

CHAMBER ACTION

1 The Commerce Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public records and meetings exemptions;
7 creating s. 497.172, F.S.; creating a public meetings
8 exemption for the Board of Funeral, Cemetery, and Consumer
9 Services for those portions of meetings conducted for the
10 exclusive purpose of developing or reviewing licensure
11 examination questions and answers; creating a public
12 meetings exemption for probable cause panel meetings of
13 the board; creating a public records exemption for records
14 of exempt probable cause panel meetings for a time
15 certain; creating a public records exemption for records
16 relating to investigations, inspections, or examinations
17 in process for a time certain; maintaining the public
18 records exemptions under certain circumstances; creating a
19 public records exemption for trade secrets; providing for
20 future review and repeal; providing findings of public
21 necessity; providing a contingent effective date.

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23 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 497.172, Florida Statutes, is created to read:

497.172 Public records exemptions; public meetings exemptions.--

(1) EXAMINATION DEVELOPMENT MEETINGS.--Those portions of meetings of the board at which licensure examination questions or answers under this chapter are discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2) PROBABLE CAUSE PANEL.--

(a) Meetings of the probable cause panel of the board, pursuant to s. 497.153, are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Records of exempt meetings of the probable cause panel of the board are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until 10 days after a determination regarding probable cause is made pursuant to s. 497.153.

(3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.--

(a) Except as otherwise provided in this subsection, information held by the department pursuant to a financial examination conducted under this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until the examination is completed or ceases to be active.

(b) Except as otherwise provided in this subsection, information held by the department pursuant to an inspection conducted under this chapter is confidential and exempt from s.

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51 119.07(1) and s. 24(a), Art. I of the State Constitution, until
 52 the inspection is completed or ceases to be active.

53 (c) Except as otherwise provided in this subsection,
 54 information held by the department pursuant to an investigation
 55 of a violation of this chapter is confidential and exempt from
 56 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 57 until the investigation is completed or ceases to be active or
 58 until 10 days after a determination regarding probable cause is
 59 made pursuant to s. 497.153.

60 (d) Information made confidential and exempt pursuant to
 61 this subsection may be disclosed by the department as follows:

62 1. To the probable cause panel of the board, for the
 63 purpose of probable cause proceedings pursuant to s. 497.153.

64 2. To any law enforcement agency or other government
 65 agency in the performance of its official duties and
 66 responsibilities.

67 3. If the department uncovers information of immediate and
 68 serious concern to the public health, safety, or welfare, it may
 69 disseminate such information as it deems necessary for the
 70 public health, safety, or welfare.

71 (e) Information made confidential and exempt pursuant to
 72 this subsection shall remain confidential and exempt from s.
 73 119.07(1) and s. 24(a), Art. I of the State Constitution after
 74 the examination, inspection, or investigation is completed or
 75 ceases to be active if:

76 1. The department submits the information to any law
 77 enforcement agency or other administrative agency for further
 78 examination or investigation. The information shall remain

79 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 80 | of the State Constitution until that agency's examination or
 81 | investigation is completed or ceases to be active.

82 | 2. Disclosure of the information would:

83 | a. Jeopardize the integrity of another active
 84 | investigation or examination;

85 | b. Reveal the identity of a confidential source; or

86 | c. Reveal investigative or examination techniques or
 87 | procedures.

88 | (f) For purposes of this subsection, an examination,
 89 | inspection, or investigation shall be considered active so long
 90 | as the examination, inspection, or investigation is proceeding
 91 | with reasonable dispatch and the department has a reasonable
 92 | good faith belief that the examination, inspection, or
 93 | investigation may lead to the filing of an administrative,
 94 | civil, or criminal proceeding or to the denial or conditional
 95 | grant of an application for license or other approval required
 96 | under this chapter.

97 | (4) TRADE SECRETS.--Trade secrets, as defined in s.
 98 | 688.002, held by the department or board, are confidential and
 99 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 100 | Constitution.

101 | (5) REVIEW AND REPEAL.--This section is subject to the
 102 | Open Government Sunset Review Act of 1995 in accordance with s.
 103 | 119.15, and shall stand repealed on October 2, 2010, unless
 104 | reviewed and saved from repeal through reenactment by the
 105 | Legislature.

