECORD OR MEETING IS OF A SENSITIVE, PERSONAL NATURE CONCERNING INDIVIDUALS, THE EXEMPTION IS NECESSARY FOR THE EFFECTIVE AND EFFICIENT ADMINISTRATION OF A GOVERNMENTAL PROGRAM, OR THE EXEMPTION CONCERNS CONFIDENTIAL INFORMATION RELATING TO AN ENTITY AND ITS PUBLIC AVAILABILITY WOULD ADVERSELY AFFECT A BUSINESS ADVANTAGE.

2. IN THE YEAR OF REPEAL BY AUGUST 1, THE DIVISION OF STATUTORY REVISION OF THE JOINT LEGISLATIVE MANAGEMENT COMMITTEE SHALL CERTIFY

TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES THE EXACT LANGUAGE AND STATUTORY CITATION OF EACH EXEMPTION WHICH MEETS THE CRITERIA CONTAINED IN THE ACT. ANY EXEMPTION NOT SO IDENTIFIED SHALL NOT BE REVIEWED AND SHALL NOT BE SUBJECT TO REPEAL UNDER THE ACT.

3. AN EXEMPTION SHALL BE DEFINED AS A PROVISION OF THE FLORIDA STATUTES WHICH CREATES AN EXCEPTION TO SS. 119.01, 119.07(1), OR 286.011, F.S., (PUBLIC RECORDS AND PUBLIC MEETINGS LAWS), AND WHICH APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

4. NO EXEMPTION WHICH IS MANDATED BY FEDERAL LAW SHALL BE REVIEWED.

5. THE LEGISLATURE SHALL REVIEW EXEMPTIONS GROUPED BY TITLE AND AT 10-YEAR INTERVALS THEREAFTER.

6. THE REVIEW PROCESS SHALL INCLUDE THE SPECIFIC RECORDS OR MEETINGS AFFECTED BY THE EXEMPTION; THE PERSON OR ENTITY UNIQUELY AFFECTED BY

THE EXEMPTION; THE IDENTIFIABLE PUBLIC PURPOSE OR GOAL; AND WHETHER THE INFORMATION PROTECTED BY THE EXEMPTION CAN BE READILY OBTAINED BY ALTERNATIVE MEANS

7. AN EXEMPTION SHALL BE MAINTAINED ONLY IF IT SERVES AN IDENTIFIABLE PUBLIC PURPOSE. AN IDENTIFIABLE PUBLIC PURPOSE IS SERVED WHEN THE EXEMPTION:

- A. ALLOWS THE STATE OR ITS POLITICAL SUBDIVISIONS TO EFFECTIVELY AND EFFICIENTLY ADMINISTER A GOVERNMENTAL PROGRAM, WHICH ADMINISTRATION WOULD BE SIGNIFICANTLY IMPAIRED WITHOUT THE EXEMPTION, OR
- B. PROTECTS INFORMATION OF A SENSITIVE PERSONAL NATURE CONCERNING INDIVIDUALS, AND ITS RELEASE WOULD BE DEFAMATORY TO SUCH INDIVIDUALS OR CAUSE UNWARRANTED DAMAGE TO THE GOOD NAME OR REPUTATION OF SUCH INDIVIDUALS, OR ITS RELEASE WOULD JEOPARDIZE THE SAFETY OF SUCH INDIVIDUALS, OR
- C. 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, AND ITS DISCLOSURE WOULD INJURE THE AFFECTED ENTITY IN THE MARKETPLACE.

8. THE REPEAL OF AN EXEMPTION SHALL OPEN RECORDS WHICH WERE MADE PRIOR TO THE EFFECTIVE DATE OF THE REPEAL, UNLESS THERE IS SPECIFIC LEGISLATIVE ACTION TO KEEP THE RECORDS CLOSED. IN DECIDING WHETHER

SUCH RECORDS SHALL BE MADE PUBLIC, THE LEGISLATURE SHALL CONSIDER THE DAMAGE OR LOSS TO PERSONS OR ENTITIES UNIQUELY AFFECTED BY THE EXEMPTION OF THE TYPE SPECIFIED IN B. OR C. ABOVE, IF THE RECORDS WERE MADE PUBLIC.

