

1989

Session Law 89-184

Florida Senate & House of Representatives

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**H 292 GENERAL BILL/1ST ENG by Governmental Operations;
Martin (Similar S-1394, Compare 1ST ENG/H 268)
Disabled Citizens/Registries; (OPEN GOVERNMENT SUNSET REVIEW)**
amends provision which provides exemption from public records requirements
for registries of disabled citizens maintained by local emergency management
agencies; saves such exemption from repeal; provides for future review & repeal.
Amends 252.355; repeals 252.355(4). Effective Date: 10/01/89.

02/13/89 HOUSE Prefiled
02/15/89 HOUSE Placed on Calendar
04/04/89 HOUSE Introduced, placed on Calendar -HJ 36
04/06/89 HOUSE Placed on Special Order Calendar; Read second time;
Amendments adopted -HJ 163
04/11/89 HOUSE Read third time; Passed as amended; YEAS 115 NAYS 0
-HJ 190
04/12/89 SENATE In Messages
04/19/89 SENATE Received, referred to Community Affairs -SJ 194
04/28/89 SENATE Extension of time granted Committee Community Affairs
05/12/89 SENATE Extension of time granted Committee Community Affairs
05/24/89 SENATE Withdrawn from Community Affairs; Substituted for SB
1394 -SJ 421; Passed as amended; YEAS 37 NAYS 1
-SJ 422
05/25/89 HOUSE In Messages
05/29/89 HOUSE Refused to concur, requested Senate to recede -HJ 705
05/29/89 SENATE In Messages; Receded; Passed; YEAS 31 NAYS 0 -SJ 503
05/29/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/28/89 Approved by Governor; Chapter No. 89-184

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0292-f.go
DATE: June 30, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 292 (PCB GO 89-12)
RELATING TO: Confidentiality of Registry of Disabled Persons
SPONSOR(S): Committee on Governmental Operations and Martin
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: June 28, 1989
CHAPTER #: 89-184, Laws of Florida
COMPANION BILL(S): CS/SB 1394 (similar)
OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SHORT SUMMARY:

Section 252.355, Florida Statutes, provides for the registration of disabled persons needing evacuation assistance in case of emergency. These registries include names, addresses, and other personal information (i.e., specific handicap). These registries are currently exempt from the public records law.

The information contained in these registries is of a personal and sensitive nature and is voluntarily submitted by disabled persons. If this information were available for public knowledge, it could possibly impair the efficient and effective administration of the emergency management program because these persons might no longer submit this information voluntarily, making the program virtually ineffective. In addition, because the information obtained in these lists specifies the person's disability, the availability of this information to the public could jeopardize the safety of these individuals.

This bill reenacts the exemption for these registries from the public records law.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified

at s. 119.01, Florida Statutes:

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in s. 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that s., but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

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

Second, the law requires that the exemption will be maintained only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; or
- protect information of a sensitive personal nature concerning individuals if 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

- protect information of a confidential nature concerning entities which include formulas, patterns, devices, 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 if its disclosure would injure the affected entity in the marketplace.

The review included in this report examines the following exemption(s):

s. 252.355, Florida Statutes

B. PRESENT SITUATION:

Section 252.355, Florida Statutes, created in 1980 and later amended in 1983, requires each local emergency management agency in the state to provide for the voluntary registration of disabled citizens needing assistance when evacuating their homes in case of an emergency. These citizens are notified annually of this voluntary registration service by the electric utilities throughout the state, and the list is updated on an annual basis.

These records are maintained by the local emergency management agencies and contain information on each disabled person's medical condition and disability.

A survey was sent to several emergency management administrators and the Department of Community Affairs in order to assess the need for the continuation of this exemption. Most respondents indicated that the repeal of the exemption would impede the efficient and effective administration of the program. In addition, repeal would leave unprotected information of a sensitive and personal nature which could jeopardize the safety of an individual if released to the public.

The respondents indicated that persons might not register if they thought the information were available to the public. Their failure to register would impair rescue efforts when local officials have to respond to last-minute calls for assistance.

The respondents also indicated that if the list were open to the public, persons listed as invalid, bedridden, blind, or wheelchair-bound would be easy targets for criminals. The repeal of the exemption would thus jeopardize the safety of disabled citizens.

The exemption serves an identifiable public purpose as required by the Open Government Sunset Review Act, s. 119.14, Florida Statutes, in that the release of this information would impair the efficient and effective administration of the emergency management program and jeopardize the safety of individuals.

