
THE BRECHNER REPORT

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Inmates engage in hunger strike to preserve rights

RAIFORD – Death row inmates at the Union Correctional Institution engaged in a hunger strike to protest newly proposed rules that would eliminate contact visits and reduce other privileges.

The proposed rules would ban physical contact with friends or family,

restrict the number of library books inmates are allowed, restrict the number of showers inmates may take and limit inmates' access to clergy and religious materials.

According to a prison spokesperson, Debra Buchanan, the

proposed rules are intended to ensure safety among prison officials. The rules would guard against potential hostage situations or the influx of contraband within the prison, she said. (4/7/00)

Giffords file suit on behalf of son

PALM BEACH – Television personalities Frank and Kathie Lee Gifford filed a libel suit against the *National Examiner* on behalf of their 10-year-old son Cody.

According to the suit, the tabloid falsely depicts Cody Gifford as “a wanton, willful and unremorseful destroyer of other people’s property.” The suit also claims that the tabloid fabricated stories about the young Gifford’s behavior on the set of a movie he was in.

The article in question described Cody Gifford as being an unruly child, and described incidents in which he spit out food in a restaurant and ruined a pair of pants in a store by drawing on them with permanent marker.

The company that owns the *National Examiner* said in a press release that it stands by the story. (4/7/00)

FIRST AMENDMENT

Reporter denied access to meeting

DELAND - A reporter from the Daytona Beach based *The News Journal* was denied access to a local hospital’s meeting in which officials considered the future fate of its operations.

ACCESS MEETINGS

Memorial Health Systems and the *The News Journal* have been at odds regarding access to the hospital’s records and meetings.

In January, the Florida Supreme Court ruled that the private corporation

created to run Memorial Hospital is subject to the Open Meetings and Public Records Laws because it acts on behalf of the taxing district’s Hospital Authority.

The Court did not rule on the constitutionality of the 1998 exemption, but refused to apply it retroactively to the Memorial Hospital. (*Brechner Report*, March 1999) The ruling applies to records created and meetings held before May 1998 when the Florida legislature passed a new law exempting private corporations that lease public hospitals from Florida’s Sunshine Law. (*Brechner Report*, May 1999) The hospital sued the paper to test if the exemption is constitutional. The non-jury trial began in April. (3/22/00)

Bush will not suspend hospital trustee

INDIAN RIVER - Gov. Jeb Bush will not suspend an Indian River County Hospital trustee indicted by a grand jury for Sunshine Law violations.

Hospital trustees Richard Aldrich and Alan Seed were indicted Mar. 9 by a grand jury for Sunshine Law violations in 1999 (*Brechner Report*, May 2000). The charges stemmed from testimony the trustees presented to a grand jury about several discussions between themselves and

other trustees following board meetings. The grand jury indicted the trustees for both Sunshine Law violations and perjury. Seed resigned his position on Jan. 1.

However, Aldrich continued to serve as trustee. Both deny any wrongdoing. According to a spokeswoman for Bush, he will follow Aldrich’s case. “Our legal staff is continuing to monitor it and we will take action if and when it’s appropriate,” said Liz Hurst. Seed’s trial is scheduled to begin in June. (3/28/00)

LIBEL

SPECIAL REPORT

See Legislative Review
inside on pages 3-6

Economic council opens meetings, but closes records

INVERNESS – A recently approved city council policy will open Economic Development Council meetings, but its records will remain closed.

Councilmembers elected to open the

meetings because the economic council receives public funding, but they said the state’s public records law is too restrictive. Two councilmembers objected to keeping the economic council’s records closed.

“The small businessman wants to know that those (tax) dollars are used for the benefit of him as well as the community at large,” said Councilmember Vicki Phillips. (4/5/00)

Council holds “cure meeting” in wake of violations

VERO BEACH – The newly seated Vero Beach City Council took up some very old business by holding a “cure meeting” for Sunshine law violations committed by the council in 1995.

