

**STORAGE NAME:** h1523.frc.doc  
**DATE:** April 20, 2001

**HOUSE OF REPRESENTATIVES**  
**FISCAL RESPONSIBILITY COUNCIL**  
**ANALYSIS**

**BILL #:** HB 1523  
**RELATING TO:** Public Records  
**SPONSOR(S):** Representative(s) Slosberg  
**TIED BILL(S):** HB 1685

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

- (1) STATE ADMINISTRATION YEAS 3 NAYS 0
  - (2) FISCAL POLICY AND RESOURCES YEAS 12 NAYS 1
  - (3) FISCAL RESPONSIBILITY COUNCIL
  - (4)
  - (5)
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**I. SUMMARY:**

In August 1997, the State of Florida was one of the first states to reach a settlement agreement in litigation against the tobacco industry (The Florida Settlement Agreement). The Florida Settlement Agreement conferred upon Florida certain fixed payments in 1997 and in 1998, which the Comptroller could verify. The 1999 payment was subject to an initial downward adjustment for volume and inflation. No further explanation was afforded to the Comptroller or any other state official concerning the payment. In attempting to verify the payment amount, a number of difficulties presented themselves as a result of the settlement agreement.

This bill creates a public records exemption for representations from members of the tobacco industry, which are submitted to the Comptroller for purposes of calculating the annual tobacco-settlement payments. The bill also exempts from public disclosure such information submitted to the Chief Financial Officer.

This bill provides a public necessity statement as is required by the Florida Constitution.

The effective date of this bill is tied to a Senate bill or to similar legislation providing for the reporting and verifying of information from the tobacco industry.

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

On April 12, 2001, the Committee on State Administration adopted a strike-everything amendment, which is substantially different from the bill, and which is traveling with the bill. The strike-everything amendment conforms the bill to the Senate version. See page 6 of this analysis for a side-by-side comparison of the bill and the amendment.

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 type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

**Public Records Law**

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

### Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 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.

### The State Comptroller

Section 4(d), Art. IV, Florida Constitution states that the comptroller must serve as the chief fiscal officer of the state, and is required to settle and approve accounts against the state. Section 17.04, F.S., describes the duties of this office:

The Department of Banking and Finance of this state, using generally accepted auditing procedures . . . shall examine, audit, adjust, and settle the accounts of all the officers of this state . . . or who may be in anywise indebted or accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property of funds according to law, or pay such moneys into the treasury of this state.

### Tobacco Settlement

In August 1997, the State of Florida was one of the first states to reach a settlement agreement in litigation against the tobacco industry (The Florida Settlement Agreement). The Florida Settlement Agreement conferred upon Florida certain fixed payments in 1997 and in 1998, which the Comptroller could verify. Commencing with 1999, Florida received its 5.5 percent market share of the Base Settlement Amounts.<sup>1</sup>

The 1999 payment was adjusted downward, by the settling tobacco companies, for volume and inflation totaling 10 percent. No further explanation was afforded to the Comptroller or any other

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<sup>1</sup> Memorandum from Jo Ann Levin, Council Attorney, Council for Smarter Government, April 3, 2001.

state official concerning the payment. In attempting to verify the payment amount, a number of difficulties arose as a result of the settlement agreement, one of which was hesitancy of the tobacco companies to produce needed documents because such documents would be public record.<sup>2</sup>

**Section 17.0401, F.S.**

Section 17.0401, F.S., provides a public records exemption for information relative to an investigation conducted by the Division of Financial Investigations (the division) in the Department of Banking and Finance. After the division's investigation is completed or ceases to be active, such information is no longer confidential and exempt unless that information is submitted to law enforcement or to a prosecutorial agency for further investigation. Such information must remain exempt until the completion of the investigation or until the investigation ceases to be active.<sup>3</sup>

**C. EFFECT OF PROPOSED CHANGES:**

This bill creates a public records exemption for representations from members of the tobacco industry, which are submitted to the Comptroller for purposes of calculating the annual tobacco-settlement payments. Only "records," or specific information contained in records can be made confidential and exempt.

This bill also amends the very exemption it creates, as of January 7, 2003, in order to reflect the discontinuance of the Office of the Comptroller and the creation of a Chief Financial Officer.

The public necessity statement, required by Art. I, s. 24 of the Florida Constitution, states that without the exemption tobacco companies may be disinclined to provide the state with a full and accurate report of information that is required for purposes of calculating and verifying the annual tobacco-settlement payments. Additionally, the public necessity statement provides that disclosure of such representations may harm the competitive standing of companies within the tobacco industry.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and is repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

The effective date of this bill is tied to a Senate bill, the number of which is not provided in the bill, or to similar legislation providing for the reporting and verifying of information from the tobacco industry.

There are a number of technical drafting errors in this bill.

**D. SECTION-BY-SECTION ANALYSIS:**

See Effect of Proposed Changes above.

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<sup>2</sup> *Id.*

<sup>3</sup> For purposes of s. 17.0401, F.S., an investigation is considered "active" so long as the "division or any law enforcement or prosecutorial agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. 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 spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. OTHER COMMENTS:**

None.

**V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On April 12, 2001, the Committee on State Administration adopted a strike-everything amendment to HB 1523. The strike-everything amendment is substantially different from the original bill, and conforms the original bill to the Senate version. The bill was reported favorably with one amendment.

<b>HB 1523</b>	<b>Strike-Everything Amendment - HB 1523</b>
Creates a public records exemption for "representations from members of the tobacco industry which are submitted to the Comptroller" for purposes of calculating the annual tobacco-settlement payments.	Creates a public records exemption for "proprietary confidential business information received by the Governor, the Attorney General, or outside counsel" representing the State in negotiations for settlement payments, or proprietary confidential business information received by the Comptroller or the Auditor General for the purposes of accomplishing their "respective responsibilities for settlement payments."
No such provision.	Provides for exceptions to the exemption.
Subjects the exemption to the Open Government Sunset Review Act of 1995.	Same.
Provides an October 2, 2006, repeal date unless reviewed and reenacted by the Legislature.	Same.
No such provision.	Defines the term "proprietary confidential business information."
Effective January 7, 2003, representations from members of the tobacco industry that are submitted to the Chief Financial Officer will be confidential and exempt from public disclosure.	No such provision.
Provides a finding of public necessity.	Same.
The effective date is tied to the adoption of a Senate bill, "or similar legislation providing for the reporting and verifying of information from the tobacco industry," in the same legislative session.	The act is effective upon becoming a law.

**VI. SIGNATURES:**

**COMMITTEE ON STATE ADMINISTRATION:**

Prepared by:

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Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

**AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:**

Prepared by:

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AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

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Richard Herring

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