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106 Section 2. (1) The Legislature finds that it is a public
 107 necessity that those portions of meetings of the Board of
 108 Funeral, Cemetery, and Consumer Services at which licensure
 109 examination questions or answers under chapter 497, Florida
 110 Statutes, are discussed be made exempt from public meetings
 111 requirements. Without the exemption, board members might not
 112 propose new questions and answers and engage in full and free
 113 discussion concerning existing and proposed questions and
 114 answers. If questions and answers for licensure examinations are
 115 disclosed to the public, the usefulness of those licensure
 116 examinations in ensuring that applicants have studied and
 117 learned the entire body of knowledge necessary for the safe and
 118 competent practice of their intended profession or occupation
 119 under chapter 497, Florida Statutes, would be severely
 120 undermined or eliminated. Therefore, without this exemption, the
 121 effective and efficient administration of the licensure process
 122 would be jeopardized.

123 (2) The Legislature finds that it is a public necessity
 124 that meetings of the probable cause panel of the board under
 125 chapter 497, Florida Statutes, be made exempt from the public
 126 meetings requirements. The Legislature also finds that it is a
 127 public necessity that records of exempt meetings of the probable
 128 cause panel be made exempt from public records requirements
 129 until 10 days after a determination regarding probable cause is
 130 made. If probable cause panel meetings and records of those
 131 meetings are open to the public, the purpose of those meetings
 132 would be thwarted and frustrated to the substantial detriment of
 133 the public health, safety, and welfare. Public oversight is

134 still maintained because the records of those meetings are
 135 preserved and are available to the public after a determination
 136 of probable cause is made.

137 (3)(a) The Legislature finds that it is a public necessity
 138 that information held by the Department of Financial Services
 139 pursuant to a financial examination conducted under chapter 497,
 140 Florida Statutes, be made confidential and exempt from public
 141 records requirements until the examination is completed or
 142 ceases to be active. If a subject of a financial examination
 143 were able to discover that an examination was underway, that
 144 subject could frustrate and thwart the examination, thereby
 145 hindering the effective and efficient administration of the
 146 examination.

147 (b) The Legislature finds that it is a public necessity
 148 that information held by the department pursuant to an
 149 inspection conducted under chapter 497, Florida Statutes, be
 150 made confidential and exempt from public records requirements
 151 until the inspection is completed or ceases to be active. The
 152 premature release of such information could frustrate and thwart
 153 the inspection if the subject of an inspection were made aware
 154 that an inspection was to occur, thereby hindering the effective
 155 and efficient administration of the inspection.

156 (c) The Legislature finds that it is a public necessity
 157 that information held by the department pursuant to an
 158 investigation of a violation of chapter 497, Florida Statutes,
 159 be made confidential and exempt from public records requirements
 160 until the investigation is completed or ceases to be active or
 161 until 10 days after a determination regarding probable cause is

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162 made. If a subject of an investigation were able to discover
163 that an investigation was underway, that subject could frustrate
164 and thwart the investigation, thereby hindering the effective
165 and efficient administration of the investigation.

166 (d) The Legislature finds that it is a public necessity to
167 maintain the confidential and exempt status of the examination
168 or investigation information if it has been provided to a law
169 enforcement agency or other administrative agency for further
170 examination or investigation. Release of such information prior
171 to the completion of that examination or investigation would
172 jeopardize the integrity of the examination or investigation.

173 (e) The Legislature finds that it is a public necessity to
174 maintain the confidential and exempt status of the examination,
175 inspection, or investigation information if release of such
176 information would jeopardize the integrity of another active
177 investigation or examination, reveal the identity of a
178 confidential source, or reveal investigative or examination
179 techniques or procedures. If such information were disclosed to
180 the public, subjects of such other investigations could
181 frustrate or thwart those investigations, jeopardize the safety
182 of the confidential source, or affect the ability of the
183 department to conduct investigations or examinations.

184 (4) The Legislature finds that it is a public necessity
185 that a trade secret, as defined in s. 688.002, Florida Statutes,
186 held by the Department of Financial Services or the Board of
187 Funeral, Cemetery, and Consumer Services be made confidential
188 and exempt from public records requirements. A trade secret
189 derives independent economic value, actual or potential, from

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190 not being generally known to, and not being readily
191 ascertainable by proper means by, other persons who can obtain
192 economic value from its disclosure or use. Without an exemption
193 from public records requirements for a trade secret held by the
194 department or board, that trade secret becomes a public record
195 when received and must be divulged upon request. Divulgence of
196 any trade secret under the public records law would destroy the
197 value of that property, causing a financial loss to the person
198 or entity submitting the trade secret. Release of that
199 information would give business competitors an unfair advantage
200 and weaken the position of the person or entity supplying the
201 trade secret in the marketplace.

202 Section 3. This act shall take effect October 1, 2005, if
203 HB 529 or substantially similar legislation is adopted in the
204 same legislative session or an extension thereof and becomes a
205 law.