

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1691 PCB GO 05-03 Review Under The Open Government Sunset Review Act
SPONSOR(S): Governmental Operations Committee, Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Everhart
1) Domestic Security Committee	8 Y, 0 N	Garner	Newton
2) State Administration Council	9 Y, 0 N	Williamson	Bussey
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for seaport security plans of a seaport authority created by the Legislature, or of a local government seaport department that operates an international seaport, which will repeal on October 2, 2005, if the bill does not become law.

The bill does not appear to have a fiscal impact on state government. The bill may have a minimal non-recurring positive fiscal impact on local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature adopted the seaport security law.¹ The law was created in response to recommendations from the November 1999 Florida Legislative Task Force on Illicit Money Laundering report, which recommended that minimum security standards for Florida's seaports be established. The original intent was to slow the flow of illegal drugs and contraband through Florida's public seaports. Since the September 11, 2001, attacks, this law has also provided a mechanism to assure that Florida's ports remain secure against terrorist threats. As such, each seaport must maintain a security plan.²

Current law provides a public records exemption for seaport security plans of a seaport authority created by the Legislature, or of a local government seaport department that operates an international seaport. Photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities are also exempt from public disclosure; however, information relating to real estate leases, layout plans, blueprints, or other relevant information is not included as part of the exemption.³ Pursuant to the Open Government Sunset Review Act of 1995 (Act), this exemption will repeal on October 2, 2005, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also removes unnecessary language.

C. SECTION DIRECTORY:

Section 1 amends s. 311.13, F.S., to remove the October 2, 2005, repeal date.

Section 2 provides an October 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a state expenditure.

¹ Section 311.12, F.S., which was created pursuant to chapter 2000-360, L.O.F.

² Section 311.12, F.S.

³ Section 311.13, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because the bill eliminates the repeal, employee training activities will be avoided, and local governments may recognize a minimal nonrecurring decrease in expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁴ 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.

⁴ Section 119.15, F.S.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.