

STORAGE NAME: h1621.fs

DATE: March 3, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: House Bill 1621 [Proposed Committee Bill TR 00-02]

RELATING TO: Public Records Exemption/Seaport Security

SPONSOR(S): Committee on Transportation and Rep. K. Smith

TIED BILL(S): N/A

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

- (1) TRANSPORTATION YEAS 10 NAYS 0
 - (2) FINANCIAL SERVICES
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a public records exemption for security plans and other records that jeopardize seaport security. The bill implements a recommendation of the Legislative Task Force on Illicit Money laundering.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Individual Freedom: The bill would prohibit individuals from obtaining information and documents about seaports that are currently available.

B. PRESENT SITUATION:

The Money Laundering Task Force examined drug and money laundering interdiction efforts of the state's public seaports, and has indicated a need for comprehensive security planning at the seaports. In order to make it more difficult for criminal or terrorist enterprises to evade or defeat security plans and measures, there is an important state interest in exempting security plans and related documents from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

C. EFFECT OF PROPOSED CHANGES:

The specific exemptions from the public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I, of the Florida Constitution, created by this bill provide confidentiality for information related to security plans at seaports, and for information such as photographs, maps, drawings and blueprints that could jeopardize seaport security. The exemption applies to records held by seaport authorities created by the Legislature or held by a county or city seaport department. The exemption is repealed effective October 2, 2005, and must be reviewed by the Legislature prior to that repeal.

The public necessity statement provided in the bill indicates that seaports can be a major point of entry for illicit drugs and contraband, and are a potential target for terrorist activities. Further, the statement indicates that the exemption is narrowly tailored to serve the necessary public purpose of ensuring seaport safety and security.

This bill implements a recommendation of the Legislative Task Force on Illicit Money Laundering. [The Task Force Report is available online at: www.leg.state.fl.us/senate/documents/DrugSummit/imlreport.pdf.]

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D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

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

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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.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

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