In two separate cases last year, the 4th District Court of Appeals and the 19th

Circuit Court ruled that the council voted behind closed doors on three separate occasions and violated the state’s Open Meetings Law. The courts ordered the “cure meeting” to resolve the violations.

Attending the meeting was local businessman Frank Zorc, who won

a \$575,000 settlement from the city last year after he sued for access to the closed meetings. (*Brechner Report*, July 1999)(3/22/00)

ACCESS RECORDS

Judge throws out voter rolls access suit

TAMPA – A federal judge dismissed a lawsuit that challenged a state law that limited access to voter rolls.

The suit, filed by the *St. Petersburg Times*, *The Miami Herald* and the First Amendment Foundation, claimed that a law that allows politicians access to voter rolls but prohibits equal public access is unconstitutional.

The state law in question allows political parties and candidates to receive

compilations of voter information that is often computerized. The same right of access is not extended to the public. Instead, the public may look at the information but may not make copies of it.

U.S. District Judge Susan C. Bucklew dismissed the suit, holding that the plaintiffs’ rights to see and publish voter information are not compromised by the law because the plaintiffs have full access to the information and can publish it. (4/1/00)

Florida Bar sponsors media law conference

The Florida Bar is sponsoring a Media Law Conference in June. The conference will include sessions on access to government information, reporter-attorney interactions, the reporter’s privilege and Internet-related legal issues. The Brechner Center for Freedom of Information is one of the conference co-sponsors.

NEWS NOTES

The conference is scheduled for 8 a.m. to 7 p.m. June 24 at the Boca Raton Resort and Club in Boca Raton. Registration is open to the public, and fees to participate are \$85. The fees include sessions, lunch and a cocktail reception. Participants may register at the conference.

Brechner Center Director Sandra Chance will lead a session titled “How to Get the Public Records You Really Want.”

For more information, contact Pequita Herring at the Florida Bar at (850)561-5766.

Public denied access to fire chief records

CORAL SPRINGS – Police officials have denied public access to an investigation of the local fire chief for possible inappropriate city fund expenditures.

The Coral Springs Police Department is looking into allegations that Fire Chief William Fyfe Jr. used public funds to take

his father and son on a trip to Appleton, Wis. to check on the status of two fire engines being purchased by the city in 1998.

The *Sun-Sentinel* requested copies of investigation materials, but city attorney Sam Goren denied access because the investigation is ongoing. (3/23/00)

Graham, Mack favored flag-burning ban

WASHINGTON – Florida’s U.S. senators supported a ban on flag-burning. However, the initiative failed in the Senate.

The Senate failed to achieve a two-thirds majority on a measure that would have banned flag-burning. Democratic Senator Bob Graham and Republican Senator Connie

Mack both voted in favor of the ban.

The Senate vote ended the possibility of the ban’s passage this year. In order for the amendment to proceed, both chambers must approve the amendment during the same congressional session. The House approved the ban in 1999, 1997 and 1995. (4/2/00)

FIRST AMENDMENT CONTINUED

DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

More exemptions fail than pass in Legislative Session

The following is a compilation of bills from the Florida Legislature's 2000 session that pertain to media law issues.

More information about the session can be accessed at <<http://www.state.fl.us>>, which is the Florida Legislature's Online Sunshine site.

Bills that passed:

HB 181 Changes to Financial Disclosure Process (Arnall, R-North Florida) Specifies that certain financial disclosure statements of former officers and employees are public records.

HB 439 Certified Capital Companies (Crow, R-Pinellas) Creates public records exemptions for (1) information submitted by or collected from a certified capital company (CAPCO) during an investigation or review by the Department of Banking and Finance; (2) any reports prepared by or for the use of the Department as a result of an investigation or review of a CAPCO, including working papers; and (3) information submitted to the Department related to personal financial matters of a CAPCO principal.