Therefore, it is recommended that this exemption be reenacted.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records exemption provided by s. 252.355, Florida Statutes, effective October 1, 1989, providing that the registry of disabled citizens maintained by the local emergency management agencies remain confidential. The bill also makes the s. subject to further review under the Open Government Sunset Review Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Appropriations Consequences:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

Not applicable.

IV. COMMENTS:

None.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Hunter L. Barnett

Staff Director:



Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Bradley DB</u>	<u>Buck DB</u>	1. <u>CA</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Registries of Disabled Persons

BILL NO. AND SPONSOR:

SB 1394 by
Community Affairs

I. SUMMARY:

A. Present Situation:

Section 252.355, Florida Statutes, was created in 1980 with the passage of HB 114 (Ch.80-191, Laws of Florida). This section requires each local emergency management agency in the state to provide for the voluntary registration of disabled citizens within its jurisdiction. The purpose of the registration is to plan for and carry out the evacuation of disabled persons in the event of a natural or accidental disaster. Each local registry is to be updated annually and electric utility companies must assist in this effort by annually notifying their residential customers of the voluntary registration program. Any advertising required in the development of the registry must, whenever possible, be done through radio public service announcements in order to limit local government expenditures. Registries of disabled citizens are exempt from the provisions of ch.119, F.S., which require public records to be open for inspection.

Based on a survey of a sample of county emergency management directors, the registries contain from 13 names (Highlands County) to 1,706 names (Orange County). Persons included in the registry may have any type of mental, physical, or medical disability and the means of evacuation (bus, van with wheelchair lift, or ambulance) and the type of emergency shelter planned would vary with the person's situation. Some communities use means of developing their registries in addition to the notices sent via the utility companies. These include community outreach through social and medical service providers and updating the registry by annual telephone survey prior to the hurricane season. Regardless of the method of assembling the registry, the basic data are generally similar and include the person's name, address, and phone, the nature of the disability, and the type of assistance needed. The post-paid card used by the Monroe County Civil Defense Office is attached to this analysis.

Staff of the local emergency management or civil defense office maintain the registry as a card file, or other form of written document, or on computer, including the new Emergency Information System (EIS) in use in approximately 12 counties. Communities using the EIS have the capacity to call up a map of a sector of the county and print out a listing of all disabled persons in that area. The degree of security of the records varies since some registries are simply kept on file at the emergency management office and others are maintained in a computer system with limited access. According to survey respondents, requests by the general public for this confidential information are never made. The data on disabled persons is not available through any other source. Staff of local emergency management agencies and the Department of Community Affairs agree that the confidentiality of the

personal data contained in the registries of disabled persons is essential. Without the confidentiality provided through the public records law exemption, many disabled persons would not voluntarily register for evacuation assistance. Public access to the registry would not only make disabled citizens vulnerable to victimization by criminals, but could lead to discrimination against certain categories of registrants, such as AIDS patients. If persons with special needs were unwilling to register with the emergency management agencies, evacuation programs designed to meet their needs could not be effectively implemented.

The exemption provisions of s.252.355, F.S., are scheduled for repeal on October 1, 1989, pursuant to the Open Government Sunset Review Act.

B. Effect of Proposed Changes:

Section 252.355, F.S., is revived and readopted with amendments to the exemption language, in accordance with the requirements of s.119.14(4)(e), F.S., to include standard language regarding the applicability of the Open Government Sunset Review Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

The exemption from the open records law for local emergency management agencies' registries of disabled persons encourages disabled persons to provide information necessary to plan for and carry out evacuation during emergencies. If the exemption were to be repealed, disabled persons would be less likely to register due to fears of being victimized by criminals, being stigmatized as a result of their disability, and having their privacy infringed upon. Without the information on citizens' special needs, emergency management agencies would be unable to effectively assist in evacuating these citizens.

The Open Government Sunset Review Act provides that an exemption may only be maintained if it serves an identifiable public purpose and that purpose is significant enough to override the strong public policy of open government. The exemption provided in s.252.355(4), F.S., meets two of the three purposes specified in s.119.14(4)(b), F.S., by allowing local emergency management agencies to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption, and by protecting information of a sensitive personal nature concerning individuals, the release of which could be damaging to the reputation or could jeopardize the safety of such individuals. The protection of disabled citizens is significant enough to justify the exception to the public's right to continual, free access to government records.

IV. AMENDMENTS:

None.