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Court: Exemption not retroactive

TALLAHASSEE – The Florida Supreme Court ruled that a Public Records Law exemption governing some hospital records cannot be applied retroactively.

The 1998 statute exempts the records of public hospitals that are leased to private companies. The

Daytona Beach News-Journal sued for the pre-1998 records of Memorial Hospital-West Volusia Inc., which were leased to a private company in 1994. (*Brechner Report*, February 2001)

The hospital fought the request, saying the law applied retroactively.

In the per curiam decision, the Court

wrote that in order for a statute to be retroactively applied, the Court must determine that there is “clear evidence” that the legislature intended to apply the statute retroactively and that the retroactive application of the statute is constitutional.

The Court ruled that there was no clear legislative intent to apply the records exemption retroactively and that the pre-1998 records should be released. The Court did not rule if the retroactive application was constitutional. The hospital was also ordered to pay the newspaper’s legal fees, estimated at \$100,000. (4/28/01)

**ACCESS
RECORDS**

Appeals court denies access to e-mails

TAMPA – Florida’s 2nd District Court of Appeal denied a request by *The Tampa Tribune* for copies of e-mails held by the chief judge of the 13th Judicial Circuit.

The Tribune wanted copies of Chief Judge F. Dennis Alvarez’s e-mails after the judge investigated harassment claims against Circuit Judge Edward H. Ward. Ward resigned after the Judicial Qualifications Commission charged him with misconduct for sending sexually explicit e-mails to a female judge and to judicial assistants.

The commission released many of

Ward’s e-mails, but *The Tribune* wanted copies of Alvarez’s e-mails about the investigation as well as any e-mails concerning “fraternization, romantic relationships or sexual contact” between any judge and any courthouse employee.

The appeals panel voted 2-1 to deny the request, saying that the e-mail records were not collected as part of Alvarez’s official duties as chief judge and therefore not official judicial records. Gregg Thomas, an attorney representing *The Tribune*, said the newspaper will appeal the issue to the Florida Supreme Court. (5/26/01)

Contract voided over open meetings violations

MARATHON – A judge ruled that a panel that helped select a company to build sewers in Key Largo violated the state’s Open Meetings Law by failing to advertise several teleconferences and by discussing the \$60 million project outside a public meeting.

Chief Judge Sandra Taylor, 16th Judicial Circuit, ruled that the violations

by the Technical Evaluation Panel voided the contract between Monroe County’s

**ACCESS
MEETINGS**

Florida Keys Aqueduct Authority and Ogden Water Systems, now Covante Energy. (*Brechner Report*, June 2001)

Both Monroe County and Covante are appealing the ruling. Taylor has not yet determined who will pay the legal fees for the lawsuit. (4/20/01 – 5/29/01)

Earnhardt photos to remain sealed

DAYTONA BEACH – A circuit court judge ruled that Florida’s new law regarding autopsy photographs is constitutional and denied a Web site and a student-run newspaper access to Dale Earnhardt’s autopsy pictures.

Judge Joseph G. Will, 7th Judicial Circuit, ruled that the law, which prevents autopsy photos from being released by medical examiners without a court order, was “valid and constitutional.” He also ruled that a provision that makes the law retroactive was constitutional.

A second ruling by Will denied a request by *The Independent Florida Alligator* and the DeLand-based Websitecity.com for a court order to have Earnhardt’s photos released. The *Alligator’s* attorney argued that access to the photos would help ensure that the medical examiner and police were doing their jobs. Will said the newspaper and Web site failed “overwhelmingly” to demonstrate any reason why they should be given access to the autopsy photos.

Newspaper and Web site attorneys said they will ask for a new trial and will appeal the ruling if the motion for a new trial is denied.

An *Orlando Sentinel* spokesperson said the Volusia ruling would not affect a lawsuit filed in Broward County by the *Sentinel* and Fort Lauderdale’s *South Florida Sun-Sentinel*, which also challenges the law. Six other news organizations have asked to join the *Sentinel* lawsuit. (4/20/01 – 6/14/01)

SPECIAL REPORT

A review of open government issues considered and passed by the Florida Legislature during the 2001 session, p. 5-8.

Auditors recommend opening some hospital records

TALLAHASSEE – State auditors examining the reporting of medical mistakes in Florida recommended that state lawmakers repeal in part the Public Records Law exemption for hospital adverse incident reports.

