

By the Committee on Governmental Oversight and Productivity;
and Senator Sebesta

585-1864-05

1 A bill to be entitled
2 An act relating to public records and open
3 meetings; amending s. 11.0431, F.S.; creating
4 an exemption from public-records requirements
5 for user identification and passwords held by
6 the Division of Legislative Information
7 Services pursuant to s. 11.0455, F.S.; creating
8 a temporary exemption from public-records
9 requirements for reports and files stored in
10 the electronic filing system pursuant to s.
11 11.0455, F.S.; creating s. 112.32156, F.S.;
12 creating an exemption from public-records
13 requirements for user identifications and
14 passwords held by the Commission on Ethics
15 pursuant to s. 112.32155, F.S.; creating a
16 temporary exemption from public-records
17 requirements for reports and files stored in
18 the electronic system pursuant to s. 112.32155,
19 F.S.; providing for future legislative review
20 and repeal under the Open Government Sunset
21 Review Act; amending s. 112.3215, F.S.;
22 creating a temporary exemption from
23 public-records and open-meetings requirements
24 for records relating to the
25 compensation-reporting audit and investigation
26 of possible lobbying compensation reporting
27 violations and for meetings held pursuant to an
28 investigation or at which a
29 compensating-reporting audit is discussed;
30 providing for future legislative review and
31 repeal under the Open Government Sunset Review

1 Act; providing findings of public necessity;
2 providing a contingent effective date.
3

4 Be It Enacted by the Legislature of the State of Florida:
5

6 Section 1. Paragraphs (j) and (k) are added to
7 subsection (2) of section 11.0431, Florida Statutes, to read:

8 11.0431 Legislative records; intent of legislation;
9 exemption from public disclosure.--

10 (2) The following public records are exempt from
11 inspection and copying:

12 (j) All user identifications and passwords held by the
13 Division of Legislative Information Services pursuant to s.
14 11.0455.

15 (k) All draft lobbying activity reports and files
16 stored in the electronic filing system pursuant to s. 11.0455,
17 until such time as the report has been submitted as filed.

18 Section 2. Section 112.32156, Florida Statutes, is
19 created to read:

20 112.32156 Electronic filing of lobbying activity
21 reports; confidentiality of information and draft
22 reports.--All user identifications and passwords held by the
23 commission pursuant to s. 112.32155 are confidential and
24 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution. All draft reports and files stored in the
26 electronic filing system pursuant to s. 112.32155 are exempt
27 from s. 119.07(1) and s. 24(a), Art. I of the State
28 Constitution until the report has been submitted as a filed
29 report. This section is subject to the Open Government Sunset
30 Review Act of 1995 in accordance with s. 119.15, and shall
31

1 stand repealed on October 2, 2010, unless reviewed and saved
2 from repeal through reenactment by the Legislature.

3 Section 3. Paragraph (d) is added to subsection (7) of
4 section 112.3215, Florida Statutes, to read:

5 112.3215 Lobbyists before the executive branch or the
6 Constitution Revision Commission; registration and reporting;
7 investigation by commission.--

8 (7)

9 (d) Records relating to the compensation-reporting
10 audit or an investigation pursuant to this section or s.
11 112.32155 are confidential and exempt from s. 119.07(1) and s.
12 24(a), Art. I of the State Constitution, and any meetings held
13 pursuant to an investigation or at which a
14 compensation-reporting audit is discussed are exempt from s.
15 286.011(1) and s. 24(b), Art. I of the State Constitution
16 either until the alleged violator requests in writing that
17 such investigation and associated records and meetings be made
18 public or until the commission determines, based on the
19 investigation, whether probable cause exists to believe that a
20 violation has occurred. This paragraph is subject to the Open
21 Government Sunset Review Act of 1995 in accordance with s.
22 119.15, and shall stand repealed on October 2, 2010, unless
23 reviewed and saved from repeal through reenactment by the
24 Legislature.

