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# THE BRECHNER REPORT

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July 2011

## Scott's bill signing, email policies raise concerns

TALLAHASSEE – Gov. Rick Scott's administration continues to draw criticism from transparency advocates, most recently after Democrats were ordered out of a budget signing and a top Scott staffer admitted to rarely using email to avoid the Public Records Law.

The budget signing in question took place at The Villages, where the *St.*

*Petersburg Times* says Scott staffers summoned Sumter County sheriff's deputies to remove Democrats from the event. Russ Abrams, a special assistant to Scott, reportedly told a *Times* reporter that the event was private.

But Scott spokesman Lane Wright denied his office had anyone removed. "Gov. Scott did not have these individuals removed," Wright said. "We don't know first-hand who was removed

### ACCESS RECORDS

or why." Also of concern to open government advocates was the admission by Mary

Anne Carter, a top aide to Scott, regarding her email use. "I rarely check and almost never respond to work email because of the open records law," Carter wrote in an email from her private account, obtained by a *St. Petersburg*

*Times/Miami Herald* public records request.

Carter, who resigned in June, was paid \$150,000 per year and helped shape many of Scott's policies, according to the *Times*. Carter declined to comment, but Brian Burgess, Scott's communication director, acknowledged that many of Scott's staffers use phones to avoid creating public records. Burgess noted that Carter is not obligated to use email.

"Are there things we don't want you to know? Yes," Burgess told the *Times*. "There are things we don't want to broadcast to our opponents."

Source: *St. Petersburg Times*

## Councilmen's Facebook posts draw resident's ire

MIAMI LAKES – Facebook posts by two members of the Miami Lakes City Council have prompted one resident to ask prosecutors to investigate whether the posts violated the Open Meetings Law.

Resident Robin Beamon complained after Councilman Nelson Hernandez posted a message on his personal

Facebook page asking his "friends" to contact another council member so she would support a measure. One of Hernandez's 866 Facebook "friends" was Councilman Richard Pulido.

At a council meeting, Pulido admitted that prior to the vote on the measure, he posted a comment to Hernandez's

Facebook page indicating support of the measure, according to the *Miami New Times*.

Hernandez denies any wrongdoing. "Using Facebook is a way to communicate with the people. That's what I use it for," Hernandez said.

Source: *Miami New Times*

## Newspaper challenges sealing of court records

SARASOTA – The *Sarasota Herald-Tribune* is fighting the sealing of records in the case of a teen accused of shooting two British tourists in April. Shawn Tyson, 16, has been in jail since April 16 and has been indicted on two counts of first-degree murder.

However, documents in the case have been sealed by Circuit Judge Rochelle

Curley, including those that would explain why police believe Tyson committed the crimes. Curley also sealed her own orders.

The *Herald-Tribune* argues that Curley did not have a hearing on the sealing of the records, contrary to Florida law, nor did she identify a compelling interest for the

### COURTS

closure. The newspaper filed a motion in the case asking for the unsealing of the records and orders.

Curley plans to hold a hearing where prosecutors and police must justify their reasons for wanting to keep the documents secret.

Source: *Sarasota Herald-Tribune*

## Appeals court overturns law on stereo volume

LAKELAND – The 2<sup>nd</sup> District Court of Appeal has struck down a Florida statute restricting how loud car stereos can be played. The statute doesn't apply if the stereo is being played for business or political purposes.

Two defendants were issued traffic citations under the statute, one of whom says he was listening to Justin Timberlake at the time he was pulled over. The law allows officers to stop a vehicle if the noise is "plainly audible at a distance of

25 feet or more."

The 2<sup>nd</sup> District ruled that the statute was "a content-based restriction on free expression which violates the First Amendment."

Source: *USA Today*

## Lobbying contract spurs Sunshine lawsuit

INVERNESS – Citrus County commissioners are facing a lawsuit by a resident who says the handling of a lobbying contract violated the Open Meetings Law.

Robert Schweickert Jr.'s lawsuit stems from individual meetings between commissioners and a lobbyist. Schweickert alleges that even though no two commissioners met in private

to discuss hiring a firm to lobby the Legislature to add Port Citrus to Florida's list of recognized ports, a de facto meeting occurred.

Schweickert is asking a judge to void the \$50,000 contract with the lobbying firm that was approved at a Feb. 22 meeting even though it was not on the meeting's agenda, according to the lawsuit.

"The decisional process leading to the selection of [the lobbying firm] was conducted behind closed doors," the lawsuit states.

