

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1903 PCB BR 05-03 Public Records
SPONSOR(S): Business Regulation Committee, Attkisson
TIED BILLS: HB 1901 **IDEN./SIM. BILLS:** HB 1571

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------|------------|----------------|
| Orig. Comm.: Business Regulation Committee | 15 Y, 0 N | Morris | Liepshutz |
| 1) Governmental Operations Committee | | Williamson | Everhart |
| 2) Commerce Council | | | |
| 3) _____ | | | |
| 4) _____ | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

This bill creates an exemption from public records requirements for “nonessential private information” supplied by applicants pursuant to an application filed for the purpose of securing a license as a slot machine licensee, and for trade secrets supplied by an entity during the licensing process. It provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill appears to have a minimal fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

See COMMENTS, section III, page 4.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background

Article X, Section 23 - Slot Machine Gaming

Amendment 4 to the State Constitution was approved by the voters at the November 2004 General Election and the election results were formally certified by the Elections Canvassing Commission on November 14, 2004. Passage of Amendment 4 authorized the governing bodies of Broward and Miami-Dade Counties to hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the Constitutional Amendment [2002 and 2003].¹

Both Broward and Miami-Dade Counties held local referendums on whether to authorize slot machines in their respective counties on March 8, 2005. Voters in Broward County approved the measure while voters in Miami-Dade County voted against authorizing slot machines at pari-mutuel facilities in that county. Pursuant to constitutional authority, electors in Miami-Dade County may vote on this issue again after two years of the initial vote.

HB 1901

HB 1901 implements a regulatory and taxation structure for slot machine gambling. It requires a slot machine licensee to report the:

- Exact net number and dollar value of all jobs created.
- Percentage of tax proceeds and dollar value.
- Measures taken by the licensee to prevent, control, and treat gambling addiction.
- Measures taken by the licensee to ameliorate public detriment to the health, safety, welfare, and morals of the citizens and the community.
- Adoption by the licensee of a three-strike policy.

¹ Article X, Section 23, Florida Constitution reads as follows:

SECTION 23. Slot machines.--

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

- Net amount of profits, payments, earnings, and expenditures retained in the state versus the amount outside the state.
- Continued operation and quality of operation of the licensee's preslot machine enterprise.

Effect of Bill

This bill creates an exemption from public records requirements for nonessential private information supplied by applicants pursuant to an application filed for the purpose of securing a license as a slot machine licensee. It also creates a public records exemption for trade secrets supplied by any entity for licensing purposes.

It is unclear what "nonessential private information" includes, and why the state would require the collection of nonessential information. As such, the public records exemption appears overly broad.

The bill provides for future review and repeal of the exemption on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity and a contingent effective date; however, the public necessity statement addresses the need to make the information confidential and exempt whereas the exemption only makes the information exempt from public records requirements.

C. SECTION DIRECTORY:

Section 1. Creates s. 551.1078, F.S., to provide a public records exemption for specified information.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date that is contingent upon the passage of PCB BR 05-01 or substantially similar legislation.

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:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested documents, and must examine every requested document to determine if a public records exemption prohibits release of the document or information contained therein. Passage of any new public records exemption will result in a minimal negative non-recurring fiscal impact, because governments will be required to communicate the new exemption to employees responsible for complying with public records requests. Every public records exemption also represents an unknown negative recurring expense to governments, as each exemption slightly increases the number and complexity of the training and management materials required to be maintained by governments. There is no known reliable method for determining the marginal fiscal impact attributable to a single public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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:

Overly Broad

It is unclear what "nonessential private information" includes, and why the state would require the collection of nonessential information. As such, the public records exemption appears overly broad.

Representatives of the First Amendment Foundation, the Florida Press Association and the Society of Newspaper Editors have expressed a concern that provisions of this legislation fail to provide a substantive justification for the proposed exemption and is unconstitutionally vague.

Two-thirds Vote

Article I, Section 24(a) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records exemption. This bill will require a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

This bill creates a public records exemption for trade secrets; however, it does not provide a definition of trade secret. It is recommended that the bill be amended to provide a cross-reference to the definition provided in s. 688.002, F.S.

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 1995² 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 & COMBINED BILL CHANGES

None.

² Section 119.15, F.S.