

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: SB 2544

SPONSOR: Senator Bronson

SUBJECT: Public Records

DATE: April 10, 1999

REVISED: 4/13/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Joseph</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates a public records exemption for certain information provided by an applicant for financial assistance from the Florida Commercial Space Financing Corporation. The bill provides a finding of public necessity for protecting the confidentiality of the applicant's personal financial records, trade secrets, or proprietary information. The exemption is subject to the Open Government Sunset Review Act and will expire on October 2, 2004.

This bill creates a yet unnumbered section of the Florida Statutes.

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.¹

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.

¹Article I, s. 24 of the Florida Constitution.

In addition to the Florida Constitution, the Public Records Law² 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 agency³ 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.⁴

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.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

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.⁷

The Open Government Sunset Review Act of 1995⁸ 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

²Chapter 119, F.S.

³The 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."

⁴Section 119.011(1), F.S.

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

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

⁷Art. I, s. 24© of the Florida Constitution.

⁸Section 119.15, F.S., 1998 Supp.

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.⁹

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.

III. Effect of Proposed Changes:

The bill provides an exemption for personal financial records, trade secrets, or proprietary information from the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The exemption is for space-related businesses applying for financial assistance from the Florida Commercial Space Financing Corporation. The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expires on October 2, 2004, unless reviewed and reenacted by the Legislature.

The bill provides a finding of public necessity that the personal financial records, trade secrets, or proprietary information provided to the Florida Commercial Space Financing Corporation should be held confidential in order to protect the premature disclosure of information that would

⁹Section 119.15(4)(b), F.S., 1998 Supp.

adversely affect business interests and that it would be an invasion of privacy due to the competition-sensitive nature of the industry.

The bill would become effective on the effective date of related legislation creating the corporation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A public records exemption would be created by this bill. The bill relates only to exemptions and it includes a statement of the public necessity that justifies the exemptions. For these reasons, the bill 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:

The fear of disclosure of sensitive financial information could dissuade a business from applying to a publicly supported financial assistance program. To the extent the public records exemption provided by the bill alleviates such concerns, more businesses may be encouraged to apply to the Commercial Space Financing Corporation for assistance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce and Economic Opportunities:

Clarifies that the effective date of this public records exemption bill is the same as the effective date of Senate Bill 2540 or similar legislation related to the commercial space industry.

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