9. LEGISLATION WHICH CREATES AN EXEMPTION WHICH IS SCHEDULED FOR REPEAL IN THE YEAR IT IS ENACTED, OR THE YEAR FOLLOWING ENACTMENT, SHALL NOT BE SUBJECT TO THE ACT UNTIL THE NEXT REVIEW CYCLE FOR THAT TITLE.

10. NEW AND REENACTED EXEMPTIONS SHALL CONTAIN UNIFORM LANGUAGE WHICH CLEARLY STATES THE SECTION IN THE FLORIDA STATUTES FROM WHICH THEY ARE EXEMPT AND WHICH PROVIDES FOR THE MAXIMUM PUBLIC ACCESS TO THE MEETINGS AND RECORDS AS IS CONSISTENT WITH THE PURPOSE OF THE EXEMPTION. EXEMPTIONS SHALL CONTAIN THE STATEMENT: "THIS EXEMPTION IS SUBJECT TO THE 'OPEN GOVERNMENT SUNSET REVIEW ACT' IN ACCORDANCE WITH S. 119.14."

11. THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE IMMUNE FROM ANY SUIT WHICH WAS BROUGHT AS THE RESULT OF THE REPEAL OR REVIVAL AND REENACTMENT OF AN EXEMPTION PURSUANT TO THE ACT.

12. IN THE 1994 INTERIM THE LEGISLATURE SHALL ASSESS THE NEED FOR CONDUCTING FURTHER REVIEWS OF EXEMPTIONS.

PURPOSE. THIS WOULD BE:

1) THE EXEMPTION ALLOWS THE EFFECTIVE AND EFFICIENT ADMINISTRATION OF A GOVERNMENTAL PROGRAM.

FOR EXAMPLE, CONFIDENTIALITY OF APPRAISAL REPORTS PRIOR TO THE PURCHASE OF REAL PROPERTY.

2) THE EXEMPTION PROTECTS INFORMATION OF A SENSITIVE PERSONAL NATURE CONCERNING INDIVIDUALS AND ITS RELEASE WOULD CAUSE UNWARRANTED DAMAGE OR JEOPARDIZE THE SAFETY OF SUCH INDIVIDUALS. FOR EXAMPLE, ADOPTION RECORDS OR THOSE PERTAINING TO HOME ADDRESSES OF LAW ENFORCEMENT PERSONNEL.

3) THE EXEMPTION PROTECTS INFORMATION OF A CONFIDENTIAL NATURE CONCERNING ENTITIES WHICH IS USED TO FURTHER A BUSINESS ADVANTAGE AND ITS RELEASE WOULD INJURE THE ENTITY IN THE MARKETPLACE. FOR EXAMPLE, TRADE SECRETS.

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THERE IS NO IDENTIFICATION
PROCESS, THEREFORE EXEMPTIONS
COULD BE REPEALED BECAUSE
THEY WERE NOT IDENTIFIED.

AN IDENTIFICATION PROCESS BY
THE DIVISION OF STATUTORY
REVISION OF THE JOINT LEGISLATIVE
MANAGEMENT COMMITTEE WOULD BE
ESTABLISHED. THIS WOULD ASSIST IN
UNIFORM IDENTIFICATION OF EXEMPTIONS.

THE TERM "EXEMPTION" IS
NOT DEFINED. THIS COULD
INCLUDE EXEMPTIONS IN SPECIAL
OR LOCAL ACTS, AND EXEMPTIONS
WHICH APPLY TO THE LEGISLATIVE
AND JUDICIAL BRANCHES OF
GOVERNMENT.

"EXEMPTION" IS DEFINED SO AS
TO EXCLUDE REVIEW OF THOSE
IN SPECIAL OR LOCAL ACTS,
AND THOSE WHICH APPLY TO
THE LEGISLATIVE AND JUDICIAL
BRANCHES OF STATE GOVERNMENT.

THERE ARE NO CRITERIA RELATING
TO THE DISPOSITION OF EXISTING
RECORDS WHEN AN EXEMPTION IS
REPEALED.

THESE RECORDS WOULD BE
OPENED UNLESS OTHERWISE
PROVIDED BY LAW. CRITERIA
ARE ESTABLISHED.