Auditors in the Office of Program Policy Analysis and Government Accountability found that one in seven hospitals did not report medical mistakes, and they recommended that

records of delinquent hospitals be made public. Hospitals that submit adverse incident reports in a timely manner should still be protected from public scrutiny, the auditors said.

The report was released just as the state Legislature ended its 2001 session during which it tried and failed to pass an exemption for doctors' reports of adverse incidents in their offices. The Legislature argued that physicians would

be more likely to report mistakes if the records weren't public.

Currently, information on Florida doctors, including professional background and medical mistakes, is available on the Department of Health's Web site <http://www.doh.state.fl.us/>.

However, auditors argued that delinquent hospitals would be more likely to report mistakes under the threat of them being made public. (5/17/01)

Lawsuit over lottery 900-number settled

TALLAHASSEE – A judge has approved a settlement in a class action lawsuit that claimed a 900-number lottery phone line violated the state's Public Records Law.

Clearwater resident Ralph DeLuise filed the initial lawsuit that argued it was illegal for the state to make a profit providing a public record. (*Brechner Report*, October 1999)

The phone line charged callers 77 cents a minute to hear winning lottery numbers. The Department of Lottery got 47 cents from every call and received an estimated \$8 million from the phone line between 1995 and 2000.

State law requires public agencies to

charge only the actual cost of producing and duplicating public records.

The settlement gives DeLuise \$5,000, and another man involved in the case will get \$1,000. The law firms involved in the case will split \$900,000.

Callers who can prove they used the 900-number by producing old phone bills will get access to a toll-free 800-number line to find out winning numbers. Callers have until June 27 to make a claim by filling out a form available at <http://www.900lottery.com>.

The settlement will be funded by new revenue generated by the 900-number, which became a private service on March 15. (5/14/01 – 5/19/01)

Private company must open records

MIAMI – The private company that manages Miami International Airport's construction program must comply with the state's Public Records Law, a judge ruled.

The Miami Herald sued in 2000 to get financial records, including records of how much the company pays in lobbyist fees, from Dade Aviation Consultants. (*Brechner Report*, March 2000)

Judge Alan L. Postman, 11th Judicial Circuit, ruled that the records of Dade Aviation Consultants, which was formed by eight private companies, are public because the company is performing a government function for the county.

"I thought it was something the public was entitled to," the judge said in an interview with *The Herald*. "Let the people know."

Postman, however, said that the company acted in good faith and ruled that it does not have to pay *The Herald's* legal fees. (5/4/01)

Judge rejects request to release e-mails

CLEARWATER – A judge refused a *St. Petersburg Times* request to see the personal e-mail messages of two Clearwater employees.

The paper had requested e-mail correspondence of an assistant city manager and a planning official. The city released e-mail related to city business but refused to release e-mail that the employees said was personal. (*Brechner Report*, March 2001)

The *Times* sued to get access to all the e-mail.

Judge Anthony Rondolino, 6th Judicial Circuit, ruled that as "personal communication" the remaining messages did not fall within the definition of public records even if the e-mails were stored on city computers.

The newspaper is considering whether to appeal the decision. (5/26/01)

Grand jury presentment opened to public

NEW PORT RICHEY – A Pasco-Pinellas judge granted a *St. Petersburg Times*' request to make public a grand jury presentment, which details alleged city council interference in Port Richey's building department.

Judge William Webb, 6th Judicial Circuit, rejected a motion by Bob Leggiere, a former councilman and acting mayor, to keep the report permanently sealed.

Leggiere's attorney had argued that the document was written by an illegally

selected and biased grand jury.

The grand jury wrote that Leggiere improperly pressured building officials to issue permits for buildings that reportedly violated federal flood-zone regulations.

Webb ruled that the grand jury's conclusions were based on facts that were cited in the report and said the report, which was released May 25, allows members of the public to examine the conduct of a city official. (4/18/01 – 5/26/01)

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.

Judge won't release full transcripts

TAMPA – The chief judge of the Pinellas-Pasco Circuit Court denied a motion to release complete transcripts of a grand jury inquiry into problems at the Hillsborough County Courthouse.

