

1989

Session Law 89-018

Florida Senate & House of Representatives

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H 1531 GENERAL BILL/1ST ENG by Governmental Operations;
Martin (Similar S 184)
Libraries/Public Records Exemption; (OPEN GOVERNMENT SUNSET RE-
VIEW) amends provision which provides exemption from public records require-
ments for library registration & circulation records to save such exemption from
repeal on 10/01/89; provides for future review & repeal. Amends 257.261. Effec-
tive Date: 10/01/89.

03/28/89	HOUSE	Prefiled
04/04/89	HOUSE	Introduced, placed on Calendar -HJ 146
04/11/89	HOUSE	Placed on Special Order Calendar
04/12/89	HOUSE	Read second time; Amendment adopted -HJ 209
04/13/89	HOUSE	Read third time; Passed as amended; YEAS 115 NAYS 0 -HJ 217
04/19/89	SENATE	In Messages
04/27/89	SENATE	Received, referred to Governmental Operations -SJ 229
04/28/89	SENATE	Extension of time granted Committee Governmental Oper- ations
05/09/89	SENATE	Withdrawn from Governmental Operations; Substituted for SB 184; Passed; YEAS 36 NAYS 0 -SJ 286
05/10/89		Ordered enrolled
05/16/89		Signed by Officers and presented to Governor -HJ 504
05/22/89		Approved by Governor; Chapter No. <u>89-18</u> -HJ 600

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: h1531-f.go
DATE: May 30, 1989

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

BILL #: HB 1531 (PCB GO 89-8)

RELATING TO: Confidentiality of library registration and circulation records

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: May 22, 1989

CHAPTER #: 89-18, Laws of Florida

COMPANION BILL(S): SB 184 (similar)

OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SHORT SUMMARY:

Section 257.261, Florida Statutes, provides that all registration and circulation records of all public libraries, except statistical reports, be kept confidential and be released only in accordance with a judicial order.

The information protected by this exemption is of a sensitive personal nature concerning individuals. If released, this information could cause unwarranted damage to the good name or reputation of an individual.

This bill reenacts that exemption for these records 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 section, 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.

B. PRESENT SITUATION:

Section 257.261, Florida Statutes, requires that registration and circulation records of every public library be kept confidential and exempts such records from the public records law. It further provides that unless required by proper judicial order, no person shall make known in any manner any information contained in such records.

The term "registration records" includes any information that libraries require a patron to provide in order to become eligible to borrow books or other materials. The term "circulation records" includes all information relating to books and other materials loaned to any library patron.

The Division of Library Services, the Florida Library Association, and the Council of the American Library Association all strongly support reenactment of the exemption. The respondents believe that if the information were released, it could cause unwarranted damage to the good name or reputation of an individual.

The committee determined that the exemption serves an identifiable public purpose as required by the Open Government Sunset Review Act, s. 119.14, Florida Statutes, and therefore reenacted this exemption.

C. EFFECT OF PROPOSED CHANGES:

This act revives and readopts the public records exemption provided by s. 257.261, Florida Statutes, effective October 1, 1989, providing that library registration and circulation records remain confidential. The bill also makes the section subject to further review ten years later 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.

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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:

The issues addressed in this bill are not included in the State Comprehensive Plan.

IV. COMMENTS:

The American Library Association's Code of Ethics prohibits librarians from releasing circulation records. The Code of Ethics reads, "Librarians must protect each user's right to privacy with respect to information sought or received, and materials consulted, borrowed, or acquired."

The issues addressed in this bill are consistent with the Governmental Operations Committee's mission statement, specifically: "Review exemptions to public record and public meeting laws pursuant to the Open Government Sunset Review Act to determine whether the continued existence of each exemption is compelled by justifications strong enough to override Florida's strong public policy of open government."

The Issues Conference Policy Statements do not address open government exemptions.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Bill Barzee
Bill Barzee

Staff Director:

Barry Kling
Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Tinney</u> <i>et</i>	<u>Stengle</u> <i>MS</i>	1. <u>GO</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Open Government;
Public Library Registration
and Circulation Records

BILL NO. AND SPONSOR:

SB 184 by
Governmental Operations
Committee

I. SUMMARY:

A. Present Situation:

The Open Government Sunset Review Act provides for the repeal of public meetings and public records exemptions over the 10-year period from 1986-1995, unless the Legislature acts to revive an exemption prior to its scheduled repeal date. Section 257.261, F.S., makes public library registration and circulation records exempt from the provisions of ch. 119, F.S. These records are produced and maintained by the state's public libraries.

Chapter 119, F.S., the Public Records Law, requires public records to be open to public inspection and copying, except as otherwise specifically exempted by law. The law defines "public records" to include documents and other materials, regardless of physical form, made or received pursuant to law or in connection with the transaction of official business by an agency. Therefore, the exemptions contained in s. 257.261, F.S., allow public libraries to shield their patron registration and circulation records from public scrutiny. Public libraries are those libraries supported with public funds. These include local and county public libraries, public school libraries, community college libraries, and state university libraries.

During the course of the review of s. 257.261, F.S., a questionnaire was sent to the Division of Library and Information Services of the Department of State, the agency which houses the State Library, relative to the exemptions. In addition, 24 other questionnaires were sent to various public libraries throughout the state. Thirteen of the 24 that were sent (54 percent) were answered and returned. Additionally, a letter was sent to the American Library Association (ALA), requesting its opinion relative to the expiration of s. 257.261, F.S. The ALA is a professional organization which sponsors annual conferences and seminars for librarians and which represents the views of librarians on issues before Congress.