GROUPS THE REPEALS BY CHAPTER
WHICH WILL DIVIDE SUBJECT
MATTER IN 7 OUT OF 10 YEARS OF
THE FIRST REVIEW CYCLE.

REPEALS ARE GROUPED BY
TITLE.

REVIEW SCHEDULE MALAPPORTIONS
WORKLOAD WITH A HIGH OF
37 REPEALS IN 1990 AND A
LOW OF 3 REVIEWS IN 1994.

TITLES ARE GROUPED SO AS
TO PROVIDE AN AVERAGE
OF 27 REVIEWS EACH YEAR
EXCEPT THE FIRST, WHICH WILL
BE APPROXIMATELY 10 FOR THE
PURPOSE OF GAINING EXPERIENCE UNDER
THE NEW LAW.

AMENDMENT #1 BY RULES AND CALENDAR

THIS IS A REQUEST BY THE JOINT LEGISLATIVE MANAGEMENT COMMITTEE,
DIVISION OF STATUTORY REVISION, TO CHANGE THE REQUIRED CERTIFICATION
DATE OF EXEMPTIONS FROM AUGUST 1 TO DECEMBER 1 FOR THE FIRST YEAR TO
ALLOW THEM SUFFICIENT TIME TO PERFORM CERTIFICATION.

ROBERTS, BAGGETT, LAFACE & RICHARD

ATTORNEYS AT LAW

101 EAST COLLEGE AVENUE

POST OFFICE DRAWER 1838

TALLAHASSEE, FLORIDA 32302

*True to
Powers + Row*

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DEPARTMENT OF STATE CABLE CAPLAW

R. A. GRAY BUILDING
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18/1537

October 2, 1985

Series _____

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OCT 3 1985

FRED W BAGGETT
MICHAEL J. CHERNIGA
STEPHEN A ECENIA
FRED F HARRIS, JR
RONALD C LAFACE
ROBERT R McDONALD
CYNTHIA B. MILLER
BARRY SCOTT RICHARD
B K ROBERTS

Honorable Barry Kutun, Chairman
Committee on Governmental Operations
Florida House of Representatives
404 House Office Building
Tallahassee, Florida 32301

HOUSE COMMITTEE ON
GOVERNMENTAL OPERATIONS

Dear Barry:

This is in response to your letter of September 3, 1985, inviting the Florida Press Association to make comments regarding sections of the Florida Statutes which are being reviewed pursuant to the Open Government Sunset Review Act. We have reviewed the sections and offer the following comments:

Section 14.22(3)(b)3 -- There are two exemptions in this section. The first provides, "The identify of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report." We have no objection to this exemption which is consistent with similar exemptions for other direct support organizations. However, we do object to the second exemption in the section which provides, "All records of the organization other than the auditor's report shall not be considered public records for the purposes of Chapter 119." While the direct support organizations are organized as corporations under Florida law, it is clear that they are organs of the state created pursuant to Section 14.22. There is no more reason why they should have a blanket exemption from the public records law than any other agency. If there is a need for exemptions regarding certain select records such as the names of donors, then that can be dealt with specifically. The concept of a blanket exemption runs contrary to the whole philosophy of the Sunset Review Act.

Section 17.076(6) -- This provision retains the privacy of salary and retirement benefits subject to direct deposit into the beneficiaries' private bank accounts. Since this is a private record in which the public has no interest once the money has been accrued, we see no reason why it should be a public record and have no objection to retention of the exemption.

Section 23.129 -- This provision provides a blanket exemption for "the Florida Mutual Aid Plan and the inventory of state and local law enforcement resources...." It is not readily apparent why confidentiality is required in this instance beyond what is provided in Section 119.07. In keeping with the policy of the Sunset Review Act we respectfully suggest that the burden should be upon the law enforcement community to establish to the Committee's satisfaction the need for the blanket exemption.

