

1 A bill to be entitled

2 An act relating to public records; amending s. 119.01,
3 F.S.; authorizing a person to request public records
4 at certain agency locations; prohibiting public funds
5 from being expended in payment of dues for private
6 entities unless certain records of such entities are
7 available for inspection and copying; amending s.
8 119.011, F.S.; defining the terms "confidential and
9 exempt" and "exempt" pursuant to statutory exemption;
10 amending s. 119.07, F.S.; providing that public
11 records requests need not be made in writing unless
12 required by law; requiring a records custodian to cite
13 such statute; limiting duplication costs of certain
14 records; amending s. 119.0701, F.S.; revising agency
15 contract requirements; requiring contractors to
16 contact agency records custodians and notify agencies
17 in certain circumstances; creating s. 119.0702, F.S.;
18 requiring agencies to provide appropriate public
19 records training to all employees; amending s. 119.11,
20 F.S.; requiring a complainant in public records
21 litigation to make a showing that the complainant
22 attempted to contact the agency; providing an
23 exception; amending s. 119.12, F.S.; providing that
24 reasonable costs of enforcement in public records
25 litigation include specified attorney fees; amending
26 ss. 257.35, 383.402, 409.2558, 943.031, and 943.0313,

27 F.S.; conforming cross-references; providing an
 28 effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Section 119.01, Florida Statutes, is amended to
 33 read:

34 119.01 General state policy on public records.—

35 (1) It is the policy of this state that all state, county,
 36 and municipal records are open for personal inspection and
 37 copying by any person. Providing access to public records is a
 38 duty of each agency.

39 (2) A person may make a request to inspect or copy a
 40 public record at an agency location open to receive government
 41 services and provide government services to the public. This
 42 subsection does not require that the public record be provided
 43 at the office at which the request is made.

44 (3)~~(2)~~(a) Automation of public records must not erode the
 45 right of access to those records. As each agency increases its
 46 use of and dependence on electronic recordkeeping, each agency
 47 must provide reasonable public access to records electronically
 48 maintained and must ensure that exempt or confidential records
 49 are not disclosed except as otherwise permitted by law.

50 (b) When designing or acquiring an electronic
 51 recordkeeping system, an agency must consider whether such
 52 system is capable of providing data in some common format such

53 as, but not limited to, the American Standard Code for
54 Information Interchange.

55 (c) An agency may not enter into a contract for the
56 creation or maintenance of a public records database if that
57 contract impairs the ability of the public to inspect or copy
58 the public records of the agency, including public records that
59 are online or stored in an electronic recordkeeping system used
60 by the agency.

61 (d) Subject to the restrictions of copyright and trade
62 secret laws and public records exemptions, agency use of
63 proprietary software must not diminish the right of the public
64 to inspect and copy a public record.

65 (e) Providing access to public records by remote
66 electronic means is an additional method of access that agencies
67 should strive to provide to the extent feasible. If an agency
68 provides access to public records by remote electronic means,
69 such access should be provided in the most cost-effective and
70 efficient manner available to the agency providing the
71 information.

72 (f) Each agency that maintains a public record in an
73 electronic recordkeeping system shall provide to any person,
74 pursuant to this chapter, a copy of any public record in that
75 system which is not exempted by law from public disclosure. An
76 agency must provide a copy of the record in the medium requested
77 if the agency maintains the record in that medium, and the
78 agency may charge a fee in accordance with this chapter. For the

79 purpose of satisfying a public records request, the fee to be
 80 charged by an agency if it elects to provide a copy of a public
 81 record in a medium not routinely used by the agency, or if it
 82 elects to compile information not routinely developed or
 83 maintained by the agency or that requires a substantial amount
 84 of manipulation or programming, must be in accordance with s.
 85 119.07(4).

86 (4) (a) (3) ~~If Public funds may not be are~~ expended by an
 87 agency in payment of dues or membership contributions to for any
 88 person, corporation, foundation, trust, association, group, or
 89 other organization unless the following, ~~all the financial,~~
 90 ~~business, and membership~~ records of such that person,
 91 corporation, foundation, trust, association, group, or other
 92 organization are open for inspection and copying:

93 1. All financial, business, and membership records that
 94 pertain to the agency from which or on whose behalf the dues
 95 payment or membership contribution is made.

96 2. Any other record that the person, corporation,
 97 foundation, trust, association, group, or other organization has
 98 shared publicly or has presented to or shared with its members
 99 at no cost other than the payment of dues or membership
 100 contributions.

101 (b) Information that is otherwise made confidential or
 102 exempt by state or federal law is not subject to the inspection
 103 and copying requirements of this subsection ~~which pertain to the~~
 104 ~~public agency are public records and subject to the provisions~~

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105 ~~of s. 119.07.~~

106 Section 2. Subsections (3) through (7) and subsections (8)
107 through (14) of section 119.011, Florida Statutes, are
108 renumbered as subsections (4) through (8) and subsections (10)
109 through (16), respectively, and new subsections (3) and (9) are
110 added to that section to read:

111 119.011 Definitions.—As used in this chapter, the term:

112 (3) "Confidential and exempt," pursuant to a specific
113 statutory exemption, means that a record or information is not
114 subject to inspection or copying by the public and may be
115 released only to those persons and entities designated in the
116 statutory exemption.