Two commissioners denied any wrongdoing. "We're very careful we don't violate the Sunshine Law," Commissioner Winn Webb told the Citrus County Chronicle.

*Source: Citrus County Chronicle*

## Secret ballots raise Sunshine concerns in Collier

COLLIER COUNTY – The use of written ballots by the Collier County School Board to narrow a list of superintendent candidates has raised questions of how the practice fits with the Open Meetings Law.

In narrowing the list of superintendent finalists from eight to four, board members voted using written ballots. The ballots did not contain the name of the

person voting but did have a number corresponding to the particular board member.

School District Attorney Jon Fishbane said the use of the ballots did not violate the Open Meetings Law because the numbers were coded to individual board members, according to the *Naples Daily News*. Fishbane said each member's vote is available for review.

Naples resident Jack Pointer, however, raised his concern with the school board that the ballots might be a Sunshine violation.

Written ballots are permitted, but only if the votes are made openly at a public meeting and the name of the person who voted is written on the ballot, according to a Florida Attorney General Opinion.

*Source: Naples Daily News*

## Newspaper questions college board's workshops

FORT MYERS – After a public records request by the *Naples Daily News* revealed a dearth of records related to workshops of the Edison State College Board of Trustees, some are concerned about potential Open Meetings violations.

The board held nine workshops over the past two-and-a-half years, but in response to a public records request by the *Naples Daily News*, the only records

related to the workshops were agendas and notes from one meeting. The workshops, which typically took place an hour or two before the board's regular meetings, were not noticed on the board's website, according to the *Naples Daily News*.

Board Vice Chair Mary Lee Mann disputed the notion that a lack of minutes for the workshops was an Open Meetings

violation. Board spokesperson Teresa Morganstern said that the agendas serve as a record of the meetings.

"To avoid any future confusion," Morganstern wrote in a statement, "we will now audio-record all workshops and post minutes of workshop meetings on the Edison State College website, which can be publicly accessed."

*Source: Naples Daily News*

## ACCESS RECORDS CONTINUED

### County ends text message plan after time-consuming request

INVERNESS – A few months after Citrus County implemented text messaging as a way for senior staffers to communicate, a public records request has prompted the county to disable the text messaging feature on county phones.

"I'd rather just have them talk in person," County Administrator Brad Thorpe said. "It's one of those technologies that is a time saver that created more heartburn."

Inverness resident Robert Schweickert Jr., who is also suing the county over the

adoption of a lobbying contract, requested three months of cell phone records related to a plan to have Port Citrus named as a state port. Schweickert received hundreds of text messages on county matters in response to his request.

Thorpe said that although text messages on county phones are automatically saved on a computer server, compiling the records requests took hours and removing the text capability was preferable to fulfilling time-consuming records requests.

*Source: Citrus County Chronicle*

## Brechner.org

Visit The Brechner Center's website, where you can find:

- Our Open Government Pledge, which you can pass on to your elected officials.
- Florida lawmakers' voting records on open government issues.
- Sample public records request letters.
- The Citizen's Guide downloadable PDF and video.
- Details on open government prosecutions in Florida dating back to 1977.

# 2011 LEGISLATIVE REVIEW

TALLAHASSEE – The following is a summary of bills pertaining to public records and open meetings introduced during the 2011 legislative session. Chief sponsors of the bills are indicated in italics.

Copies of the legislation in full are available at the Florida Legislature's website ([www.leg.state.fl.us](http://www.leg.state.fl.us)).

*SB=Senate Bill; HB=House Bill; CS=Committee Substitute*

*The following nine bills create new exemptions to the state Public Records and Open Meetings Laws.*

## **CS/HB 409 Video Voyeurism:**

Expands the current public record exemption for criminal intelligence and investigative information, creating an exemption for photos, video or images of victims of certain sexual offenses, including video voyeurism. *Rep. Keith Perry (R-Ocala)*. Signed by Gov. Scott May 31.

## **CS/HB 411 Photographs Depicting Killing of a Person:**

Creates a new exemption to the Public Records Law for photos, videos or audio recordings that depict the "killing of a person." This is defined as "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Immediate family members of the deceased, as well as official agencies, are permitted access. Others can access the records only by a court order and a showing of good cause. *Rep. Rachel Burgin (R-Tampa)*. Signed by Gov. Scott June 2.