Although Chief Judge Susan Schaeffer, 6th Judicial Circuit, ruled in January that the grand jury report on the investigation should be made public, she refused a request in May to release the full transcripts of the grand jury probe. (*Brechner Report*, February 2001)

The report has yet to be released because one of the judges mentioned in the report has appealed, asking that the report remain sealed. (2/17/01 – 5/26/01)

Court rules on intercepted phone call

WASHINGTON – The U.S. Supreme Court ruled that the First Amendment protects the media from liability when they publish illegally intercepted information. However, the Court kept the 6-3 ruling narrow, saying that the press is not liable when the subject matter is of public concern and when the media did not participate in the illegal interception.

In *Bartnicki v. Vopper*, two teachers' union officials in Pennsylvania were discussing heated contract negotiations when their cell

phone conversation was intercepted and recorded by an unknown person. A copy of the intercepted conversation was passed on to the news media, which broadcast the conversation.

FIRST AMENDMENT

The union officials sued the news media under state and federal wiretap laws.

The Court's opinion said that the free speech and free press clauses of the First Amendment in this case protect the media because of the value of the public debate and because the media were not involved in intercepting the call. (5/22/01)

EPA withdraws proposal to allow more access to data

WASHINGTON – The Environmental Protection Agency has rescinded a Clinton administration proposal that would have made information about the worst-case scenarios at chemical plants more readily available to the public.

Currently, the public can visit federal document reading rooms and view the documents that summarize the potential

consequences of chemical plant accidents in their immediate area and detail risk management plans. The documents cannot be copied or removed from the reading rooms.

For anyone who wishes to look up data for plants outside an immediate area, current rules limit members of the public to 10 per month. The Clinton plan

would have eased the restrictions on viewing data on plants outside the immediate area and given greater access to qualified researchers.

The EPA said national security concerns prompted them to rescind the proposal. The agency argues that wider access to the information could aid terrorists. (3/27/01)

Records destroyed despite judge's order

WASHINGTON – Files created by former Environmental Protection Agency officials were destroyed, although a federal judge had ordered the files preserved as part of a Freedom of Information Act lawsuit.

Files on the computers of EPA Administrator Carol Browner and three of her aides were erased just before the Clinton administration left office on

Jan. 20. U.S. District Judge Royce Lamberth ordered the files preserved on Jan. 19 as part of a lawsuit filed by the Landmark Legal Foundation.

The group was seeking documents under FOIA that dealt with EPA regulatory actions.

Landmark asked the judge to sanction the EPA for violating the order. (4/27/01)

Photographs of mayor's wife released

MIAMI – A state appeals court ruled that photographs of Maria Ledon Carollo, wife of Miami Mayor Joe Carollo, be released to the public, even before they are entered into evidence at the mayor's battery trial on July 16.

Joe Carollo was charged with simple battery after he allegedly threw a cardboard tea canister at his wife's head, causing a lump. WPLG-TV in Miami filed a lawsuit demanding the release of photos taken of Mrs. Carollo the night of the incident.

The mayor's attorney argued that the photos would not be public record until they were submitted into evidence during the mayor's misdemeanor trial. The TV station's attorney argued the photos became public record when the mayor's lawyer filed a motion to see the evidence in the case.

Judge Bernard S. Shapiro, 11th Judicial Circuit, ordered the release of the photographs. The 3rd Circuit Court of Appeal upheld the release. (3/6/01 – 5/3/01)

NEWS GATHERING

TV station agrees to restraining order

MIAMI – A judge issued a restraining order against a television station barring the station's reporters from interviewing a lobbyist.

Eric "Rick" Sisser filed an invasion of privacy lawsuit against WPLG-Channel 10, claiming that a WPLG reporter tried to interview him in the hospital against his will. Jilda Unruh was attempting to ask Sisser about a land deal with the Miami-Dade School Board while Sisser waited in the hospital for a heart catheterization procedure.

Judge Norman S. Gerstein, 11th Judicial Circuit, issued the restraining order against WPLG and Unruh. The 30-day order prevented the station from trying to interview Sisser until after June 9. WPLG agreed to the restraining order, but station officials called the lawsuit "frivolous." (5/15/01 – 5/16/01)

Judge rules officials complied with Open Meetings Law

FERNANDINA BEACH – Nassau County officials did not violate the state's Open Meetings and Public Records laws in deciding to build a new courthouse in Yulee, a judge ruled.

However, Judge L. Haldane Taylor, 4th Judicial Circuit, did say that commissioners violated the Open Meetings Law by allowing Clerk of the

Changes to lease allow more secrecy

VERO BEACH – Because of changes to its lease, Indian River Memorial Hospital Inc. now can keep more information out of the public eye.

