

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 17, 1998 Revised: _____

Subject: Confidentiality of Public Records for the Department of Labor and Employment Security

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Under the Public Records Law, and Article I, Section 24 of the State Constitution, records of public bodies must be open to the public. Committee Substitute for Senate Bill 1408 exempts from disclosure under the Public Records Law investigatory records of the Division of Workers' Compensation (Department of Labor and Employment Security) which are received from employers pursuant to its authority to enter work sites and inspect business records to ascertain compliance with workers' compensation coverage requirements, as provided by CS/SB 1406. The bill provides that the investigation or business records become public and are disclosed when the division's investigation is completed or ceases to be active. Under limited circumstances, certain business records remain confidential. This public records exemption provision is similar to current law for other state agencies which obtain records through their compliance-type activities, such as the Department of Insurance and the Agency for Health Care Administration.

This bill would take effect on the effective date of Senate Bill 1406, or similar legislation relating to the powers of the Division of Workers' Compensation. That bill provides specific authority to the Division to enter work sites and inspect business records to ascertain employer compliance with the workers' compensation coverage requirements. This bill further provides a public necessity statement for the exemption, as is required by Article I, s. 24 of the State Constitution, and the exemption is made subject to the Open Government Sunset Review Act of 1995 and is repealed, subject to prior legislative review and reenactment, on October 2, 2003.

This bill creates section 440.108 of the Florida Statutes.

II. Present Situation:

Under chapter 440, F.S., all public and private employers and employees, unless specifically exempted, must be covered for workers' compensation insurance. The Division of Workers' Compensation within the Department of Labor and Employment Security is responsible for ensuring that employers comply with the mandate of providing coverage for both themselves and their employees. Currently, s. 440.107, F.S., authorizes the division to issue stop-work orders and issue civil penalties for employers who do not comply with the insurance requirements. Division investigators visit job sites to determine compliance with the law and often must review work or business records. However, express statutory authority to enter workplaces, to inspect and copy records, and to issue subpoenas is not currently provided. A separate bill, Committee Substitute for Senate Bill 1406, would provide such express authority.

Article I, s. 24 of the Florida Constitution expresses Florida's public policy regarding access to government records by providing that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Constitution does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of section 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is addressed under s. 119.07, F.S., which provides that:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

III. Effect of Proposed Changes:

Section 1. Creates s. 440.108, F.S., to provide that investigatory records of the Division of Workers' Compensation which are obtained from businesses pursuant to the division's compliance activities under s. 440.107, F.S., (as amended by CS/SB 1406) and any records necessary to complete an investigation are confidential and exempt from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. (See Related Issues, below.) The investigatory or business records become public and are disclosed when the division's investigation is completed or ceases to be active. An investigation is considered to be active while such investigation is being conducted by the division with a reasonable, good faith belief that it may lead to the filing of administrative, civil or criminal proceedings. Under limited circumstances, certain business records remain confidential, i.e., if disclosure would jeopardize the integrity of another active investigation or reveal business or personal financial information. The exemption created by the bill would be repealed on October 2, 2003, subject to prior legislative review, in accordance with s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

Section 2. The Legislative findings provided in the bill state that it is a public necessity that these investigatory records be held confidential and exempt during an investigation in order not to compromise the investigation and disseminate potentially inaccurate information. Additionally, revealing such information would impede the effective and efficient operation of investigatory governmental functions.

Section 3. The bill takes effect on the effective date of SB 1406, or similar legislation relating to the powers of the Division of Workers' Compensation. Pursuant to the provisions of the Public Records Act, this bill (CS/SB 1408) contains only the exemption provisions and does not contain other substantive provisions. Committee Substitute for Senate Bill 1406 contains the substantive provisions which relate to the powers of the Division of Workers' Compensation to enter work sites and inspect business records to ensure compliance with the workers' compensation laws.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill provides for a public records exemption relating to employer or investigatory records under chapter 440, F.S. A statement of public necessity justifying the exemption is included in **Section 2** of the bill. Since this bill relates only to an exemption, it complies with the requirements of s. 24, Art. I, of the State Constitution.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is linked to Committee Substitute for Senate Bill 1406 which provides specific authority for the Division of Workers' Compensation to enter work sites, inspect and copy records, and to issue subpoenas regarding compliance with maintaining workers' compensation coverage.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