Honorable Barry Kutun
October 2, 1985
Page Two

Section 27.37 -- Subsection (6)(a) provides an exemption for, "all documents pertaining to criminal intelligence or investigations in the possession or control of the Counsel on Organized Crime". This exemption is clearly unnecessary since it is adequately provided for in Sections 119.011 and 119.07. In keeping with the policy of eliminating unnecessary exemptions and attempting to centralize exemptions in Chapter 119 whenever possible, we urge that this exemption be repealed.

We deeply appreciate the opportunity for this input.

Sincerely,


Barry Richard

BSR:cjm

cc: Mr. Dick Shelton
Mr. Robert Stiff

Senate Gov. Ops. Committee	
DATE REC'D	
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Action	File

REVISED: May 28, 1985

DATE: May 14, 1985

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BILL NO. CS/SB 1320

Page 1

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Table 32399-0250
Series 18 Carton 1532

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Smawley</u>	<u>Swindell</u>	1. <u>GO</u>	<u>Fav/CS</u>
2. <u>Alberdi</u>	<u>Alberdi</u>	2. <u>RC</u>	<u>Fav/7am.</u>
3. _____	_____	3. _____	_____

SUBJECT:

Open Government Sunset
Review Act

BILL NO. AND SPONSOR:

CS/SB 1320 by
Governmental Operations

I. SUMMARY:

A. Present Situation:

Sections 8 and 9 of ch. 84-298, L.O.F., created the "Open Government Sunset Review Act" which is now codified as ss. 119.14 and 286.0111, F.S. The act repeals exemptions to the Public Records Act (ch. 119, F.S.) and Public Meetings Law (s. 286.011, F.S.) over the 10-year span 1986 through 1995 by grouping the chapters 1-99, 100-199, etc.

In reviewing exemptions prior to the scheduled repeal, the Legislature is to consider each exemption in light of its nature and scope, rationale, purpose or justification, nature and weight in light of the alleged compelling justification for maintaining the exemption, and the balance between the policy of open government and the compelling justification advanced for preserving the exemption. Certain exemptions applicable to the Ethics and the Elections Commission are exempted from the act. If the Legislature does not reenact exemptions to the Public Records Act and Public Meetings Law prior to their year of scheduled repeal, the exemptions will sunset on October 1 of the given year. Exemptions are neither identified nor defined in the act. No legislative intent is explicitly set forth in the present law.

B. Effect of Proposed Changes:

The bill would amend the Open Government Sunset Review Act to provide legislative intent that there is a strong public policy of open government and that exemptions would be maintained only if the exempted record or meeting is of a sensitive personal nature concerning individuals, is necessary for the effective and efficient administration of a governmental program, or affects confidential information concerning an entity. Further, the bill would provide that the public has a right of access to government records and meetings unless the criteria for restricting access contained in the bill is met. The bill would also require the Legislature to consider the criteria before enacting future exemptions.

The bill would alter the schedule of the repeal of exemptions. Instead of repeals being grouped by chapters of the statutes, they would be grouped by titles of the Florida Statutes, i.e., by subject. The schedule of repeals would be from October 1, 1986 through October 1, 1995.

The Division of Statutory Revision of the Joint Legislative Management Committee would certify to the President of the Senate and the Speaker of the House of Representatives, by August 1 of each year, the language and statutory citation of each exemption scheduled for repeal on October 1 of the

following year which met the criteria of an exemption as defined in the act. Any exemption which was not certified would not be subject to legislative review and repeal under the act, unless it was improperly omitted, in which case it would be reviewed the following year.

An exemption would be defined as, "A provision of the Florida Statutes which creates an exception to ss. 119.01, 119.07(1), or 286.011, and which applies to the executive branch of state government, or to local government, but shall not include any provision of a special or local law." Exemptions required by federal law would not be subject to repeal under the act.

The Legislature would be required to consider, as part of the review process, the following:

- 1) What specific records or meetings are affected by the exemption?
- 2) Whom does the exemption uniquely affect?
- 3) What is the identifiable public purpose or goal of the exemption?
- 4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Exemptions would be maintained only if they served an identifiable public purpose. Such a purpose would be served when the exemption met one of the following purposes and this purpose is demonstrated by legislative review, in connection with the exemption, to override the strong public policy of open government:

- 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, and its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or jeopardize the safety of such individuals; or
- 3) Protects information of a confidential nature concerning entities, i.e., a trade secret, and its release would impair a business advantage.

