

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65B CS
SPONSOR(S): Reagan
TIED BILLS: HB 63B

Public Records and Public Meetings Exemptions for Lobbying
IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	8 Y, 2 N	Williamson	Mitchell
2) State Administration Council	7 Y, 2 N, w/CS	Williamson	Bussey
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a public records exemption for records relating to an audit of a lobbying firm or an investigation of violations of the lobbying compensation reporting laws. It creates a public meetings exemption for meetings of the Commission on Ethics at which confidential and exempt audit or investigative information is discussed. Such records and meetings are open to the public under certain circumstances. The bill provides for future review and repeal of the exemptions and provides a statement of public necessity and a contingent effective date.

The bill appears to have a minimal fiscal impact on state government. See FISCAL COMMENTS section for further details. It does not appear to have a fiscal impact on local governments.

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 public access to records and meetings of the Commission on Ethics.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

HB 63B authorizes the Legislative Auditing Committee to conduct random audits and field investigations of lobbying firms. It also authorizes the Commission on Ethics to investigate any lobbying firm upon receipt of information from a sworn complaint or random audit of lobbying reports indicating a possible violation other than a late-filed report.

EFFECT OF BILL

HB 65B creates a public records exemption for records relating to an audit of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. It also creates a public records exemption for records relating to an investigation of violations of the lobbying compensation reporting laws for the executive branch or the Constitution Revision Commission.

Current law provides a public records exemption for records held by the legislative branch of government which, if held by an agency would be confidential or exempt from public records requirements.¹ As such, the public records exemption created by this bill also applies to the same type of record held by the Legislature. Therefore, similar records of the Legislative Auditing Committee are exempt from public records requirements.

HB 65B creates a public meetings exemption for meetings of the Commission on Ethics at which confidential and exempt audit or investigative information regarding a lobbying firm is discussed.

Such records and meetings are closed to the public until the:

- Lobbying firm requests in writing that the records or meetings be made public; or
- Commission on Ethics determines there is probable cause that the audit reflects a violation of the reporting laws.

The bill provides for repeal of the exemption on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 112.3215, F.S., creating a public records and public meetings exemption for audit and investigative information regarding a lobbying firm.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

¹ Section 11.0431(2)(a), F.S.

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 an increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

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 expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

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; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act² 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

On December 6, 2005, the State Administration Council adopted an amendment to HB 65B and reported the bill favorably with committee substitute. The committee substitute provides that the records of the audited lobbying firm, and the meetings surrounding such audit, are open to the public if the Commission on Ethics determines there is probable cause that the audit reflects a violation of the reporting laws. The bill required that the audit reflect a "substantial" violation of the reporting laws and provided no definition of the term "substantial."

² Section 119.15, F.S.