



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

www.floridafaf.org

September 2, 2010

The Honorable Jeremy Ring, Chair
The Committee on Governmental Oversight and Accountability
The Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

BY FACSIMILE

RE: 2011 Open Government Sunset Reviews

Dear Senator Ring:

The First Amendment Foundation has conducted its initial review of the exemptions from public records and meetings requirements subject to review and repeal under the Open Government Sunset Review Act during the 2011 legislative session. Our comments on each follow below.

Section 112.3215(8)(d), F.S. – This exemption closes meetings at which an investigation or audit is discussed, not just those portions of such meetings at which the investigation or audit is discussed. We suggest the exemption be narrowed to close only “that portion of a meeting at which an investigation or audit is discussed” rather than the entire meeting. In addition, the exemption should be amended to require that closed meetings be taped or that minutes be taken, and that such records are subject to disclosure as specified in s. 112.3215(9). Such a requirement will ensure public oversight.

Section 119.071(1)(b)1.b., F.S. – This exemption protects sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals. The information is exempt until such time as the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. The Foundation is not opposed to reenactment of the exemption in its current form.

Nevertheless, the Foundation would like to point out that some practical issues with the exemption have been identified by vendors, and the Foundation worked with transportation engineers and legislative staff during the 2010 legislative session to resolve the concerns that were raised. Amendments to the section were proposed in HB 745 and SB 1142; the Foundation took a neutral position on both bills..

Section 119.071(4)(i), F.S. – Section 119.071(4)(i) provides an exemption for certain specified information relating to probation officers and is one of a long list of such exemptions for various government employees and officers. It is our position that making such information exempt is

overbroad under the constitutional standard when that information is publicly available from other publicly-available sources such as phone books and on the Internet. The fact that this exemption in its current form is based on an exemption that is grandfathered under the constitutional provision does not alleviate the constitutional overbreadth problem as the exemption under review was created after the constitutional standard was enacted. Because the exemption is overbroad, it could be challenged under the constitutional standard and the protection provided by the exemption could be lost as a result. Therefore, we suggest this exemption be amended to add language requiring probation officers to close personal information that is publicly available from other sources and to provide a statement in writing to their employer prior to the exemption taking effect.

We would also suggest that s. 119.071(4) be completely revised to create uniformity in these exemptions.

Section 119.071(5)(g), F.S. – This exemption for biometric identification information is drafted narrowly, and the Foundation is not opposed to reenactment of this exemption in its current form.

Section 215.44(8)(c)1., F.S. – The Foundation has received numerous reports of significant problems in the application of this exemption, and as a result, we suggest a complete and thorough review of this exemption.

Section 286.0113(2)(a), F.S. – This exemption is drafted narrowly, and the Foundation is not opposed to reenactment in its current form.

Section 381.8531, F.S. – This exemption is drafted narrowly, and the Foundation is not opposed to reenactment in its current form.

Section 744.1076, F.S. – This exemption closes court monitor reports related to the medical condition, financial affairs or mental health of a ward and should be narrowed to exempt only that information which identifies the ward. In addition, the exemption contains internal inconsistencies in that some information is confidential and exempt, while other information is exempt only. We would suggest that those inconsistencies be addressed, and that all such information should be exempt from disclosure, rather than confidential and exempt.

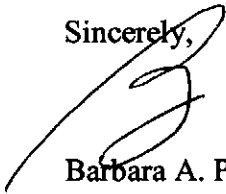
Section 744.7082, F.S. – This exemption is drafted narrowly, and the Foundation is not opposed to reenactment in its current form. However, we suggest that this provision could be used to create a uniform exemption for the identity of donors.

Section 787.03, F.S. – This exemption is drafted narrowly, and the Foundation is not opposed to reenactment in its current form.

Section 790.0601, F.S. – The Foundation is stridently opposed to the reenactment of this exemption on both public policy and constitutional grounds, and respectfully request that the exemption be allowed to sunset.

We appreciate the opportunity to comment on the exemptions under review and appreciate consideration of these issues by the Legislature. If we can provide more information or answer any questions, please don't hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

cc: Staff Director, Senate Committee on Governmental Oversight & Accountability
Jon Kaney, FAF Senior Counsel, Cobb & Cole, P.A.
Sandy D'Alemberte, Palmer and D'Alemberte, P.A.
Sam Morley, General Counsel, Florida Press Association
Carol LoCicero, Thomas and LoCicero, P.A.