The public hospital, which is leased to a private, nonprofit company, was required by its lease to abide by the Public Records and Open Meetings laws as they were written in 1984, when the lease was signed.

Since 1984, the Legislature has passed several Public Records Law exemptions including one in 1998 that allows publicly owned hospitals run by private companies to keep some records and meetings secret.

The Indian River Memorial Hospital District board of trustees changed the lease in April to require the hospital to follow the Open Meetings and Public Records laws "as each is amended from time to time."

The change allows the hospital to conduct more business in secret, and the board of directors held its first closed-door meeting on May 2. (4/19/01 – 5/2/01)

Mother sues DCF over meeting

WEST PALM BEACH – The Department of Children and Families is being sued for allegedly violating the Sunshine Law when they met privately to decide to sever a mother's rights to her children.

Anne Banks sued the agency, saying the officials met secretly on Jan. 20, 2000, and decided to recommend at an upcoming hearing that Banks lose her rights to her four children.

Banks' lawyers want a circuit court judge to issue an injunction to stop the proceedings. (3/6/01)

Circuit Court J.M. "Chip" Oxley Jr. to attend closed meetings between April 1996 and December 2000. (*Brechner Report*, May 2001)

Clark V. Hoshall Jr. filed a lawsuit over the courthouse move in 1998, claiming commissioners met in secret, failed to keep minutes of meetings and did not give adequate notice of some

Hospital agrees to pay part of legal fees

VERO BEACH – The Indian River County Hospital District board of trustees agreed to pay almost \$23,000 to two former board members to help cover part of the cost of their Sunshine Law cases.

Richard Aldrich and Allen Seed were indicted for violating the Open Meetings Law by discussing board business outside a public meeting. In a deal with

Former legislator faces Sunshine Law trial

MIAMI – Former state Rep. Eladio Armesto-Garcia is awaiting trial on charges he violated the Open Meetings Law. As a member of the Miami Code Enforcement Board, Armesto-Garcia allegedly discussed two cases outside of a public meeting.

A zoning consultant secretly recorded conversations between

COURTS

Judge won't force media to hide names, faces

WEST PALM BEACH – A judge denied a motion that would have required the news media to blur the faces and erase the names of students testifying in the murder trial of Nathaniel Brazill.

The Palm Beach County School Board had requested that the media be made to hide the identities of students testifying at the trial, arguing that

special meetings.

Taylor ruled against Hoshall after a weeklong civil trial, saying he found no evidence county officials met in secret or failed to give adequate notice of meetings.

Taylor has not decided whether the county will have to pay Hoshall's legal fees. (5/8/01 – 5/12/01)

prosecutors, the criminal charges were dropped, and the pair agreed to a civil charge and a fine of \$500 each. (*Brechner Report*, October 2000)

The two men asked the board to cover the full \$45,460 in legal fees, but the board initially refused. A new board of trustees reversed the decision and agreed to pay \$22,669 to the two men. (4/22/01)

Armesto-Garcia and Angel Gonzalez, the chairman of the codes board, in which the two men discussed lowering fines against the zoning consultant's clients. Gonzalez is also facing charges.

John Countryman, a Broward County assistant state attorney, said the trial is pending while the state reviews about eight taped discussions. (2/11/01)

students were anxious and afraid of the trial.

Judge Richard Wennet, 15th Judicial Circuit, said the school board lacked the standing to make the request on behalf of the students. He also said the media have a right to report what is said at trial.

Brazill, 14, was sentenced to life in prison for the shooting death of a teacher. (5/25/01 – 5/30/01)

FIRST AMENDMENT CONTINUED

Charities challenge disclosure ordinance in suit

CLEARWATER – A Pinellas County ordinance that requires fundraising groups to register in the county and submit reports on how much money they raise and how they spend that money is being challenged in federal court.

A group of nonprofit organizations filed suit in U.S. District Court in Tampa

in May, claiming the ordinance violates their First Amendment free speech rights and interferes with interstate commerce. Additionally, the lawsuit challenges whether the county can demand information from charities that receive donations from Pinellas County residents via the Internet. (5/17/01)

Legislature passes 15 new exemptions during session

TALLAHASSEE – The Florida Legislature considered 134 bills during the 2001 session that dealt with open government issues. The Legislature passed 15 new exemptions to the Open Meetings and Public Records laws, re-enacted 10 exemptions it reviewed under the Open Government Sunset Review Act, and passed several other bills dealing with open government that did not create new exemptions. Copies of the legislation are available at the Legislature's Web site, Online Sunshine, at <http://www.leg.state.fl.us>.