Records which were made prior to the date of repeal of an exemption would be made public unless specifically closed by an act of the Legislature. In deciding whether to close such records, the Legislature would consider the damage or loss which would occur, of the type specified in 2 and 3 immediately above, if the records became public.

Legislation which created an exemption which was scheduled for repeal in the year of, or the year following the year of, enactment would not be reviewed and repealed until the next review cycle for that title. Exemptions which were created or revised and reenacted would contain uniform language which stated that the exemption was from ch. 119 or s. 286.011, F.S., and provide for maximum public access consistent with the exemption. In addition, a statement that "This exemption is subject to the 'Open Government Sunset Review Act' in accordance with s. 119.14" would be included when the exemption

was reenacted. In the year prior to the 1995 regular session, the Legislature would consider the necessity of conducting further reviews. Finally, express sovereign immunity would be given from suits or liability for repeals or revival and reenactment of exemptions.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

The Legislature will incur significant costs for implementation of the existing law especially at the committee staff level. Since reviews of exemptions are not to occur until the 1985 interim, the impact of these costs has not yet occurred. The amount of staff time and resources should be reduced by the proposed changes because of the clarifying language. The Division of Statutory Revision may find it necessary to hire an additional attorney to conduct the identification and certification process. Substantive committees may also require additional staff to conduct reviews. The amount of these costs are not readily determinable.

III. COMMENTS:

The existing law, by grouping repeals by chapter, divides subject matter between 2 years in many instances and also malapportions the workload of reviewing exemptions for the same reason.

The review criteria in the current law lacks clarity and fails to define "exemption," thereby creating problems with their identification. This may lead to inconsistencies in the review process.

The present law does not speak to the effect of the repeal of exemptions on past records.

The present law includes exemptions contained in special or local laws, thereby necessitating a manual examination of such laws from 1909 to the year of scheduled repeal.

The present law does not exempt judicial exemptions, thereby creating a potential separation of powers problem.

The law appears to apply to the Legislature, which may create a conflict with the Senate and House rules.

IV. AMENDMENTS:

Explanation of the 7 Rules Committee amendments to CS/SB 1320.

- 1) Technical amendment: Makes a grammatically parallel construction.
- 2) Conforms law to recent Florida Supreme Court case regarding the Court's power to determine legislative rules, which case effectively exempted the Legislature from Chapter 119 and s. 286.011, F.S., leaving the houses of the Legislature, by rule, to regulate their own records and meetings.
- 3) Requires Legislature to consider the stated criteria when deciding whether to continue an exemption; but keeps laws from being challenged as invalid just because the Legislature fails to use certain demonstrative words when applying the criteria.

REVISED: May 28, 1985

BILL NO. CS/SB 1320

DATE: May 14, 1985

Page 4

- 4) Reduces Statutory Revision's burden of stating every purpose for each exemption and protects validity of the law if the Legislature fails to use certain demonstrative words.
- 5) Provides a four-month delay period in starting the first year's review cycle.
- 6) Retains existing law unless otherwise specifically provided by the Legislature in the exemption review process. The expectation of confidentiality is retained for current confidential records that were confidential when made or created.
- 7) Savings clause - If the Legislature fails to use certain demonstrative words in re-enacting an exemption, as often can happen in the floor amendment process, that failure will not affect the validity of the law.

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 1
(reported favorably)

HB _____

The Committee on...Rules & Calendar.. recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 2, line 4,

after the word "individuals,"

insert:

or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

* Amendment No. 1, taken up by committee: Adopted XX*

* Offered by Sen. Gordon Failed *

Amendment No. Adopted Failed Date

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 2
(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

- 1
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Amendment

On page 2, line 10,

before the word "governmental"

insert:
executive branch

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

* Amendment No. 2, taken up by committee: Adopted XX*
* Offered by Sen. Gordon Failed *

Amendment No. Adopted Failed Date / /

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 3

(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 2, line 13,
and page 5, line 31, strike

the words "demonstrated by"

insert:
considered during

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 3, taken up by committee: Adopted XX*
* Offered by Sen. Gordon Failed *

(Amendment No. Adopted Failed Date)

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 4
(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 2, lines 18-20, strike

lines 18-20

and insert:

enacting future exemptions.