HB 683 Relating to Lewd or Lascivious Exhibition Over the Internet (Frankel, D-Palm Beach) Provides penalty for transmission of such exhibition over Internet under certain circumstances; reenacts some provisions such as the definition of "sexually violent offense," for purposes of provisions such as the Community Alcohol, Drug Abuse and Mental Health Services.

HB 1037 Domestic Violence Prevention Task Force (Pruitt, R-Port St. Lucie) Exempts from public disclosure some information obtained by domestic violence fatality review teams.

HB 2417 Telecommunications Proprietary Business Information (Rojas, R-Hialeah) Provides an exemption to the public records law for telecommunications or cable company records pertaining to proprietary confidential business information.

SB 4-A Lethal Injection Records (Burt, R-Volusia) Creates public records exemption for information that would identify the person prescribing, preparing, compounding, dispensing or administering a lethal injection pursuant to a death penalty sentence.

SB 220 Florida Engineers Management Corporation Act (Regulated Industries) Provides for meetings of board of directors of Florida Engineers Management Corporation be open to public.

SB 318 Domestic Violence/Minor Children (Rossin, D-South Central) Creates public records exemption for information provided to sheriffs and state attorneys by people who take minor children when fleeing from domestic violence.

SB 606 Re-creating the Public Records Modernization Trust Fund (Browne-Waite, R-Sumter/Polk/Hernando/Pasco) Extends the life of the Public Records Modernization Trust Fund.

SB 794 Attorney/Client Privilege Creates an attorney/client privilege for government attorneys, but the privilege must not be construed as creating or altering Florida's Public Records or Open Meetings laws.

SB 836 Account Information/College Savings Program (Horne, R-Duval/Clay/St. Johns) Creates a public records exemption for information that identifies the benefactors or designated beneficiaries of college savings program accounts. Authorizes release of the exempt information to community colleges and universities under certain, specified circumstances.

SB 890 Donors to Direct Support Organizations (Kurtz, D-Brevard/Indian River/St. Lucie) Prohibits contributions by university or community college direct support organizations to political campaigns or political action committees unless the contribution is certified by a majority of the DSO.

SB 1256 Seaport Security Plans (S. Criminal Justice Committee) Creates a public records exemption for seaport security plans of a county or municipal seaport department

or a seaport authority created by the Legislature. Also exempts photographs, maps, blueprints, drawings and similar material if a seaport department or authority determines that such items contain information that is not generally known and that could jeopardize seaport security. Stipulates that real estate leases, layout plans and related blueprints are not exempt and specifically limits the exemptions to records held by a seaport authority or seaport department that operates a seaport.

SB 1262 Money Transmitter Records (Criminal Justice) Creates a public records exemption for all investigative records conducted by the Department of Banking and Finance (DBF) pursuant to the Money Transmitter's Code until the conclusion of the investigation or examination. Includes provision that closes records of administrative, civil, or criminal proceedings if the proceedings end in an acquittal or dismissal.

SB 1334 Electronic Commerce (Klein, D-Delray Beach) Amended to include provisions requiring county recorders to provide indexes of all documents recorded in the official records on a publicly available website. The website must have the capability to provide a central statewide search site with the index no later than Jan. 1, 2002. Also extends the authority of the Task Force on Privacy and Technology.

SB 2082 Abandoned Newborns (Grant, R-Tampa) Creates a public records exemption for information that identifies parents who leave newborn infants at hospitals.

SB 2250 School Readiness Program Student Records (Cowin, R-Leesburg) Creates public records exemptions for the records of students enrolled in school readiness programs and subsidized child-care programs.

Bills that did not pass:

HB 37 Funding of Legislative Projects (Merchant, R-Palm Beach) Would have established a formal review process for legislative projects not recommended by the

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Governor or a state agency, requiring a public hearing in both the House and the Senate, and that such projects met certain minimum criteria.