## **CS/HB 579 Regional Autism**

**Centers:** Creates a public record exemption for clients of regional autism centers who receive services at the center or participate in activities at the center. Also exempt are records related to clients families. The bill also exempts from the Public Records Law personal identifying information or current or prospective donors to a regional autism center who request anonymity. *Rep. Marti Coley (R-Marianna)*. Signed by Gov. Scott June 24.

## **HB 597 Emergency Notification System:**

Creates a new public record

exemption for information provided to an agency for emergency notification purposes. Exempt information includes names, addresses, telephone numbers, email addresses, and other electronic communication addresses. *Rep. Dwayne Taylor (D-Daytona Beach)*. Signed by Gov. Scott May 31.

## **CS/HB 667 Inspector General**

**Reports:** Changes the current exemption for non-final reports of internal auditors for local governments. Creates a new public record exemption for investigative and audit reports of local government inspectors general, providing for disclosure only after the audit or investigation is final. Information received, produced or gained as the result of a local government inspector general's investigation is also exempt. *Rep. Jeff Clemens (R-Lake Worth)*. Signed by Gov. Scott May 31.

## **CS/HB 677 Office of Financial**

**Regulation:** Creates public record exemptions for information received by the Office of Financial Regulation from other agencies that is exempt under state or federal law, as well as information received as part of a multi-agency investigation. *Rep. Ray Pilon (R-Sarasota)*. Signed by Gov. Scott May 31.

## **CS/HB 913 Public Airports –**

**Proprietary Business Information:** Creates an exemption to the Public Records Law for "proprietary confidential business information" that is held by or submitted to a public airport. This information includes: business plans; internal auditing controls and reports; reports of external auditors for privately held companies; trade secrets; client and customer lists; material that could be patented; business transactions; financial information of the proprietor; and financial projections of the proprietor or airport facilities projects. Also creates an exemption for proposals and counterproposals between a public airport and a non-governmental entity relating to the sale, use, development, or lease of airport land or airport facilities, are also exempt. However, these proposals and counterproposals will become public once approved. *Rep. Mike Horner (R-Kissimmee)*. Vetoed by Gov. Scott June 24.

## **CS/HB 1473 Florida Health**

**Choices Program:** Creates public record exemptions for information related to the Florida Health Choices Program, including personal identifying information of enrollees or participants; client and customer lists; and proprietary confidential business information held by Florida Health Choices. *Rep. Richard Corcoran (R-New Port Richey)*. Signed by Gov. Scott June 21.

## **CS/SB 1970 Office of Program Policy Analysis and Government**

**Accountability:** Creates a public record exemption for papers held by the Office of Program Policy Analysis and Government Accountability that relate to a project or research product. *Sen. John Thrasher (R-Jacksonville)*. Signed by Gov. Scott May 5.

*The following open government bills were passed in 2011 but do not create exemptions.*

**CS/SB 170 Electronic Filing & Receipt of Court Records:** Requires state attorneys and public defenders to implement a system for electronic filing and receipt of court records. *Sen. Mike Bennett (R-Bradenton)*. Signed by Gov. Scott June 21.

## **SB 298 Meetings – Municipal**

**Government:** Permits the governing body of a city with less than 500 residents to hold meetings within five miles of the exterior boundaries of the city. *Sen. J.D. Alexander (R-Lake Wales)*. Signed by Gov. Scott June 17.

## **HB 951 Recording of Real**

**Property Documents:** Provides that a document otherwise entitled to be recorded and which has been accepted for recording by the clerk of court is valid even if the document is defective or deviates from strict compliance with applicable statutes, rules or procedures. Applies retroactively. *Rep. Ben Albritton (R-Bartow)*. Signed by Gov. Scott June 17.

## **CS/HB 965 Florida Tax Credit**

**Scholarship Program:** Removes the provision that limits tax credits to 75% of taxes owed by contributors to the Florida Tax Credit Scholarship Program. *Rep. Mike Horner (R-Kissimmee)*. Signed by Gov. Scott June 2.

**CS/SB 1346 Obsolete References and Programs:** Repeals the current public records and open meetings exemptions for certain records and meetings relating to the U.S. Department of Defense Base Realignment and Closure 2005 process. Signed by Gov. Scott June 21.

**SB 2096 State Financial Information:** Requires the Auditor General to provide annually to the Legislature a list of school districts and water management districts that have failed to comply with financial transparency requirements. Signed by Gov. Scott May 26.

