

# 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.)

BILL: CS/SB's 1766 and 1928

SPONSOR: Commerce and Economic Opportunities Committee, Senator Kirkpatrick, and Senator Silver

SUBJECT: Public Records/Entertainment Industry

DATE: April 14, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute creates a public records exemption for information held by the Office of the Film Commissioner regarding the identity; trade secrets; or plans, intentions, or interests of an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand any of its business activities in this state, unless the information is otherwise released by the party requesting confidentiality. Information regarding identity or plans, intentions, or interests to locate, relocate, or expand business activities may be released when the party obtains a new or additional business location in this state. The exemption is subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2004, unless reviewed and reenacted by the Legislature.

The committee substitute makes it a second-degree misdemeanor for any person who is an employee of the Office of the Film Commissioner to willfully and knowingly violate the provisions of the exemption related to the identity; trade secrets as defined by statute; or plans, intentions, or interests to locate, relocate, or expand any business activities in this state.

The committee substitute amends section 228.1251, Florida Statutes, to be created by Committee Substitute for Senate Bills 2152 and 1930.

## II. Present Situation:

### Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution

that raised the statutory right of public access to public records to a constitutional level.<sup>1</sup> Article I, s. 24, Florida Constitution, provides:

- (a) Every person has the right to inspect or copy any public record 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.

In addition to the Florida Constitution, the Public Records Law<sup>2</sup> specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., 1998 Supp., requires:

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.

The Public Records Law states that, unless specifically exempted, all agency<sup>3</sup> records are to be available for public inspection. The term "public record" is broadly defined to mean:

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.<sup>4</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>5</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>6</sup>

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<sup>1</sup>Article I, s. 24 of the Florida Constitution.

<sup>2</sup>Chapter 119, F.S.

<sup>3</sup>The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>4</sup>Section 119.011(1), F.S.

<sup>5</sup>*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>6</sup>*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

The Open Government Sunset Review Act of 1995<sup>8</sup> states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>9</sup>

Article I, s. 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

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<sup>7</sup>Art. I, s. 24(c) of the Florida Constitution.

<sup>8</sup>Section 119.15, F.S., 1998 Supp.

<sup>9</sup>Section 119.15(4)(b), F.S., 1998 Supp.

## **Entertainment Industry Promotion and Development**

During the 1998 legislative session, funding for the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to contract with an entity to provide assistance in entertainment industry promotion and development was tied to the passage of specific legislation. Since the legislation did not pass both houses of the Legislature, funding was not available to OTTED for this purpose for FY 1998-99.

Until June 30, 1998, OTTED contracted 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 the entertainment industry in Florida. The contract naming the FEIC as the state's designee referred to a contracted services contract for specifics on what activities the FEIC was to perform in order to receive remuneration. This second contract stipulated that the FEIC would receive remuneration for the publication of a directory and four quarterly magazines and that the FEIC would only make public the records it maintained which directly related to those publications. The FEIC asserted that as a private corporation it was not required to abide by the open records laws prescribed for agents of the state. However, there was question as to that assertion since the FEIC's sole function was 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 related to the identity and intentions of private companies or persons interested in expanding or relocating their businesses in Florida. Any employee of an economic development agency who intentionally violates the provisions of the exemption is guilty of a second-degree misdemeanor. The exemptions were extended to the records of the private corporations, partnerships or persons 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.

### **III. Effect of Proposed Changes:**

The committee substitute creates a public records exemption, pursuant to a request by the affected entity, for information held by the Office of the Film Commissioner regarding the identity; trade secrets, as defined by s. 812.081, F.S.; or plans, intentions, or interests of an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand any of its business activities in this state, unless the information is otherwise released by the party requesting confidentiality. Furthermore, information regarding identity or plans, intentions, or

interests to locate, relocate, or expand business activities may be released when the party retains a new or additional business location in this state.

The exemption is made subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2004, unless reviewed and reenacted by the Legislature.

The committee substitute makes it a second-degree misdemeanor for any person who is an employee of the Office of the Film Commissioner to willfully and knowingly violate the provisions of the exemption related to the identity; trade secrets as defined by s. 812.081, F.S.; or plans, intentions, or interests to locate, relocate, or expand any business activities in this state. The committee substitute also provides a public necessity statement outlining the reasons for the exemption.

The committee substitute would take effect on the same date that legislation which creates s. 288.1251, F.S., establishing the Office of the Film Commissioner, takes effect.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

A public records exemption would be created by the committee substitute. The committee substitute relates only to an exemption and it includes a statement of the public necessity that justifies the exemption. For these reasons, the committee substitute appears to comply with the provisions of s. 24(c), Art. I, Florida Constitution.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

By creating this public records exemption, more entertainment industry businesses may choose to locate, relocate, or expand their business activities in this state.

##### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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