CODING: words stricken are deletions; words underlined are additions.

* Amendment No. 4, taken up by committee: Adopted XX*
* Offered by Sen. Gordon Failed *

Amendment No. Adopted Failed Date / /

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 5
(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 4, line 18, strike

the words "August 1 of each"

insert:

December 1, 1985 and by August 1 of each subsequent

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 5, taken up by committee. Adopted XX*

* Offered by Sen Gordon Failed *

Amendment No. Adopted Failed Date / /

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 6
(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 6, lines 20-22, strike

lines 20-22

and insert:

(c) No records made prior to the date of a repeal of an exemption under this act shall be made public unless otherwise provided by law. In

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 6, taken up by committee; Adopted XX*

* Offered by Sen. Gordon Failed *

Amendment No. Adopted Failed Date / /

SENATE COMMITTEE AMENDMENT

CS/SB 1320

No. 7

(reported favorably)

HB _____

The Committee on...Rules & Calendar...recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Amendment

On page 7, line 17,

after the period

insert:

No law shall be invalidated because of the
Legislature's failure to comply strictly with requirements of
the Open Government Sunset Review Act.

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 7, taken up by committee: Adopted XX*
* Offered by Sen. Gordon Failed *

Amendment No Adopted Failed Date / /

BILL ACTION REPORT

(C3-75 File with Secretary of Senate)

(S)(H) BILL NO. CS/SB 1320

Govt. Ops.

COMMITTEE ON RULES AND CALENDAR

DATE May 27, 1985

Date Reported May 28, 1985

TIME 12:00 - 1:30 p.m.

FINAL ACTION

PLACE Room 1, Capitol

X Favorably with 7 amendments

COPY

OTHER COMMITTEE REFERENCES.
(In order shown)

Favorably with Committee Substitute

Goes to Calendar

Unfavorably

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FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250

OTHER - Temporarily Passed

Series 18 Carton 1532

Reconsidered

Not Considered

THE VOTE WAS:

moved by Sen. Jennings

Gordon moved all amendments

FINAL BILL VOTE		SENATORS	Amendment #1 Gordon		Amendment #2		Amendment #3		Amendment #4		Amendment #5		
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	
FAVORABLE		BARRON	-----unanimously favorable-----										
BY VOICE		CASTOR											
VOTE		CRAWFORD											
		FOX											
		GORDON											
		HAIR											
		JENNINGS											
		LANGLEY											
		NEAL											
		STUART											
		THOMAS											
		WEINSTEIN											
		JENNE (CHAIRMAN)											
		TOTAL											
Aye	Nay	Aye		Nay		Aye		Nay		Aye		Nay	

(Attach additional page if necessary)

Lease Complete. The key sponsor appeared
A Senator appeared
Sponsor's aide appeared
Other appearance

(X) Govt. Ops. Chairman-Vogt
(X) Sen. Gordon
()
()

OPEN GOVERNMENT SUNSET REVIEW ACT
EXEMPTION ANALYSIS

BY Staff of
SENATE GOVERNMENTAL OPERATIONS COMMITTEE

COPY

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FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1537

ANALYST: _____

STAFF DIRECTOR: _____

SUBJECT:

Cite the section of the Florida Statutes where the exemption is located.
Cite the catchline of the section of the Statutes.

I. INTRODUCTION:

Use the following standard language to give a brief overview of the Open Government Sunset Review Act: The Open Government Sunset Review Act, ss. 119.14 and 286.0111, F.S., provides for the systematic repeal, over the 10-year period 1986-1995, of exemptions to the Public Records Act and Public Meetings Law. Each year exemptions in designated titles to chapters of the Florida Statutes certified to the presiding officers of each house by the Division of Statutory Revision of the Joint Legislative Management Committee are repealed unless revived and readopted after an orderly review process. This analysis addresses the repeal of _____, F.S., which makes (subject of exemption) exempt from the provisions of the public records law. These records are produced and maintained by the (agency or unit of government). The full text of the exemption as it appears in the Florida Statutes is as follows:

Set forth in bold face and inset for emphasis the precise language and statutory citation of the exemption as certified by the Division of Statutory Revision.

