

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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, however, may 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 also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," 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. It 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:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- Protecting trade or business secrets.

Public Records Exemption for Incentive Programs

Section 288.1067, F.S., provides that certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses¹ is confidential and exempt² from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The specific information includes:

¹ The incentive programs are the Capital Investment Tax Credit Program (s. 220.191), Qualified Defense Contractor Tax Refund Program (s. 288.1045), Qualified Target Industry Tax Refund Program (s. 288.106), High Impact Performance Grant Program (s. 288.108) and the Quick Action Closing Fund (s. 288.1088).

² There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and

- An employer's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number;
- Trade secret information as defined in s. 812.081, F.S.;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

Effect of Proposed Changes

The bill expands the public records exemption provided in s. 288.1067, F.S., to include information held by the Office of Tourism, Trade and Economic Development; Enterprise Florida, Inc.; or county or municipal governmental entities and their employees or agents pursuant to s. 288.1089, F.S., the "Innovation Incentive Program" created by HB 1283.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1283 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.1067, F.S., to expand the existing public records exemption to include information held pursuant to the Innovation Incentive Program under s. 288.1089, F.S.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1283 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

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:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or expanded public records or public meetings exemption. The bill expands a current public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

Lines 94 through 96 of the bill reference the need to protect "private information, such as employee names and social security numbers" concerning employees of a business seeking participation in the Innovation Incentive Program. The exemption, however, does not protect such information from public disclosure. The sponsor may want to consider an amendment to remove those lines from the bill to conform the public necessity statement to the public records exemption.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.