

STORAGE NAME: h0839s1.go

DATE: March 30, 1999

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

BILL #: CS/HB 839 (PCB TU 99-05)

RELATING TO: Public Records/Entertainment Industry

SPONSOR(S): Committees on Governmental Operations and Tourism, Representative Starks and others

COMPANION BILL(S): SB 1766 (identical), SB 2378 (identical), SB 1928 (similar), HB 983 (compare), HB 985 (compare), SB 1778 (compare), SB 1930 (compare), SB 2152 (compare), and SB 2376 (compare)

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

(1)	TOURISM	YEAS 7 NAYS 0	
(2)	BUSINESS DEVELOPMENT & INTERNATIONAL TRADE		YEAS 7 NAYS 0
(3)	BUSINESS REGULATION AND CONSUMER AFFAIRS		YEAS 9 NAYS 0
(4)	GOVERNMENTAL OPERATIONS	YEAS 4 NAYS 0	
(5)			

I. SUMMARY:

This bill creates a public records exemption for information held by the Office of the Film Commissioner regarding the identity; trade secrets; 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, or applications for a sales and use tax certificate of exemption under s. 288.1258, 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 bill 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.

This bill 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 812.081, or plans, intentions, or interests to locate, relocate, or expand any business activities in this state. Any person who is an employee of the Office of the Film Commissioner who divulges any information related to the application for a sales and use tax exemption under s. 288.1258 in any manner, except for official purposes, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The bill does not appear to have a fiscal impact on state or local governments.

The bill would take effect on the same date that House Bill 985 or similar legislation which creates s. 288.1251, Florida Statutes, establishing the Office of the Film Commissioner, takes effect during the current Legislative session or an extension thereof.

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.

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.

Trade Secrets

Section 812.081(1)(c), Florida Statutes, defines "trade secrets" to mean:

[T]he 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

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 and trade secrets related to the identity and intentions of private companies or persons interested in expanding 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.

B. EFFECT OF PROPOSED CHANGES:

This bill 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.; 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, or applications for a sales and use tax certificate of exemption under s. 288.1258, 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 bill 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.

This bill 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 812.081, or plans, intentions, or interests to locate, relocate, or expand any business activities in this state. Any person who is an employee of the Office of the Film Commissioner who divulges any information related to the application for a sales and use tax exemption under s. 288.1258 in any manner, except for official purposes, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The 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?

No.

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

The Office of the Film Commissioner must keep certain records confidential and exempt as set forth in this bill.

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

Yes. This bill will limit public access to certain public records.

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

An agency or program is not 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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

Yes. This bill will limit public access to certain public records.

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. Persons or companies involved in the decision making process of moving or expanding business activities in Florida may conduct business negotiations without 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?

This bill will limit public access to certain public records.

5. Family Empowerment:

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

This 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?

No.

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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 228.1251, Florida Statutes, (to be created by HB 985 or similar legislation).

E. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes Section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

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

D. FISCAL COMMENTS:

None.

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:

This bill has a contingent effective date based upon enactment of HB 985 or similar legislation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Committee on Governmental Operations adopted an amendment which provides that: the Office of the Film Commissioner must maintain the confidentiality of certain business records related to the application for a tax exemption; there is a public necessity for the confidentiality of such tax information in order to encourage the growth of the film industry in Florida; the penalties for disclosure of such information are consistent with other penalties for disclosure of similar types of information; and the effective date of this bill is contingent upon the enactment of HB 985, or similar legislation.

The bill was then reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Judy C. McDonald

Staff Director:

Judy C. McDonald

AS REVISED BY THE COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Victoria A. Minetta

Staff Director:

J. Paul Whitfield, Jr.

AS FURTHER REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Gip Arthur

Staff Director:

Rebecca R. Everhart

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Douglas Pile

Staff Director:

Jimmy O. Helms