The following new exemptions to the Public Records Law were passed. Chief sponsors of the bills are in parenthesis. If Gov. Jeb Bush signed the legislation into law by press time, a 2001 chapter number is provided.

CS/CS/HB 721 Individual agricultural records (Stansel, D-Live Oak) – Creates a public records exemption for information provided to the Department of Agriculture and Consumer Services as part of pollution reduction efforts. Exempt information includes records specifying the processes or methods of production, the costs and profits of production and any other financial information not subject to disclosure. The Department of Environmental Protection or a water management district can still access the exempt records. (Chapter No. 2001-74)

SB 772 Non-Title IV-D child support enforcement services (Sanderson, R-Fort Lauderdale) – Creates a records exemption for the names and other identifying information of people who apply for or receive child support services from non-Title IV-D county child support enforcement agencies. A court can authorize access. (Chapter No. 2001-131)

CS/SB 840 Public records/health/financial records (Saunders, R-Cape Coral) – Creates a records exemption for financial information provided to the Department of Health. The records could be released with written consent, in a medical emergency or under a court order. (Chapter No. 2001-108)

CS/SB 892 Deferred presentment (Garcia, R-Hialeah) – This public records exemption is linked to a larger

bill that regulates deferred presentment providers, who are people that exchange cash for post-dated checks or hold checks for a certain number of days. Creates an exemption for identifying information contained in a state-mandated deferred provider database.

CS/SB 904 Medicaid pharmaceutical rebates (Garcia, R-Hialeah) – Creates a records exemption for information collected by the Agency for Health Care Administration during negotiations with pharmaceutical companies. Exempt information includes trade secrets, rebate amounts, percent of rebates, pricing and supplemental rebates. Creates an exemption for meetings of the Medicaid Pharmaceutical and Therapeutics Committee when exempt information is discussed.

HB 1083 Autopsy photographs (Johnson, R-Winter Garden and Miller, R-Milton) – Creates a public records exemption for autopsy photographs, video tapes or audio tapes kept by a medical examiner. The family and government agencies are allowed access to the records, but the identity of the deceased, when possible, is exempt. A judge can allow access to the records if a requester shows "good cause." The bill requires the family to be notified when a request is filed. The provisions apply retroactively. (Chapter No. 2001-1)

SB 1200 Nursing homes/internal risk-management records (Brown-Waite, R-Brooksville) – Creates public records exemptions for (1) the meeting records of nursing home risk-management and quality assurance committees, (2) incident reports filed with facility risk managers and administrators, (3) notifications of adverse incidents, and (4) adverse incident reports. The Agency for Health Care Administration can release the records to law enforcement agencies or regulatory boards. Creates an exemption for the meetings of nursing home risk-management and quality-assurance committees. (Chapter No. 2001-44)

CS/HB 1385 Temporary assistance programs (Joyner, D-Tampa) – Creates a meetings exemption for portions of meetings held by regional and state agencies where the identities of people

who are participating in a temporary cash assistance program are revealed. Also creates a records exemption for the identifying information. (Chapter No. 2001-160)

CS/HB 1541 Economic development agencies (House Economic Development and International Trade Committee) – Amends an exemption to allow private businesses planning to locate, relocate or expand their activities to request a third year of confidentiality from an economic development agency. Expands the definition of economic development agency to include the Florida Commercial Space Finance Corporation and local government employees involved in business recruitment and expansion activities. The bill also creates an exemption for trade secret information contained in the records of an economic development agency. A trade secret is exempt for 10 years. (Chapter No. 2001-161)

CS/SB 1562 Tobacco industry records (Burt, R-Ormond Beach) – Creates a public records exemption for proprietary, confidential business information collected by Florida officials as part of the negotiations for settlement payments with the tobacco companies. (Chapter No. 2001-136)

HB 1565 Archaeological sites (Hogan, R-Jacksonville) – Creates a records exemption for Division of Historical Resources information identifying the location of archaeological sites if the agency finds that revealing the information would place the site at risk of harm, theft or destruction. (Chapter No. 2001-162)

CS/SB 1726 Elderly Affairs/personal information (Saunders, R-Cape Coral) – Creates a records exemption for personally identifying information contained in records received by programs administered or funded by the Department of Elderly Affairs. Allows access with the written consent of the individual or his/her representative. (Chapter No. 2001-194)

SB 1766 Code enforcement officers and local government human resource managers (Crist, R-Tampa) –

Creates a records exemption for the home addresses, telephone numbers, social security numbers and photographs of current or former human resource, labor relations or employee relations managers or directors and their spouses and children. The exemption also applies to those human resource managers of any local government or water management district. Expands the current exemption for home addresses of code enforcement officers to include their spouses and children.