117 (9) "Exempt," pursuant to a specific statutory exemption,
118 means that a record or information is not subject to inspection
119 or copying by the public but may be disclosed or made available
120 for inspection or copying by the public at the discretion of a
121 custodian of public records if the custodian determines there is
122 a statutory or substantial policy need for disclosure.

123 Section 3. Paragraph (a) of subsection (1) and paragraph
124 (d) of subsection (4) of section 119.07, Florida Statutes, are
125 amended to read:

126 119.07 Inspection and copying of records; photographing
127 public records; fees; exemptions.—

128 (1) (a) Every person who has custody of a public record
129 shall permit the record to be inspected and copied by any person
130 desiring to do so, at any reasonable time, under reasonable

131 conditions, and under supervision by the custodian of the public
132 records. A public records request need not be made in writing
133 unless required by law. If a written request is required, the
134 custodian of the public record must provide the statutory
135 citation.

136 (4) The custodian of public records shall furnish a copy
137 or a certified copy of the record upon payment of the fee
138 prescribed by law. If a fee is not prescribed by law, the
139 following fees are authorized:

140 (d) If the nature or volume of public records requested to
141 be inspected or copied pursuant to this subsection is such as to
142 require extensive use of information technology resources or
143 extensive clerical or supervisory assistance by personnel of the
144 agency involved, or both, the agency may charge, in addition to
145 the actual cost of duplication, a special service charge, which
146 shall be reasonable and shall be based on the cost incurred for
147 such extensive use of information technology resources or the
148 labor cost of the personnel providing the service that is
149 actually incurred by the agency or attributable to the agency
150 for the clerical and supervisory assistance required, or both.
151 The cost of clerical or supervisory assistance shall be no
152 greater than the labor cost of the lowest-paid personnel capable
153 of providing such clerical or supervisory assistance and
154 excludes employer-paid health insurance premiums or other
155 employer-paid benefits.

156 Section 4. Subsection (2) of section 119.0701, Florida

157 Statutes, is amended to read:

158 119.0701 Contracts; public records.—

159 (2) In addition to other contract requirements provided by
 160 law, each ~~public agency~~ contract between a public agency and a
 161 contractor ~~for services~~ must include a provision that requires
 162 the contractor to ~~comply with public records laws, specifically~~
 163 ~~to~~:

164 (a) Keep and maintain public records that ordinarily and
 165 necessarily would be required by the public agency in order to
 166 perform the service.

167 (b) Provide the public with access to public records on
 168 the same terms and conditions that the public agency would
 169 provide the records and at a cost that does not exceed the cost
 170 provided in this chapter or as otherwise provided by law.

171 (c) Ensure that public records that are exempt or
 172 confidential and exempt from public records disclosure
 173 requirements are not disclosed except as authorized by law.

174 (d) Meet all requirements for retaining public records and
 175 transfer, at no cost, to the public agency all public records in
 176 possession of the contractor upon termination of the contract
 177 and destroy any duplicate public records that are exempt or
 178 confidential and exempt from public records disclosure
 179 requirements. All records stored electronically must be provided
 180 to the public agency in a format that is compatible with the
 181 information technology systems of the public agency.

182 (e) Consult the public agency's custodian of public

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183 records before denying a request to inspect or copy a record
184 held by the contractor.

185 (f) Notify the public agency if the contractor is served
186 with a civil action to enforce the provisions of this chapter.

187 Section 5. Section 119.0702, Florida Statutes, is created
188 to read:

189 119.0702 Training of agency employees.—Each agency must
190 provide appropriate training on the requirements of this chapter
191 to each employee according to the employee's duties.

192 Section 6. Subsections (1) through (4) of section 119.11,
193 Florida Statutes, are renumbered as subsections (2) through (5),
194 respectively, and a new subsection (1) is added to that section
195 to read:

196 119.11 Accelerated hearing; immediate compliance.—

197 (1) Before a civil action may be filed to enforce the
198 provisions of this chapter, the complainant must show that he or
199 she has attempted to contact the agency's custodian of public
200 records by telephone, e-mail, United States mail, or in-person
201 request using the contact information provided by the agency.

202 The complainant need not make this showing if the agency did not
203 make contact information for its custodian of public records
204 available by website, telephone, or in-person request at an
205 agency location open to receive government services and provide
206 government services to the public.

207 Section 7. Section 119.12, Florida Statutes, is amended to
208 read:

209 119.12 Attorney ~~Attorney's~~ fees.-

210 (1) If a civil action is filed against an agency to
 211 enforce the provisions of this chapter and ~~if~~ the court
 212 determines that such agency unlawfully refused to permit a
 213 public record to be inspected or copied, the court shall assess
 214 and award, against the agency responsible, the reasonable costs
 215 of enforcement ~~including reasonable attorneys' fees.~~

216 (2) Reasonable costs of enforcement include, but are not
 217 limited to, reasonable attorney fees, including reasonable
 218 attorney fees incurred in litigating entitlement to, and the
 219 determination or quantification of, attorney fees for the
 220 underlying civil action.