HB 125 Release of Employment Records

(Tullis, R-Duval) Would have required an employer to release employment and other records to law enforcement officers, correctional officers, or correctional probation officers conducting background investigations for employment. Also would have required the officer seeking release of the information to provide the employer with an "authorization for release of information" form.

HB 197 Government Products and Services over the Internet

(Greenstein, D-Broward) Would have provided for governmental products and services to be made available on Internet under certain circumstances; directed state system of public education to make reasonable progress towards making certain products available on Internet; provided for responsibilities of Department of Management Services such as information technology; provided for state agency information technology plans; provided for audits.

HB 383 Statewide and Local Advocacy Councils

(Littlefield, R-Pasco/Hillsborough) Would have renamed statewide and district human rights advocacy committees as Florida statewide and local advocacy councils; provided for duties of councils for monitoring activities of, and investigating complaints against, state agencies that provide client services; provided for access to records of state agencies subject to council investigations.

HB 419 Tobacco Production Relief

(Stansel, D-North Central Florida) Would have provided for use of portion of state's tobacco settlement funds to compensate those adversely affected by settlement; provided for public meetings and records.

HB 429 Identifying Information/Cash

Assistance Programs (House Committee on Children and Families) Would have created a public meetings exemption for portions of meetings held by certain, specified agencies at which information identifying individuals

who have applied for or are receiving temporary chase assistance would have been discussed. Also would have created a public records exemption for information identifying such individuals.

HB 553 Deferred Presentments (Barreiro, R-Dade) Would have revised definitions; provided additional grounds for disciplinary action, provided for continuation of certain administrative proceedings under certain circumstances; deleted provisions providing public records confidentiality for certain hearings, proceedings and emergency orders; created "Deferred Presentment Act."

HB 633 Release of Student Records

(Alexander, R-Hillsborough/Polk) Would have authorized the release of personally identifiable student records to the Department of Highway Safety and Motor Vehicles and the Department of Children and Family Services for certain purposes. Also would have clarified provisions regarding the release of student directory information, required schools to provide written notification prior to the release of the information and to have obtained written authorization for such release.

HB 751 Creation of Florida Sports

Authority (Rojas, R-Collier/Dade) Would have created Florida Sport Authority; provided for submission of annual budget to state audit contract and authority projects; provided for public bidding process; provided for revenue application and authority to operate Florida Sports Hall of Fame; provided for consultation with local officials; authorized authority to apply for and obtain pari-mutuel wagering permit; provided for distribution of revenues; provided for employees, etc.

HB 829 Adverse medical incident reports

(Kyle, R-Fort Myers) Would have created an exemption for information contained in physicians' and osteopathic physicians' adverse incident reports.

HB 903 Pawnshop Transaction Records

(Bloom, D-Dade) Would have required local law enforcement agencies to transfer information regarding pawnshop and second-hand goods transactions to the Florida

Department of Law Enforcement (FDLE) and required FDLE to create and maintain a database of such transactions. Would have prohibited FDLE from selling the information without legislative authority and stipulated that the database established by FDLE could be accessed by a law enforcement agency for official investigative purposes only. Also would have created a public records exemption for all records relating to secondhand goods acquisitions provided to a local law enforcement agency.

HB 1081 Software and Obscenity in

Libraries (Trovilleon R-Winter Park) Would have required public libraries to install and maintain software that would block access to obscene materials on at least half of the computers available for public use.

HB 1099 Campaign Treasurer Reports

(Flanagan, R-Bradenton) Would have provided a public records exemption for information required to maintain the security of anything submitted or received through an electronic filing system for campaign treasurer's reports.

HB 1477 Local Government Human Resource Managers' Home Addresses

(Gay, R-Cape Coral) Would have created an exemption for the home addresses, telephone numbers, social security numbers, and photographs of local government or water management district human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers & their spouses & children.

HB 1741 Health Care Practitioners' Home

Addresses (Boyd, D-Monticello) Would have exempted from public records law requirements the home addresses and telephone numbers of nurse practitioners working in correctional or mental health facilities.