CS/HB 1805 Accident reports (House Insurance Committee) – Creates records exemption for the names, addresses, telephone numbers or other identifying information for people involved in auto accidents and contained in accident reports. The records are exempt for 60 days. The bill allows access during the 60-day period by specified people including those involved in the accident, insurance companies and newspaper and broadcast journalists. Any government employee who knowingly discloses the exempt record to an unauthorized person can be charged with a third-degree felony. Any unauthorized person who knowingly accesses such information also can be charged with a third-degree felony. (Chapter No. 2001-163)

CS/SB 1836 Department of Revenue/communication services tax information (Carlton, R-Osprey) – Creates a records exemption for tax and audit files provided to the Department of Revenue relating to communication services taxes and the Communication Services Tax Simplification Law. Information can be shared with local governments but remains exempt when transferred to local government. (Chapter No. 2001-140)

The following bills related to open government were passed during the 2001 session, but they did not create additional exemptions to the Open Meetings or Public Records laws.

CS/CS/SB 306 Crime victims notification (Clary, R-Destin) – Part of this bill requires the Department of Corrections to notify the state attorney and the victim or victim's representative when an inmate has been approved for work release. It also says the victim or the victim's representative can review the presentencing investigation report.

Bill requires that victims or witnesses be informed about the address confidentiality program and that victims in sexual offenses cases must be informed of the right to have the courtroom cleared of certain people when they testify about the offense.

HB 947 Medical malpractice/release of records (Seiler, D-Fort Lauderdale) – Amends state statutes to allow for the release of medical records during a malpractice investigation to the family of the deceased or the family's attorney. The bill says that a health care provider who complies with the disclosure requirements will not be liable for any civil damages attributable to the disclosure. (Chapter No. 2001-155)

CS/CS/SB 1092 Illegal use of public records (Campbell, D-Tamarac) – Amends current law to make it a third-degree felony to use information concerning crime or accident victims gathered from police reports for commercial solicitation purposes.

HB 1811 Information technology/ chief privacy officer (House Information Technology Committee) – Authorizes the State Technology Office to designate a State Chief Privacy Officer to be responsible for the continual review of policies, laws, rules and practices of state agencies that may affect the privacy of state residents.

HB 1845 Criminal use of personal information (House Information Technology Committee) – Amends current statute to make it a second-degree felony to willfully use personal identification information to commit a fraud, if the damages exceed \$75,000. If public records are used to facilitate or further the crime, the crime is reclassified to the next higher degree.

CS/SB 2220 Data processing software/electronic records (Posey, R-Rockledge) – Re-enacts a statute that allows a government agency to copyright data processing software it develops. The bill retains provisions to protect public access to electronic records.

The following exemptions to the state Public Records/Open Meetings laws were reviewed and re-enacted during the 2001 legislative session under the Open

Government Sunset Review Act.

HB 385 Sealed bids (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 119.07(3)(aa)) for documents used directly or solely by a municipally owned utility to prepare and submit bids. (Chapter No. 2001-87)

HB 387 Sports industry donors (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 288.12295) for the identities of donors to the Florida Sports Foundation, an organization that promotes the sports industry and amateur athletics. The donors must request anonymity. (Chapter No. 2001-150)

HB 393 Florida tourism industry research (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 288.1226(8)) for the identity of people who respond to marketing and advertising research projects conducted by the Florida Tourism Industry Marketing Corp. and for trade secrets obtained in connection to the research. (Chapter No. 2001-69)

HB 395 Airport security (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 331.22) for security plans, photographs, maps, blueprints, drawings, and other materials that show airport-operating facilities. (Chapter No. 2001-59)

HB 397 Payment of tolls (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 338.155(6)) for personal information, including bank account numbers, checks, and debit card, charge card and credit card numbers, gathered by government agencies in collecting tolls or fees. (Chapter No. 2001-70)

