

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Domestic Security Committee

BILL: SB 288

SPONSOR: Domestic Security

SUBJECT: Seaport Security Plan/OGSR/Public Record

DATE: January 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Skelton</u>	<u>Skelton</u>	<u>DS</u>	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill reenacts and amends s. 311.13, F.S., to continue the public records exemption for seaport security plans, and certain specific documents related to those plans, of a seaport authority created by act of the Legislature or a seaport department of a county or municipality that operates an international seaport. The effective date of the bill is October 2, 2005.

The bill reenacts and amends the following sections of the Florida Statutes: 311.13.

II. Present Situation:

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909¹. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the State Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the State Constitution, provides that any bill that contains an

¹ Section 1, ch. 5942, 1909; RGS 424: CGL 490.

exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F.S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of the existing exemption.

Under the Open Government Sunset Review Act of 1995, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Records Exemption for Seaport Security Plans and Certain Related Documents

In 2000, the Legislature adopted the Florida Seaport Security Law, s. 311.12, F.S. The law was created in response to recommendations from the November 1999 Florida Legislative Task Force on Illicit Money Laundering report that minimum security standards for Florida’s seaports be established. The purpose of the law, as originally passed, was to slow the flow of illegal drugs and contraband through Florida’s public seaports. Since the attacks on America in 2001, this law has served to provide as a mechanism to assure that Florida’s ports remain secure against terrorist threats, as well. As part of this new law, the Legislature required each public seaport in the state, as described in s. 311.09(1), F.S., to create a Seaport Security Plan based on an assessment of threats and vulnerabilities unique to individual facilities. The Office of Drug Control was directed to develop statewide minimum seaport security standards and each of Florida’s seaports was required to develop an individual security plan based on the statewide standards.²

² Chapter 2000-360, L.O.F.

Section 311.13, F.S., provides a public records exemption for the seaport security plans required by law. In addition, photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities are exempt if the seaport authority or department determines that such items contain information that is not generally known and that could jeopardize the security of the seaport. This exemption does not include information relating to real estate leases, layout plans, blueprints or information relating to those leases.

Florida statutes provide another public records exemption related to security plans, s. 119.071, F.S., which makes confidential and exempt a security system plan or portion thereof for any property owned or leased to the state or...subdivisions; or any privately owned or leased property which plan or portion thereof is in the possession of any agency. A security system plan is described as including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof that relate directly to the physical security of a facility or revealing an security systems; threat assessments conducted by any agency...or any private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training.

The Federal Maritime Transportation Security Act of 2002 (MTSA)³ requires owners and operators of all facilities within federal Areas of Maritime Security (AMS) to submit Seaport Security Plans to the United States Coast Guard. These plans are kept by the Captain of the Port (COTP) for each Coast Guard district and are compiled into an Area Maritime Security Plan for the district. These plans, and their components, have been designated as Sensitive Security Information (SSI)⁴ by the Department of Homeland Security and, as such, are exempt from the federal Freedom of Information Act.

Florida's seaports continue to constitute a major threat for the transport of illicit drugs and other contraband, and for potential terrorist activity. The exemption from public disclosure of seaport security plans and certain photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities found in s. 311.13, F.S., is narrowly tailored to serve a public purpose and is necessary to ensure the safety and security of Florida's public seaports. In addition, the exemption conforms with s. 119.071, F.S., and the Sensitive Security Information exemptions from the federal Freedom of Information Act found in the Maritime Transportation Security Act.

S. 311.13, F.S., meets the specified criteria set forth in s. 119.15(4)(b)3, as it protects confidential information concerning entities, disclosure of which could be detrimental to the safety and security of the state's seaports and citizens.

III. Effect of Proposed Changes:

The bill reenacts and amends s. 311.13, F.S., to continue the public records exemption for specific information including Seaport Security Plans required by s. 311.12, F.S., and certain documents related to those plans.

³ Public Law 107-295

⁴ USCG, Department of Homeland Security, *Sensitive Security Information*, 49 CFR Part 1520, @ <http://www.uscg.mil/hq/g-m/mp/pdf/GuideSSI.pdf>.

The bill has an effective date of October 2, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts the public records exemption found in s. 311.13, F.S.

Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁵ Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁶

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

⁵ See, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁶ Art. I, s. 24© of the State Constitution

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
