

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1362

SPONSOR: Governmental Oversight & Productivity Committee, Home Defense, Public Security, & Ports Committee and Senator Bennett

SUBJECT: Public Records Requirement/Exemption

DATE: April 22, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CP</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1362 creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams of an attractions and recreation facility, entertainment/resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which documents are held by a governmental agency. Definitions are provided for the structures identified in the exemption. The CS/CS provides for exceptions to the public records exemption.

The CS/CS redesignates present paragraph (ff) of subsection (3) of section 119.07, F.S., as paragraph (gg), and adds a new paragraph (ff) to that subsection.

II. Present Situation:

A. Public Records Laws

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. The Public Records Law¹ 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., provides that 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

¹ Chapter 119, F.S.

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 records are to be available for public inspection. Section 119.011, F.S., broadly defines the term "public records" 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.

Section 119.011, F.S., defines "agency" 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 . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

In 1992, Floridians enacted an amendment that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), Florida Constitution, contains provisions similar to those of the Public Records Law and those provisions apply to the legislative, executive, and judicial branches of government.

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

The Open Government Sunset Review Act of 1995² provides for the systematic repeal of exemptions to the Public Records Law five years after creation of, or substantial modification to, the exemption. The 1995 law also provides criteria for the Legislature to consider prior to creating or reenacting an exemption.

The act authorizes the creation or expansion of an exemption only if the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

² Sections 119.15 and 286.011, F.S.

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.³

Under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

B. Related Exemptions

Section 119.07(3)(ee), F.S., provides a public records exemption for building plans, blueprints, schematic drawings, and diagrams of buildings or other structures that depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure *owned or operated by a governmental agency*. Drafts, preliminary, and final formats are included within this exemption.

This section provides for exceptions to the public records exemption. Such exempt information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other agency owned or operated structure; or
- Upon a showing of good cause before a court of competent jurisdiction.

Under s. 119.071, F.S., documents relating to *security system plans of a public or private entity* that are in the possession of a public agency are exempt from the public record requirements. A “security system plan” is defined by statute and includes, but is not limited to: information or portions thereof relating directly to the physical security of a facility or revealing security systems, threat assessments, threat-response plans, emergency-evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training. Information made confidential and exempt under this section may be disclosed by the custodial agency to another state or federal agency; the confidential and exempt status of the information is retained while in the possession of the receiving agency.

III. Effect of Proposed Changes:

The Committee Substitute for Committee Substitute creates a new exemption for building plans, blueprints, schematic drawings, and diagrams that depict the internal or external layout or structural elements of an attractions and recreation facility, entertainment/resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which are held by a governmental agency. Drafts, preliminary, and final formats

³ Section 119.15(4)(b), F.S.

are included within the exemption, and the exemption applies to any documents held either permanently or temporarily by an agency.

The CS/CS provides for exceptions to the public records exemption. Such exempt information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To the owner or owners of the structure in question; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill contains definitions for the structures referred to in the exemption. Specifically, definitions are provided for “attractions and recreation facility,” “entertainment/resort complex,” “industrial complex,” and “hotel or motel development.”

As required by s. 24, Article I of the Florida Constitution, the bill provides a statement of public necessity. The stated public necessity for the exemption is that the exemption ensures public safety.

This bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution requires new exemptions to pass each house of the Legislature by a two-thirds vote.

Exemptions are required to be narrowly-tailored in order to meet the public necessity for that exemption. An exemption which captures more records than required by the stated public necessity may be overturned on grounds of being overbroad. The CS/CS more narrowly tailors the exemption so that every privately-owned structure in the state is not captured by the exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS/CS should have a more limited impact on persons attempting to obtain building plans and other building-related documents.

C. Government Sector Impact:

Closure of the types of information for structures contained in the bill is likely to have a fiscal impact on a variety of local agencies that hold this information because of procedural changes that will need to be implemented to comply with the exemption. The cost for implementation is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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