HB 399 Emergency 911 records (Brunner, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 365.171(15)) for the name, address and other identifying information of people requesting emergency service or reporting an emergency while the information is in the custody of the agency providing emergency services. (Chapter No. 2001-71)

HB 401 Antitrust no-action letters (Brunner, R-Apopka) – Re-enacts an

LEGISLATIVE REVIEW CONTINUED

exemption (Florida Statutes, Section 408.185) for information submitted to the Attorney General by health care organizations as part of an antitrust review, including preferred provider and health maintenance organization contracts, trade secrets, a health care provider's marketing plan and proprietary business information. (Chapter No. 2001-72)

HB 403 Pawnbroker transactions (Brummer, R-Apopka) – Re-enacts an exemption (Florida Statutes, Section 539.003) for pawnbroker transaction records given to law enforcement officials, including the name, address and thumbprint of the seller, a description of the goods, and the amount paid. (Chapter No. 2001-151)

HB 405 Insurance records (Brummer, R-Apopka) – Re-enacts and changes an exemption (Florida Statutes, Section 626.921(8)) for records submitted to the Department of Insurance such as names and addresses, coverage types, amounts and costs, effective dates, and deductibles. The bill deleted an exemption for trade secrets and in its place created an exemption for "information specific to a particular policy or policyholder." Extends the exemption to insurance records submitted to the state's Surplus Lines Service Office. (Chapter No. 2001-181)

HB 407 University health service support organizations (Brummer, R-Apopka) – Re-enacts and narrows an exemption (Florida Statutes, Section 240.2996(2)(3)(4)) for certain records and meetings of university health support organizations. The records exemptions include (1) managed care contracts, (2) trade secrets, (3) records of peer review panels that evaluate health care services and professional credentials, and (4) meeting minutes that contain exempt information. Re-enacts an exemption for meetings during which confidential and exempt information is discussed. Narrows the exemption for marketing plans by saying the exemption applies only if a competitor can use the information to "frustrate, circumvent or exploit" the plan. (Chapter No. 2001-35)

The following bills were introduced, but were not passed during the legislative session. Summaries of these

bills are available from the Florida Legislature's home page, Online Sunshine, at <http://www.leg.state.fl.us>. Summaries and final dispositions are also available from the First Amendment Foundation's Web site at <http://floridafaf.org/>.

- **HB 3 and CS/SB 714** – Citizens' Right to Honest Government Act.
- **HB 64 and SB 356** – Public libraries/obscenity.
- **SB 92** – Legislature/open meetings.
- **SB 242** – Recording devices in nursing homes.
- **SB 270** – DNA testing and analysis.
- **CS/HB 275** – Campaign treasurers' reports.
- **HB 383 and SB 632** – Bank account numbers and payment information.
- **HB 389 and SB 484** – Economic development agencies.
- **HB 391 and SB 486** – Qualified defense contractor tax refund program.
- **HB 477 and SB 1314** – Abandoned newborns.
- **SB 514** – Use of public record information.
- **HB 643 and SB 696** – Criminal use of personal information.
- **SB 692 and HB 1067** – Physician reports of adverse incidents.
- **HB 731 and SB 768** – Home address/human resource managers.
- **CS/HB 813 and CS/SB 1096** – Pharmaceutical adverse incidents.
- **CS/SB 894 and HB 1535** – Educational professionals.
- **SB 896** – Public records exemption.
- **SB 898** – Public records exemption.
- **SB 900** – Public records exemption.
- **SB 902** – Public records exemption.
- **CS/SB 906 and CS/HB 1561** – Learning gateway.
- **HB 985 and CS/SB 2146** – Medical records/solicitation.
- **HB 995 and SB 1688** – Police report access.
- **SB 996** – Identity theft.
- **SB 998** – Privacy and public records.
- **HB 1035 and CS/SB 1628** – Uniform correction or clarification of defamation act.
- **CS/HB 1103 and CS/SB 1458** – Insurer receivership.
- **HB 1147 and CS/SB 1734** – Department of Insurance/personal information.
- **SB 1186** – Law enforcement employees.
- **SB 1238 and HB 1951** – Paratransit services.