25 Section 4. (1) The Legislature finds that it is a
26 public necessity to exempt from public-records requirements
27 all user identifications and passwords held by the Division of
28 Legislative Information Services pursuant to section 11.0455,
29 Florida Statutes, and by the Commission on Ethics pursuant to
30 section 112.32155, Florida Statutes, as created in Senate Bill
31 2646 or similar legislation. The public-records exemption is

1 necessary to ensure accountability for the filing of false or
2 inaccurate information. Under current law, the lobbyist, or
3 the designated lobbyist and principal, must certify and bear
4 responsibility for the correctness of each expenditure report
5 filed with the Division of Legislative Information Services
6 and the Commission on Ethics under pain of penalty or fine.
7 The law uses the physical signatures of such individuals on
8 the paper reports as evidence of attestation to the veracity
9 of the report. Electronic reporting eliminates the evidentiary
10 advantages of hard-copy signatures by persons submitting
11 reports, so the provisions of law creating the electronic
12 filing system provide for the issuance of secure "sign-on"
13 information to the individuals designated, and provides that
14 such individuals are responsible for all filing using such
15 "sign-on" credentials unless they have notified the division
16 or commission, whichever is applicable, that their credentials
17 have been compromised. Without a public-records exemption for
18 this information, there would be no accountability for
19 lobbying activity reporting.

20 (2) In addition, the public-records exemption is
21 necessary to protect against the unwarranted submission of
22 false or erroneous lobbying activity data. Limiting access to
23 the electronic filing system will prevent unauthorized users
24 from changing or submitting false or inaccurate information
25 that could be damaging to the reporting persons and result in
26 finances and penalties being levied against the persons
27 accountable by statute for the veracity of the information.

28 (3) The Legislature also finds that it is a public
29 necessity to exempt from public-records requirements draft
30 reports and files entered into the electronic filing system by
31 persons subject to the electronic-reporting requirements until

1 a final report is due pursuant to law. The public-records
2 exemption for draft reports and files will allow all lobbyists
3 to update reports and subject the reports to internal
4 verifications to check for errors prior to submission. Also,
5 the public-records exemption will provide each principal the
6 opportunity to review and verify the activity report of his or
7 her designated lobbyist, especially lobbying expenditures made
8 directly by the principal, for which the principal is liable.
9 Principals are deemed to certify to the accuracy of such
10 expenditures submitted by operation of law pursuant to section
11 11.0455 or section 112.32155, Florida Statutes, whichever is
12 applicable.

13 (4) The Legislature also finds that this
14 public-records exemption will accelerate the public's access
15 to this information compared with current law, which allows
16 for the filing of paper reports by mail on the designated due
17 date and may result in both mailing and data-entry delays in
18 processing the information to the Internet.

19 (5) Finally, the Legislature finds that it is a public
20 necessity to exempt from public-records and open-meetings
21 requirements records relating to the compensation-reporting
22 audit and investigation of violations of the executive
23 lobbying compensation reporting laws, and meetings held
24 pursuant to an investigation or at which a
25 compensation-reporting audit is discussed or at which such
26 records are discussed, until the alleged violator requests in
27 writing that such associated records and materials be made
28 public or the Commission on Ethics has made a probable cause
29 determination. The release to the public of proceeding
30 records and investigative information in connection with
31 possible violations before the Commission makes a probable

1 cause determination may have an adverse effect upon the person
2 who is the subject of the investigation. Also, making such
3 proceedings and information available to the public could
4 hamper the Commission's ongoing investigation, and its ability
5 to gather pertinent documents and information crucial to
6 making a probable cause determination. Further, the exemption
7 is of limited scope so that the alleged violator's rights are
8 protected while, at the same time, preserving the public's
9 right to ultimately obtain the information.

10 Section 5. This act shall take effect on the same date
11 that Senate Bill 2646 or similar legislation takes effect,
12 creating section 11.0455 and section 112.32155, Florida
13 Statutes, to provide for electronic filing of lobbying
14 activity reports, and amending section 112.3215, Florida
15 Statutes, to provide for the investigation of possible
16 lobbying compensation reporting violations, if such
17 legislation is enacted in the same legislative session or an
18 extension thereof and becomes law.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 Senate Bill 2644

23 Clarifies the records that are subject to a temporary
24 exemption from public records requirements.

25 Clarifies what meetings are closed when specific types of
26 records are discussed.