The State Library is established by s. 257.01, F.S., in the Division of Library and Information Services of the Department of State, and is assigned by law to maintain and provide research and information services for all state agencies. The law further directs the division to give aid and assistance as needed, whether financial, advisory, or otherwise, to all public school, state institutional, academic, free, and public libraries in the state, and to communities proposing to establish libraries. In addition, the division is authorized to accept, receive, administer, and expend money and other aid available from the federal government, and to establish reasonable and pertinent operating standards under which libraries may qualify to receive state money.

Section 257.261, F.S., provides that the registration and circulation records of every public library, except statistical records of registration and circulation, are confidential. Access to the protected information is available only under proper judicial order. The law defines "registration records" to include any information required by a library of its patrons in order to become eligible to borrow books and other materials. The term "circulation records" is defined to include all information which identifies patrons borrowing particular books and other materials. The law provides that persons violating the confidentiality provisions of s. 257.261, F.S., are guilty of a second degree misdemeanor, punishable as provided by law. Punishments for a second degree misdemeanor include imprisonment for up to 60 days, a fine of up to \$500, or both.

According to questionnaire responses, most public library registration records are stored either in paper files or on computer disks and tapes. Some libraries maintain both paper and computer registration records. Questionnaire responses revealed that most public libraries maintain their circulation records on computer, although a few libraries use paper files. The confidentiality of the records is maintained by limiting access to the records to authorized library staff. Computer records are further protected by the fact that security codes, usually in the forms of passwords, are required for access to the records stored in computers.

Respondents to the questionnaires also stated that they rarely receive requests for protected information and, when they do, it is usually because a library patron wishes to borrow materials that are already checked out. Most libraries have reserve lists for materials to address this problem. In cases where librarians receive requests for patron registration or circulation information, the request is denied based on the public records exemptions in s. 257.261, F.S. None of the questionnaire respondents noted cases of having received judicial orders for access to protected information.

The Code of Federal Regulations, 36 C.F.R. s. 703.3 (1988), has contained similar provisions for the confidentiality of circulation records in the Library of Congress since 1976. The federal regulation exempts from public disclosure library materials which are related to specific reader use of the collections in the Library of Congress or its lending service.

If the exemptions contained in s. 257.261, F.S., are allowed to repeal as scheduled on October 1, 1989, the circulation and registration records of the state's public libraries would no longer be exempt from ch. 119, F.S., the Public Records Law. The primary ramification to the expiration of the exemptions would be that borrowing records of library patrons would be available for public scrutiny. As recently as 1988, public libraries reported being approached by federal investigative agencies requesting access to circulation records. Absent the protections contained in s. 257.261, F.S., public libraries, which are public agencies as provided in ch. 119, F.S., would be required to provide information relative to their patrons and their associated circulation records.

Based on the findings of the exemption review, staff found that the exemptions serve an identifiable public purpose in that they protect information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to the individuals or cause unwarranted damage to the good name or reputations of library patrons. This could occur because a library patron could be subjected to ridicule based on the type of materials he borrows. For example, material containing information on unpopular doctrines, or published by countries not currently on friendly terms with the United States, when associated with a specific library patron, could be damaging to the good name of an individual. As well, other

information required by libraries of their borrowing patrons, such as addresses and telephone numbers, would be accessible to the public if the exemption were repealed.

Additionally, these exemptions also promote the efficient and effective operation of public libraries. Some questionnaire respondents noted that they would likely lose patrons if circulation records were to lose their confidentiality.

B. Effect of Proposed Changes:

No changes to the law would result. The exemptions from the Public Records Law for public library registration and circulation records would be revived and reenacted without modification. The exemption would be specifically identified as subject to the Open Government Sunset Review Act, s. 119.14, F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The questionnaire respondents noted that no extra costs are incurred as a result of keeping the records confidential. Some respondents stated, however, that they would likely incur extra costs if the records were open, since additional staff and supplies would be necessary to provide public access to the records.

III. COMMENTS:

All questionnaire respondents urged that the Legislature revive and reenact the exemptions, and thus continue to protect the privacy of library users by maintaining the confidentiality of the materials they borrow from public libraries. One questionnaire respondent noted that, "[d]isclosure of this information might compromise personal privacy rights . . . protected by the U. S. and Florida Constitutions or compromise the attorney/client privilege by disclosure of materials being used by attorneys in advising their clients."

The American Library Association (ALA), a professional organization for the library profession, has established the Office for Intellectual Freedom to deal with matters of individual freedom and privacy with regard to library use. Since 1971, the ALA has had a "Policy on Confidentiality of Library Records." The policy of the ALA, like the Florida law in s. 257.261, F.S., recognizes that the records will be opened upon order of a court of competent jurisdiction.

In its response to staff's inquiry, the ALA noted that Florida is one of 38 states, plus the District of Columbia, which affords confidentiality to library patron records. Additionally, the ALA urged that the Florida law be revived in order to continue protecting the privacy of library patrons.

According to several newspaper articles from May and June of 1978, the bill that contained the subject exemption was introduced on behalf of librarians in Brevard County. The librarians sought introduction of the bill because of incidents which had occurred in Daytona Beach and in Cocoa Beach. In both places, librarians had been asked by law enforcement investigators to disclose circulation records for library patrons whose reading records were hoped to provide information that would be helpful in criminal investigations. A June 8, 1978, *Florida Times-Union* article quoted the director of the Volusia County library as saying, "Whether or not these requests [for patron circulation records] are

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harmless, a person is entitled to be as safe in their thoughts as they are in their homes."

IV. AMENDMENTS:

None.