**CS/HB 4045 Assisted Living Facilities:** Removes the requirement that the Agency for Health Care Administration (AHCA) report annually a list of assisted living facilities that were sanctioned or fined. Also removes the requirement that these facilities report liability claims to AHCA on a monthly basis. *Rep. Matt Hudson (R-Naples)*. Vetoed by Gov. Scott June 27.

*The following exemptions were reenacted in 2011 under the Open Government Sunset Review Act (OGSR), which requires review of exemptions every five years.*

**HB 7075 Home Addresses – DJJ Employees:** Reenacts with minor modification the public record exemption for the home address and other contact information of certain employees of the Department of Juvenile Justice and their family members. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 21.

**HB 7077 Biometric Identification Information:** Reenacts without change the public record exemption for biometric information held by an agency. Biometric identification information includes friction ridge detail, fingerprints, palm prints and footprints. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 21.

**HB 7079 Florida Center for Brain Tumor Research:** Expands the current exemption for medical records held by the Florida Center for Brain Tumor Research to include an exemption for personal identifying information of donors to the central repository for brain tumor biopsies or the brain tumor registry. *H. Government Operations Subcommittee*.

Signed by Gov. Scott June 21.

**HB 7081 Statewide Public Guardianship Office:** Reenacts with minor changes the public record exemption for information identifying donors or potential donors to the direct support organization of the Statewide Public Guardianship Office. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 24.

**HB 7083 Interference with Custody:** Reenacts the public record exemption for the current address and telephone number of a person who takes a minor child and reports such to the sheriff or state attorney under the exception to the offense of interference with custody. *H. Government Operations Subcommittee*. Signed by Gov. Scott May 31.

**HB 7085 Court Monitors:** Reenacts with minor changes the public record exemption for court orders appointing court monitors. Also exempts reports of monitors related to medical conditions, finances or mental health of wards. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 21.

**HB 7159 Ethics Commission:** Reenacts the public records and open meetings exemptions for records and meetings related to Ethics Commission investigations of alleged violations of certain lobbyist registration and reporting requirements. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 17.

**HB 7161 Concealed Weapon Permits:** Reenacts with minor changes the public record exemption for personal identifying information of individuals applying for concealed weapon permits. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 2.

**HB 7223 Competitive Solicitations:** Amends the public record exemption for sealed bids or proposals received by an agency in response to requests for proposal or invitations to bid. Provides a public record exemption for sealed bids, proposals or replies received by an agency pursuant to a competitive solicitation, providing that the replies are exempt only until the agency provides notice of an intended decision to award a contract or until 30 days after the opening of the bids, proposals or replies, whichever is earlier.

Also provides an exemption for portions of meetings at which negotiations with vendors conducted pursuant to a competitive solicitation and those portions of team meetings at which negotiation strategies are discussed. Requires a complete recording of exempt portions of meetings, providing that such recordings and any records presented at an exempt meeting are exempt only until the agency provides notice of an intended decision to award a contract or until 30 days after the opening of the bids, proposals or replies, whichever is earlier. *H. Government Operations Subcommittee*. Signed by Gov. Scott June 2.

**HB 7225 State Board of Administration Alternative Investments:** Reenacts the public record exemption for records related to alternative investments made by the State Board of Administration. Provides that information relating to third-party placement agents is subject to disclosure. SBA is required to maintain a list and description of records that are declared proprietary and therefore not subject to disclosure. *H. Government Operations Subcommittee*. Signed by Gov. Scott May 31.

*The following bills were introduced in the 2011 session but were not passed.*  
HB 31/SB 102, Chief Technology Officer  
HB 89/SB 914, Publication of Public Notices  
CS/SB 106/CS/HB 121, Exemption/Donors - Performing Arts Centers  
HB 129/SB 262, Intimidation of a Judge  
SB 134, Sealing Criminal History Records  
HB 193/SB 458, Expunction/Arrest Records  
SB 198/HB 335, Placement Agents  
HB 285 and SB 310, Public's Right to speak  
SB 314/HB 485, Exemption/Dental Surveys  
CS/HB 619/CS/SB 1448, Sale of Public Hospitals  
SB 678/HB 4065, Long-Term Care Councils  
SB 682 /HB 4061, Long-Term Care Programs  
HB 727/SB 1402, Criminal History Records  
SB 766/HB 1027, Exemption/Spouse Names  
HB 931/SB 2024, Sale or Lease of Public Hospitals  
HB 1065/SB 1408, Exemption/Litigation Meetings  
HB 1169/SB 1800, Exemption/Insurance Records  
SB 1240, Exemption/Home Addresses – EMTs and Paramedics  
HB 1297/SB 1534, Sealing /Juvenile Criminal History Records

*continued on p. 5*

## Judge refuses to issue gag order, close proceedings

OCALA – Despite attempts by defense attorneys to close pretrial hearings and prevent those associated with the case from talking to the media, a circuit judge has ruled in favor of openness.

