

STORAGE NAME: h1461a.go

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1461

RELATING TO: Public Records/Lottery Department

SPONSOR(S): Representative Bitner

COMPANION BILL(S): SB 2178 (similar), CS/HB 1453 (compare), and SB 2176 (compare)

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

- (1) REGULATED SERVICES YEAS 8 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 2
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1461 provides a public records exemption for certain information obtained by the Department of the Lottery in connection with the establishment and operation of video lottery games. These exemptions include: trade secrets; security measures, systems, procedures and reports; information concerning bids and other contractual data; specified personal employee information; personal information concerning winners and investigative matters. The bill authorizes disclosure of this information to certain state agencies, the Auditor General and Legislative leaders under certain circumstances.

The bill does not appear to have a fiscal impact on state revenue.

The bill provides a public necessity statement for the exemptions, as is required by Article 1, Section 24 of the State Constitution.

The bill will take effect on the same date as its companion measure, HB 1453.

Note. There is one technical amendment traveling with the bill which references the enactment of HB 1453 as the contingent effective date.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides 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.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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 also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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 a 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., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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.

Chapter 119.011, F.S., gives an expansive definition to the term "public record," meaning, "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Chapter 24 provides for confidentiality for certain records held by the Department of the Lottery. Section 24.105 (13), F.S., provides the department with similar public records exemptions for existing lottery operations relating to trade secrets, security measures, bid and contract information, employee personnel information, and street addresses and telephone numbers of winners; and provides for disclosure to certain state agencies and officials under certain circumstances. Section 24.108 (5), F.S., provides that the department shall maintain the confidentiality of records supplied by certain departments relevant to an investigation pursuant to a request, and subsection (7) provides that the department shall keep confidential certain portions of a comprehensive operational security study, which shall be disclosed only to specified state officials.

B. EFFECT OF PROPOSED CHANGES:

HB 1461 creates s. 24.1126, F.S., and provides a public records exemption for certain information obtained by the Department of the Lottery in connection with the establishment and operation of video lottery games.

Subsection (1) exempts trade secrets; security measures, systems or procedures; security reports; information concerning bids or other contractual data; certain employee personnel information; and information obtained by the Division of Security pursuant to its investigations which is otherwise confidential.

Subsection (2) exempts the street address and telephone number of any winner of a video lottery game unless the winner consents to the release of the information.

Subsection (3) requires the disclosure of certain of this exempt information to the Auditor General, Legislative leaders and other designated persons.

Subsection (4) makes all exemptions subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement for the exemptions, as is required by Article 1, Section 24, Florida Constitution. This statement provides that:

- these exemptions are necessary to enable the Department of the Lottery to effectively and efficiently administer the establishment and operation of video lottery games;
- if trade secrets and other sensitive business information were subject to disclosure, businesses providing video lottery equipment and services could be significantly damaged in the marketplace and such businesses would hesitate to cooperate with the department;
- if information about the security of video lottery games were subject to disclosure, the integrity of the lottery system could be breached, resulting in the erosion of the public's confidence in the lottery, reduced participation and reduced revenue; and
- if identifying information about the winner of a video lottery game were disclosed without the winner's consent, the winner could be subject to unwanted publicity and harassment, possibly with criminal intent.

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?

This bill would require the Department of the Lottery to restrict access to public records obtained by the department in connection with the establishment and operation of video lottery games. Public records exemptions are already in place for other lottery game information.

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

Yes. The bill would restrict public access to certain information relating to the operation of video lottery gaming.

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

The bill does not eliminate or reduce an agency or program.

- (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?

Yes. The bill would restrict public access to certain information relating to the operation of video lottery gaming.

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

No.

4. Individual Freedom:

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

Yes, if trade secrets and other sensitive business information were subject to disclosure, businesses providing video lottery equipment and services to the department could be significantly damaged in the marketplace.

Additionally, if identifying information about the winner of a video lottery game were disclosed that individual could be subjected to unwanted publicity and harassment, possibly with criminal intent.

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

Yes. The bill would restrict public access to certain information relating to the operation of video lottery gaming.

5. Family Empowerment:

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

The bill does not purport 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:

The bill would not create or change a program providing services to families or children.

STORAGE NAME: h1461a.go

DATE: April 8, 1999

PAGE 6

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 24.1126, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & 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

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:

STORAGE NAME: h1461a.go

DATE: April 8, 1999

PAGE 7

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

The bill protects private enterprise businesses by restricting public access to data which could contain trade secrets and other sensitive business information.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A technical amendment was adopted by the Committee on Regulated Services on March 17, 1999, which will travel with the bill. The amendment inserts the bill number, HB 1453 -- the main implementing legislation -- which must also be adopted this session if this bill is to take effect.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Janet Clark Morris

Staff Director:

Paul Liepshutz

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Douglas Pile

Staff Director:

Jimmy O. Helms

STORAGE NAME: h1461a.go
DATE: April 8, 1999
PAGE 8