HB 1851 Hospital Report Cards

(Crow, R-Dunedin) Would have required that hospitals make "report cards" available to the public. The annual reports would have included information about the facilities, such as the number of beds and services available, as well as information regarding adverse incident in the facilities.

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LEGISLATIVE REVIEW CONTINUED

Review continued from page 4.

HB 1869 Home Addresses of Visitation Center Employees and Volunteers (House Family Law and Children Committee) Would have kept confidential the home addresses, telephone numbers, social security numbers, and photographs of any certified supervised visitation program employees, volunteers, and their spouses and children.

HB 1897 Traffic Crash Reports (Andrews, R-Delray Beach) Would have required Florida Highway Patrol officers to include whether a driver was using a cellular phone when involved in a traffic accident. Would have also required the FHP to submit an annual report detailing this information.

HB 1967 Driver History Records (Harrington, R-Punta Gorda) Would have created an exemption for information contained in motor vehicle records, including social security numbers & medical & disability information. Also would have revised conditions upon which information was released for bulk distribution use.

HB 2027 Patient Identifying Information (Bloom, D-Miami Beach) Would have exempted any patient-identifying information contained in the Department of Insurance's medical records.

HB 2075 Privacy and Technology Task Force (House Utilities and Communications Committee) Would have instituted a task force on privacy and technology.

Would also have provided for an office within the Department of Management Services charged with offering support and guidance to all state agencies in order to enhance the state's use and management of information technology resources.

HB 2289 Children and Family Services Personnel Home Addresses (House Family Law and Children Committee) Would have created a public records exemption for the home addresses, telephone numbers, and social security numbers belonging to employees of Children and Family Services, as well as their spouses and children.

HB 2321 Brain and Spinal Cord Injury Program (House Health Care Services Committee) Would have created a public

records exemption for information regarding the applicants to and clients of the brain and spinal cord injury program.

SB 208 Copyright of Governmental Software Would have re-enacted § 119.083, F.S., which would have authorized government agencies to copyright software created by the agency.

SB 886 Entertainment Company Production Records (Kirkpatrick, R-North Central) Would have created a public records exemption for all business records provided by an entertainment industry production company to the Office of the Film Commissioner for the purpose of receiving sales and use tax exemptions.

SB 992 Department of Health/Disciplinary Records (Clary, R-Panhandle) Would have created public record exemptions for (1) all information obtained by the Department of Health regarding final disciplinary action against a physician taken by a licensed hospital or ambulatory surgical center; (2) all information contained in notification of adverse incidents provided to DOH by physicians and osteopathic physicians; and (3) presuit notices and all information obtained by DOH in connection with its investigation of alleged malpractice claims.

SB 1002 Blueprints/Educational Facilities (Sen. Education Committee) Would have created an exemption for educational and state university facilities.

Also would have created a public meetings exemption for those portions of all meetings or proceedings relating solely to the exempt blueprints.

SB 1108 Public Corruption Investigation Records (Sebesta, R-St. Petersburg) Would have created a public records exemption for records and any subpoena *duces tecum*, warrant or court process, compiled or generated by a criminal justice agency in response to allegations of misconduct or crimes committed by a government official or employee.

Would have stipulated that the investigative records were exempt for a period of three years.

SB 1110 Ethics Commission Investigation Records (Sebesta, R-Hillsborough/Pinellas) Would have extended the current exemption for investigations of complaints filed with the Ethics Commission, F.S. 112.324(1), to include investigations initiated by the commission pursuant to pending legislation.

SB 1278 Windstorm Insurance Records and Meetings (King, R-Jacksonville) Would have created public records and public meetings exemptions for information relating to windstorm insurance policyholders, including appraisals, surveys and applications.