Use the following standard language to give the specific criteria relating to identifiable public purpose of exemptions and the repeal date of the specific exemption being analyzed:

The Open Government Sunset Review Act sets forth specific criteria for review of exemptions certified for repeal. In essence, these criteria mandate a determination as to whether the confidentiality of the records in _____, F.S., serve an identifiable public

purpose. Stated another way, the primary considerations in this review are whether the confidentiality of these records:

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, or
2. Protects information of a sensitive personal nature concerning individuals, and its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or its release would jeopardize the safety of such individuals, 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, and its disclosure would injure the affected entity in the marketplace.

If no identifiable public purpose is found, then the repeal scheduled for _____ (date of repeal) must be allowed to take effect. If there is an identifiable public purpose, the exemption must be evaluated to determine if it provides the maximum public access consistent with its purpose and legislation must be drafted to revive the exemption.

II. HISTORY:

Provide a brief history of the exemption and its evolution since its creation by the Legislature. Give the statutory context in which it appears.

III. PRESENT SITUATION:

Explain the role of the exemption as it relates to the program or unit of government to which it applies. Tell how the records are maintained and whether special security is provided. Also describe how the records are used and who else has access to them.

Cite not only what the law says about the exemption but the actual fact situation as explained by the agency.

IV. EFFECT OF EXEMPTION REPEAL:

This is a summary of the written response of the agency as it relates to the agency's position regarding the probable effect of repealing the exemption. The response is to questions designed to determine whether there is a public purpose in retaining the exemption that meets any criteria set out in the law. (See attached list of questions.)

V. COMMENTS:

Extract from the agency's written response the exact wording regarding their statement whether the exemption should be repealed, revived, or modified in any way.

Provide staff comments if appropriate. Do not make recommendations.

VI. ATTACHMENTS:

List pertinent attached documents such as agency's response to questions posed by staff, organizational chart, flow chart of process involved, budget documents, or excerpts from audit reports, as appropriate.

VII. COMMITTEE ACTION:

Following consideration of the exemption, the final action of the committee of reference will be recorded here.

NOTE: It is envisioned that this entire document will be kept as a permanent record of the exemption. If there is a bill to sustain the exemption introduced by the committee of reference, this analysis will travel with that bill to provide information along the way.

9/85-GO

FLORIDA SENATE
GOVERNMENTAL OPERATIONS COMMITTEE
303 SENATE OFFICE BUILDING
OPEN GOVERNMENT SUNSET REVIEW ACT

Q U E S T I O N N A I R E

1. Which unit of state government is responsible for the custody and maintenance of the documents pertaining to criminal intelligence or investigations, or records of meetings closed to the public, (hereinafter referred to as "confidential materials")?
2. Give a brief overview of the process involved in the preparation and use of the confidential materials.
3. Identify the specific records affected by the _____, F.S., exemption to the Public Records law.
4. Give a brief description of how these records are maintained by the records custodian.
5. Can the information contained in the exempt records be readily obtained from any other source, such as any federal, state, or local agencies, or private entities. If so, explain.
6. Are any persons or entities uniquely affected by the exemption, as opposed to the general public? If so, identify and explain.
7. Does the exemption allow the state to effectively and efficiently administer this program? If so, explain.
8. Would the administration of this program be significantly impaired without the exemption? If so, explain and document.
9. Does the exemption protect information of a sensitive personal nature concerning individuals? If so, explain and document.
10. Would the release of the information, contained in the exempt records, be defamatory, cause unwarranted damage to the good name or reputation or jeopardize the safety of the individual? If so, explain.

11. Does the exemption protect information of a confidential nature concerning entities? If so, explain.
12. Is the exemption required by Federal Law? If so, explain and give citation to United States Code or Code of Federal Regulations.
13. What is the intent or goal of the exemption?
14. Are there fiscal costs associated with keeping the exempt records confidential? If so, explain.
15. What is the agency's position on either repealing or reviving the exemption? Give justification based on the specific criteria set forth in ch. 85-301, L.O.F.
16. Name and title of person preparing response; date response prepared.

09/04/85