Attorneys for Charlie Kay Ely, 18, argued that the gag order and closures were necessary to preserve her right to a fair trial. Ely, along with four others, is charged with the first-degree murder of 15-year-old

**COURTS** Seath Jackson in April. Circuit Judge David B. Eddy declined to grant the defense's request. "I strongly suggest this is a matter of strong public concern," Eddy said.

Attorneys representing the *Ocala Star-Banner* and The Associated Press argued against the restrictions. Ely's attorneys were especially concerned about online comments about Ely and her being "crucified in the national media."

Ely is being held without bail. Prosecutors have declined to seek the death penalty against her.

Source: *Ocala Star-Banner*

## North Port votes to revise policy

NORTH PORT – The North Port City Commission has voted to order staffers to revise the city's public records policy. The revision was prompted by a *Sarasota Herald-Tribune* request for two weeks of the city attorney's emails.

Prior to releasing the records, the city requested a \$445 payment, including \$360 for the time it took City Attorney Rob Robinson to review his correspondence. Robinson's \$160 hourly rate was charged for emails on his computer system. For Robinson's emails on city servers, the cost was \$85 for two

to three hours of staff time.

Pat Gleason, special counsel for open government in the Attorney General's Office, noted that the \$160-per-hour rate would be justified if reviewing the emails was "work that only a lawyer should do." Florida's Public Records Law only allows agencies to charge a rate based on the hourly pay of the lowest-paid person capable of performing the task.

The goal of the revised records policy is to bring consistency to the process and make records cheaper to obtain.

Source: *Sarasota Herald-Tribune*

## Officials commit to transparency

The Brechner Center launched its Open Government Pledge last fall. We encourage you to ask your local and state lawmakers to sign the pledge, available at [www.brechner.org](http://www.brechner.org), and join the following officials in committing to transparency:

**•U.S. Representatives:**

Tom Rooney

**•State Senators:**

Eleanor Sobel, Dist. 31

**•State Representatives:**

Jim Waldman, Dist. 95

Lori Berman, Dist. 86

Evan Jenne, Dist. 100

John Patrick Julien, Dist. 104

Jason Brodeur, Dist. 33

Dwight Bullard, Dist. 118

Debbie Mayfield, Dist. 80

Marti Coley, Dist. 7

Jeff Clemens, Dist. 89

William L. Weatherford, Dist. 61

Darren M. Soto, Dist. 49

Fred Costello, Dist. 26

**•Mayors/Vice Mayors:**

Harley Strickland, Orange City

Robert F. Apgar, City of Deland

Buddy Snowden, Lake Helen

Dominic Persampiere, Oviedo

Ann Robins, Lake Helen

Jeff Triplett, Sanford

Patty Mahany, Sanford

**•Commissioners:**

Jerry Gemskie, Kissimmee

Mark McCarty, Sanford

Velma Williams, Sanford

Randy Jones, Sanford

Vernon J. Burton, Lake Helen

Rick Basso, Lake Helen

Cameron Lane, Lake Helen

Fred Lowry Jr., Deltona

Zenaida Denizac, Deltona

Fred Hawkins Jr., Osceola County

**•Council Members:**

Anthony Pupello, Orange City

Cindy Drago, Oviedo

Russell Holmes, St. Cloud

Kimberly Prosser, Rockledge

James O'Brien, Windermere

**•School Board Members:**

Diane J. Smith, Volusia

Candace C. Lankford, Volusia

Tina Calderone, Seminole

**•Others:**

Malcom Thompson, Clerk of Court, Osceola

Tony Ferentinos, Soil and Water Conservation Dist., Osceola

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## 2011 LEGISLATION CONTINUED