SB 1510 Managed Care Dispute Resolution (Browne-Waite, R-Brooksville) Would have created an exemption from open meetings requirements for portions of meetings of statewide provider & managed care claim dispute mediation panel that contained personal information about a managed care subscriber, or information regarding trade secrets or risk management.

SB 1588 Lottery Telephone Services (Horne, R-Orange Park) Would have provided a public records exemption for information regarding fees charged for access to winning lottery numbers & payout information by the Florida Lottery's 1-900 telephone service.

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Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.jou.ufl.edu/brechner/>
e-mail: jthomas@jou.ufl.edu

Michele Bush, Editor
Jackie Thomas, Production Coordinator
Meghan McShane, Production Assistant
Sandra F. Chance, J.D., Director/Executive Editor
Bill F. Chamberlin, Ph.D., Founding Director

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Bills that failed in session may be recycled

The 2000 session of the Florida Legislature could have had a truly scary outcome, had all of the exemptions passed that legislators proposed. But in the end, there were more failing bills than passing bills relating media law issues.

The Back Page

By Michele Bush

However, this should not give a false sense of security. Some of the bills that appeared this year seemed to have been recycled from failing bills last year. I'm sure many of the 41 failing bills from our list will reappear during the next legislative session.

For example, SB 794, which creates an attorney/client privilege for government attorneys, passed this year. The bill was very similar to last year's SB 1838, which failed. Also, last year legislators attempted

This year, the Brechner center's list of relevant bills showed that 17 bills passed and 41 failed.

to pass bills that would have created exemptions for information

contained in physicians' adverse incident reports (HB 1843), and information regarding the home addresses and telephone numbers for government resource managers (SB 1718). Both issues reappeared this year in HB 829 and HB 1477, respectively.

Another example is HB 1967, which would have created an exemption for motor vehicle records. It was pretty much the same as HB 43 from last year – both were introduced by Lindsay Harrington, R-Punta Gorda. Both died during the sessions. (Harrington's office did not know yet if he plans to sponsor the bill again next year.)

While the session for this year has concluded, and we seem to have escaped a longer set of exemptions, they are not completely behind us. Consider the list of bills that failed this year a preview of what may appear next year.

Michele Bush is a Ph.D. candidate at the University of Florida and the summer editor for the The Brechner Report.

LEGISLATIVE REVIEW CONTINUED

Review continued from page 5.

SB 1690 Trade Secrets (Campbell, D-Tamarac) Would have created a public records exemption for trade secrets received by a state agency procuring commodities or services.

SB 1732 Pawnbroker Transaction Records (Campbell, D-Tamarac) Would have created an exemption for all information submitted to the Florida Department of Law Enforcement relating to pawnbrokers' transactions.

SB 1986 Media Access to Executions (Campbell, D-Tamarac) Would have provided that certain provisions of the statute exempting executions from the Administrative Procedures Act should not be construed as blocking access to the media during executions.

SB 2032 Patient Identifying Information (Clary, R-Destin) Would have created a public records exemption for information relating individuals applying for or receiving services from the Health Department.

SB 2078 Economic Development Data (Kirkpatrick, R-Gainesville) Would have expressed the legislative intent to create a public records exemption for certain international trade and economic development data that were in the nature of trade secrets.

SB 2112 Death Sentence Records (Browne-Waite, R-Brooksville) Would have granted public access after sentences were carried out to information relating to death sentences that was exempt from disclosure.

SB 2280 Guardian Ad Litem Records (Mitchell, D-Jasper) Would have provided an exemption for portions of records held by guardian ad litem in cases regarding allegations of child abuse, neglect, or abandonment.

SB 2434 Recovery Network Program and Educators (Cowin, R-Leesburg) Would have created an exemption for information related to educators who successfully completed a recovery treatment program.

SB 2502 Records and Meetings (Latvala, R-Palm Harbor) Would have expressed the legislative intent to ensure that exemptions from public records and meetings requirements were enacted in compliance with specified requirements of the Florida Constitution.