

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 9E (PCB SA 03E-02) Public Records Exemption for the Economic Investment Mega Fund
SPONSOR(S): State Administration and Benson
TIED BILLS: HB 3E **IDEN./SIM. BILLS:** none

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Bond</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 288.1089, F.S., if created by separate bill, creates an Economic Investment Mega Fund Incentive within the Office of Tourism, Trade, and Economic Development. The fund is an economic development program designed to encourage businesses to locate or expand in Florida for the purpose of jobs creation. This PCB amends the current public records exemption applicable to other economic development programs to include records of the Economic Investment Mega Fund Incentive, and extends the sunset review for those existing public records exemptions from 2007 to 2009.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0009E.sa.doc
DATE: October 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

n/a

B. EFFECT OF PROPOSED CHANGES:

Background

The Office of Tourism, Trade, and Economic Development (OTTED) is a part of the Executive Office of the Governor.¹ Current law provides for a number of economic development programs that are managed by OTTED. Section 288.1089, F.S., if created by separate bill, creates an Economic Investment Mega Fund Incentive program within OTTED. The fund would be an economic development program designed to encourage businesses to locate or expand in Florida for the purpose of jobs creation. The fund would provide resources to respond to extraordinary economic opportunities and to compete effectively for high-impact business facilities.

Section 288.1067, F.S., creates a public records exemption for certain records held by OTTED related to five current economic development programs.² In general, the records that are exempt include: tax identification numbers, trade secret information, income, wages paid, and taxes paid. The exemption is subject to the Open Government Sunset Review Act of 1995, and stands repealed on October 2, 2007, unless reviewed and saved from repeal.

The Open Government Sunset Review Act of 1995 requires that any new or expanded public records or public meetings exemption contain a sunset date of October 2 of the fifth year after passage. Thus, a new or expanded public records exemption passed in this session is assigned a sunset repeal date of October 2, 2009.

Effect of Bill

This bill amends the existing public records exemption at s. 288.1067, F.S., to add a reference to the Mega Fund Incentive Program, thus expanding the public records exemption to be applicable to the fund. This bill also extends the Open Government Sunset Review repeal date found in s. 288.1067, F.S., by 2 years, from 2007 to 2009.

C. SECTION DIRECTORY:

Section 1 amends s. 288.1067, F.S., to create a public records exemption.

Section 2 provides a statement of public necessity.

¹ Section 14.2015, F.S.

² Section 220.191, F.S. (capital investment tax credit); s. 288.1045, F.S. (qualified defense contractor tax refund program); s. 288.106, F.S. (tax refund program for qualified target industry businesses); s. 288.108, F.S. (high-impact businesses); s. 288.1088, F.S. (quick-action closing fund).

Section 3 provides an effective date of upon becoming law, contingent upon passage of the substantive bill creating the Mega Fund Incentive Program.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested documents and information, and must examine every requested document or piece of information to determine if a public records exemption prohibits release of the document or information. There is likely no marginal fiscal impact to a single public records exemption; in that the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995 provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.