HB 1299 Juvenile Offender Records

SB 1310/HB 1435, 911 Call Records

HB 1313/SB 1956, Public-Private Partnerships

HB 1325 Exemption/Pawnbroker Transaction Records

HB 1383/SB 1984, Exemption/Technology Seed Capital Fund

HB 1419 and SB 1712, Exemption/Destination Resort Commission

SB 1472, Exemption/Ethics Commission

SB 1606, Exemption/Title Insurance Records

SJR 1704/HJR 7037 Records/Judicial Qualifications Commission

SB 1834/HB 4091, Expunction of Records

SB 1858, Exemption/Abortion Records

SB 1876, Expunction of Traffic Violations

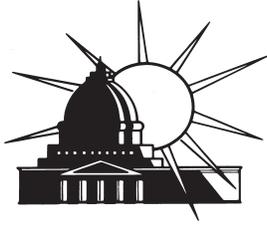
HB 4005 Legislative Records

Source: *Florida First Amendment*

# THE BRECHNER REPORT

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## Lawmakers fail to protect right to speak at meetings

The 2011 legislative session, like the 2010 legislative session before it, initially held out some promise for positive developments related to open government. In 2010, bills were filed that would have incorporated many of the recommendations of the Governor's Commission on Open Government to improve open meetings and public record laws. While no House committees in 2010 heard a bill incorporating the Commission's recommendations, at least three Senate committees heard and voted favorably for Senate Bill 1598 by Senator Paula Dockery (R-Lakeland), which incorporated those recommendations. Unfortunately, the bill did not pass the full Legislature in 2010 nor was it reintroduced in 2011.

Likewise, some significant open government bills were filed for consideration in the 2011 legislative session. Probably the most important were bills that would have confirmed that Floridians

**The Back Page**  
By **Jim Rhea**

have the right to speak in public meetings. You may have thought that you already had that right, but in May 2010, the First District Court of Appeal held in the case *Keesler v. Community Maritime Park Associates, Inc.*, that we do not have the right to speak in a public meeting. The Florida Supreme Court did not accept jurisdiction on appeal, sending a chill through the access community, and leaving the holding in *Keesler* standing as the session started.

So, the Foundation was quite pleased when Senator Joe Negron (R-Palm City) filed Senate Bill 310 and Representative Eric Eisnaugle (R-Orlando) filed House Bill 285, both of which would have confirmed in statute that the public does in fact have the right to speak at a public meeting. The bills also ensured that reasonable rules could be adopted so that public meetings would proceed in an orderly fashion. Shockingly, not a single committee in either house even considered the bills confirming the right to speak at a public meeting. Not one committee. As a result, neither bill passed the Legislature, leaving Floridians who want to speak at public meetings at the mercy of collegial bodies who may not want to hear what the citizenry actually thinks about an issue before it.

The Legislature in 2011, however, did have time to hear and pass a number of bills that created new exemptions or expanded existing exemptions from access requirements. One of the most significant disappointments, and a further restriction on access to public records, was passage of House Bill 411 by Rep. Rachel

Burgin (R-Tampa) – the companion was Senate Bill 485 by Senator Bogdanoff (R-Ft. Lauderdale). HB 411 makes confidential and exempt a photograph, video or audio recording that depicts or records the killing of a person. The bill defines "killing of a person" to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Given the breadth of this definition, even those portions of a recording that don't actually show a killing are protected under the exemption. The spouse, surviving parent or child of the victim or a designated agent may inspect or copy the recording, as may governmental entities in the performance of their duties. Unfortunately, everyone else has to go to court to get a copy of the recording – which usually means hiring an attorney and paying attorneys fees and costs to bring the action. Of course, there is no guarantee that the right to inspect or copy the recording will be granted by the judge.

The impact of HB 411 on our ability to oversee the actions of governmental officials cannot be understated. As a result of HB 411, it will now be much more difficult to obtain recordings from security cameras, patrol cars, or even confiscated recordings taken by citizens that show evidence of wrongdoing by public officials or employees. Requiring the public to expend funds to get access, as well as requiring the public to have to rely on judges to grant us the ability to exercise oversight over our government, is yet another worrisome restriction on public access to public records.

While the number of new exemptions and open government sunset review bills in 2011 was about average, the Legislature still failed to address the most pressing issues that impact access to records and meetings. The concerns identified by the Governor's Commission on Open Government, and included in SB 1598 by Senator Dockery in 2010, still remain unaddressed. Further, the Legislature did not address the issue of the right of the public to speak in a public meeting. The issues raised by the Commission, as well as by the court in *Keesler*, are very serious concerns that must be addressed if access to records and meetings are to be preserved. Hopefully, the 2012 Legislature will find the time to focus on these significant issues.

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*Jim Rhea is director of the First Amendment Foundation. Details on all open government bills considered during the 2011 legislative session are available at [www.floridafaf.org](http://www.floridafaf.org).*