

STORAGE NAME: h4125.go
DATE: March 19, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4125 (PCB TU 98-02)

RELATING TO: Confidentiality of Records

SPONSOR(S): Committee on Tourism, Representative Barreiro and others

COMPANION BILL(S): SB 1614 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TOURISM YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
-

I. SUMMARY:

This bill provides a limited exemption from the public records requirements for information gathered by the Office of the Entertainment Industry Commissioner (OEIC) which identifies an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand any of its business activities in this state. The bill also provides the same level of confidentiality for the identity, trade secrets, or information gathered by the OEIC concerning the plans, intentions, or interests of such persons.

The bill does provide that the corporation's, partnership's or person's identity may be released when that party retains a business location in the state. Other records covered by the exemptions provided in this bill may be released by the OEIC if such records have been otherwise released by the party requesting confidentiality.

This bill also provides a public necessity statement outlining the reasons for the exemption. This bill does not appear to have a fiscal impact on state or local governments.

Comments by the Committee on Governmental Operations:

*This bill requires that a written request be made by the affected person/entity before "**records** of the [OEIC] **which contain** the identity, trade secrets ..., or information concerning plans, intentions, or interests of such [person/entity] to locate, relocate, or expand any of its business activities in this state" be held confidential and exempt. This means that an entire record is exempt if any portion of it contains, for example, identity or trade secret information. This seems overly broad especially in light of the fact that the public necessity statement for the exemption only justifies the need for an exemption for identifying information; trade secret information; or plans, intentions, or interests information regarding location, relocation, or expansion, not for the entire record which may contain such information. **See also "Comments" section of this analysis.***

Representative Barreiro has filed an amendment which appears to address the concerns above-mentioned.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Exemptions

Chapter 119, F.S., requires that public records held by an agency are subject to inspection and copying by the public. However, public records may be exempted from public disclosure.

Article I, section 24, Florida Constitution, provides that exemptions, other than those expressly provided for in the Constitution, may only be accomplished by general law. General law exempting records "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law."

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Section 812.081, F.S., defines "trade secrets" to mean

the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Entertainment Industry Promotion and Development

Currently, the Governor's Office of Tourism, Trade, and Economic Development contracts with a private, not-for-profit corporation, known as the Florida Entertainment Industry Council, Inc. (FEIC) to represent the State in the promotion and development of

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the entertainment industry in Florida. The contract naming the FEIC as the State's designee refers to a contracted services contract for specifics on what activities the FEIC is to perform for remuneration. This second contract stipulates that the FEIC will receive remuneration for the publication of a directory and four quarterly magazines and that the FEIC will only make public the records it maintains which directly relate to these publications. The FEIC asserts that as a private corporation it is not required to abide by the open records laws prescribed for agents of the state. However, there is a question as to that assertion and the subsequent confidentiality of the FEIC's records since the FEIC's sole function is to act as the State's only representative for promoting and developing the entertainment industry.

Other agents of the State which perform economic development promotion and development functions have been afforded a limited exemption from the public records law under s. 288.075, F.S., for information and trade secrets related to the identity and intentions of private companies or persons interested in expanding their businesses in Florida. The exemptions were extended to the records of these entities because of the sensitivity of the negotiations surrounding business moves or expansions.

There are numerous negotiations, many of them highly sensitive, which must be brought to closure during the preproduction stage of an entertainment industry production project. If the records of such a project were immediately open to the public, critical confidential information could be revealed which could put any or all of the parties involved in the negotiations at a competitive disadvantage. Additionally, if Florida were seeking to persuade a production company to engage in production activities in the state and other locations were apprised of this information and relative details, Florida could be put at a competitive disadvantage in such negotiations and could lose the project.

B. EFFECT OF PROPOSED CHANGES:

This bill provides a limited exemption from the public records requirements for information gathered by the Office of the Entertainment Industry Commissioner (OEIC) which identifies an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand any of its business activities in this state. The bill also provides the same level of confidentiality for the identity, trade secrets, or information gathered by the OEIC concerning the plans, intentions, or interests of such persons.

The bill does provide that the corporation's, partnership's or person's identity may be released when that party retains a business location in the state. Other records covered by the exemptions provided in this bill may be released by the OEIC if such records have been otherwise released by the party requesting confidentiality.

This bill also provides a public necessity statement outlining the reasons for the exemption.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Persons or companies involved in the decision making process of moving or expanding business activities in Florida may conduct business negotiations without the State publicizing the details or outcome of those negotiations until the person or business either locates in the state or releases the information.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No. The provisions of this bill would actually avert any interference in business negotiations that might result from the publicity of information released under governmental public records regulations.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

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D. STATUTE(S) AFFECTED:

s. 288.1254

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates s. 288.1259, F.S., providing a limited exemption from the public records requirements for information gathered by the Office of the Entertainment Industry Commissioner (OEIC) which identifies an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand any of its business activities in this state. This section also provides the same level of confidentiality for the identity, trade secrets, or information gathered by the OEIC concerning the plans, intentions, or interests of such persons.

This section provides that the corporation's, partnership's or person's identity may be released when that party retains a business location in the state. Other records covered by the exemptions provided in this section may be released by the OEIC if such records have been otherwise released by the party requesting confidentiality.

Section 2. Provides a statement of public necessity for the exemption described in section 1 above.

Section 3. Provides that this act will take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

Comments by the Committee on Governmental Operations:

This bill requires that a written request be made by the affected person/entity before "records of the [OEIC] which contain the identity, trade secrets ..., or information concerning plans, intentions, or interests of such [person/entity] to locate, relocate, or expand any of its business activities in this state" be held confidential and exempt. This means that an entire record is exempt if any portion of it contains, for example, identity or trade secret information. This seems overly broad especially in light of the fact that the public necessity statement for the exemption only justifies the need for an exemption for identifying information; trade secret information; or plans, intentions, or interests information regarding location, relocation, or expansion, not for the entire record which may contain such information.

This bill authorizes the release of confidential and exempt records, if the affected party otherwise releases information contained in such records; and, in the case of identity only, until the party retains a business location in the state. It would also appear reasonable to release records containing information regarding plans, intentions, or interests in "location, relocation, or expansion", once the affected party had located, relocated, or expanded. If the duration of an exemption exceeds the need for confidentiality, the exemption could be challenged as overly broad.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Legislative Research Director:

Susan F. Cutchins

Judy C. McDonald

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

J. Marleen Ahearn, Ph.D., J.D.

Jimmy O. Helms