221 Section 8. Subsection (1) of section 257.35, Florida
 222 Statutes, is amended to read:

223 257.35 Florida State Archives.-

224 (1) There is created within the Division of Library and
 225 Information Services of the Department of State the Florida
 226 State Archives for the preservation of those public records, as
 227 defined in s. 119.011 ~~119.011(12)~~, manuscripts, and other
 228 archival material that have been determined by the division to
 229 have sufficient historical or other value to warrant their
 230 continued preservation and have been accepted by the division
 231 for deposit in its custody. It is the duty and responsibility of
 232 the division to:

233 (a) Organize and administer the Florida State Archives.

234 (b) Preserve and administer such records as shall be

235 transferred to its custody; accept, arrange, and preserve them,
236 according to approved archival practices; and permit them, at
237 reasonable times and under the supervision of the division, to
238 be inspected and copied.

239 (c) Assist the records and information management program
240 in the determination of retention values for records.

241 (d) Cooperate with and assist insofar as practicable state
242 institutions, departments, agencies, counties, municipalities,
243 and individuals engaged in activities in the field of state
244 archives, manuscripts, and history and accept from any person
245 any paper, book, record, or similar material which in the
246 judgment of the division warrants preservation in the state
247 archives.

248 (e) Provide a public research room where, under rules
249 established by the division, the materials in the state archives
250 may be studied.

251 (f) Conduct, promote, and encourage research in Florida
252 history, government, and culture and maintain a program of
253 information, assistance, coordination, and guidance for public
254 officials, educational institutions, libraries, the scholarly
255 community, and the general public engaged in such research.

256 (g) Cooperate with and, insofar as practicable, assist
257 agencies, libraries, institutions, and individuals in projects
258 designed to preserve original source materials relating to
259 Florida history, government, and culture and prepare and publish
260 handbooks, guides, indexes, and other literature directed toward

261 encouraging the preservation and use of the state's documentary
 262 resources.

263 (h) Encourage and initiate efforts to preserve, collect,
 264 process, transcribe, index, and research the oral history of
 265 Florida government.

266 (i) Assist and cooperate with the records and information
 267 management program in the training and information program
 268 described in s. 257.36(1)(g).

269 Section 9. Subsection (9) of section 383.402, Florida
 270 Statutes, is amended to read:

271 383.402 Child abuse death review; State Child Abuse Death
 272 Review Committee; local child abuse death review committees.—

273 (9) The State Child Abuse Death Review Committee or a
 274 local committee shall have access to all information of a law
 275 enforcement agency which is not the subject of an active
 276 investigation and which pertains to the review of the death of a
 277 child. A committee may not disclose any information that is not
 278 subject to public disclosure by the law enforcement agency, and
 279 active criminal intelligence information or criminal
 280 investigative information, as defined in s. 119.011 ~~119.011(3)~~,
 281 may not be made available for review or access under this
 282 section.

283 Section 10. Paragraph (a) of subsection (3) of section
 284 409.2558, Florida Statutes, is amended to read:

285 409.2558 Support distribution and disbursement.—

286 (3) UNDISTRIBUTABLE COLLECTIONS.—

287 (a) The department shall establish by rule the method for
 288 determining a collection or refund to be undistributable to the
 289 final intended recipient. Before determining a collection or
 290 refund to be undistributable, the department shall make
 291 reasonable efforts to locate persons to whom collections or
 292 refunds are owed so that payment can be made. Location efforts
 293 may include disclosure through a searchable database of the
 294 names of obligees, obligors, and depository account numbers on
 295 the Internet in compliance with the requirements of s.
 296 119.01(3)(a) ~~119.01(2)(a)~~.

297 Section 11. Paragraph (b) of subsection (9) of section
 298 943.031, Florida Statutes, is amended to read:

299 943.031 Florida Violent Crime and Drug Control Council.—

300 (9) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL MEETINGS
 301 AND RECORDS.—

302 (b) The Florida Violent Crime and Drug Control Council
 303 shall be considered a "criminal justice agency" within the
 304 definition of s. 119.011 ~~119.011(4)~~.

305 Section 12. Subsection (7) of section 943.0313, Florida
 306 Statutes, is amended to read:

307 943.0313 Domestic Security Oversight Council.—The
 308 Legislature finds that there exists a need to provide executive
 309 direction and leadership with respect to terrorism prevention,
 310 preparation, protection, response, and recovery efforts by state
 311 and local agencies in this state. In recognition of this need,
 312 the Domestic Security Oversight Council is hereby created. The

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313 council shall serve as an advisory council pursuant to s.
314 20.03(7) to provide guidance to the state's regional domestic
315 security task forces and other domestic security working groups
316 and to make recommendations to the Governor and the Legislature
317 regarding the expenditure of funds and allocation of resources
318 related to counter-terrorism and domestic security efforts.

319 (7) AGENCY DESIGNATION.—For purposes of this section, the
320 Domestic Security Oversight Council shall be considered a
321 criminal justice agency within the definition of s. 119.011
322 ~~119.011(4)~~.

323 Section 13. This act shall take effect July 1, 2014.