- **CS/SB 1280 and HB 1585** – Abandoned property.
- **CS/HB 1405** – Release of student records.
- **HB 1421** – Qualified tax refund programs.
- **CS/HB 1437 and CS/SB 1762** – Communication systems.
- **HB 1517 and CS/SB 2082** – HMO/risk-based capital reports.
- **HB 1537 and SB 1678** – Agency contracting/state employees.
- **SB 1552** – Form DD-214.
- **SB 1560 and CS/HB 1763** – Department of Environmental Protection/Internet notices.
- **HB 1695** – Student assessments records.
- **CS/HB 1699 and CS/SB 2218** – Windstorm underwriting records.
- **HB 1771** – Juvenile records.
- **SB 1838** – Financial statements/bidders.
- **CS/SB 1848** – Nursing home claimants.
- **HB 1871** – Physician adverse incident reports.
- **SB 1898** – Government collection of personal information.
- **SB 1930** – Central voter file.
- **SB 1944** – Chief privacy and public access officer.
- **SB 1958** – Investigations/compensation claims.
- **SB 2006** – Juvenile justice records.
- **CS/SB 2028** – Production of records.
- **SB 2128** – Lists of state employees.
- **SB 2170** – Department of Insurance records.
- **SB 2228** – Long-term care.

THE BRECHNER REPORT

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Sunshine Laws dimmed during recent session

In 1992, the voters of the state of Florida overwhelmingly approved a constitutional right of access to government meetings and records. More than 82 percent of the state's voters approved this constitutional provision, guaranteeing the public's right to access public records and attend public meetings.

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protected from the whims of a legislature easily influenced by special-interest lobbyists seeking new exemptions to the state's open government laws.

You'd never know how strongly Floridians believe in open government based on the actions of the Florida Legislature.

This year, 134 bills affecting access to public records and open meetings were filed. That's a 50 percent increase over the number of access bills filed during the 2000 legislative session.

The Legislature passed 15 new exemptions limiting access, many without any debate. Most of these were quickly signed by the Governor. A number of them are unconstitutional. According to the state's Constitution, the legislature must state with specificity the public necessity justifying the exemption, and the exemption cannot be any broader than necessary. The legislature seems to view this requirement as an inconvenience. The resulting legislation severely restricts the public's right to know about important governmental activities.

The worst new law exempts all reports of "adverse incidents" in the state's nursing homes from public inspection. These reports would include errors, neglect or malicious acts that result in significant harm to nursing-home residents.

This bill is the most glaring example of the Legislature's inability to adequately evaluate this public necessity requirement for new exemptions. What public interest is served by keeping mistakes secret? If you have a loved one in a nursing home, what information could be more important?

A number of the new laws help the government and private businesses keep secrets, under the guise of protecting personal privacy. There is an important distinction between protecting individual privacy, and the government setting up a culture of secrecy. Many people in this country are confused. As a result,



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The constitutional amendment also ensured that this right would be

new exemptions are passing in record time, with little debate. The "Earnhardt Family Protection Act" is an example of how concern over privacy and the Internet can influence lawmakers and alter access to public information. Autopsy photographs have been public records in Florida for many years. There's no history of media exploitation. This was a legitimate news story. Earnhardt was one of a handful of NASCAR drivers killed during a race in recent years. How did the legislature miss the importance of accurate information regarding Earnhardt's death? Wouldn't it be helpful to know if we could do something to prevent more deaths?

The legislators also created a new position in state government, the Chief Privacy Officer. This person will be responsible for protecting the privacy of state residents. Last year, the state's Task Force on Privacy and Technology recommended the establishment of a Chief Privacy and Public Access Officer to balance privacy with public access.

But when it came before the legislature this year, the balance between the right of access and the right of privacy was gone. Is there going to be a Chief Public Access Officer? Probably not.

Florida's constitutional right of privacy was passed in 1980. Legislators who drafted the amendment understood the importance of access to information.

The amendment says: "The right to be let alone and free from governmental intrusion into his private life ... shall not be construed to limit the public's right of access to public records and meetings as provided by law." The rights must be balanced.

We all want to be protected from businesses abusing our personal information. We're worried about the bank selling our financial information without our permission. We're worried about our insurance companies releasing our medical data without proper authorization. And with good reason. We are also worried about what our government is doing.

While the public doesn't have a war chest to fight every battle over access like the business interests in this state, citizens have something more important – a vote. Legislators would be wise to remember that Floridians strongly support open government and the concept of freedom of information.

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