

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2230

INTRODUCER: Banking and Insurance and Senator Richter

SUBJECT: Public Records/Examination Techniques and Procedures/OFR

DATE: March 30, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Snider	Burgess	BI	Fav/CS
2.	Naf	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. The OFR may make investigations and examinations within or outside of Florida as it deems necessary.

Current law provides a public records exemption for certain information related to investigations and examinations conducted by the OFR pursuant to the Act. Generally, the exemption expires once the investigation or examination is completed or ceases to be active; however, certain information remains confidential and exempt, including information that would disclose investigative techniques or procedures. Protection is not provided for information that would reveal examination techniques or procedures.

The bill creates a public-records exemption for information that would reveal examination techniques or procedures used by the OFR pursuant to the Act. It provides for retroactive application of the exemption. Information that would reveal such examination techniques or procedures may be provided by the OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

This bill creates the following section of the Florida Statutes: 517.2016

II. Present Situation:

Public-Records Law

Article I, s. 24(a) of the State 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) of the State 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.¹

Public policy regarding access to government records is addressed further 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. 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. In addition, it must be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.³

Florida Securities and Investor Protection Act⁴

The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. The OFR may make investigations and examinations within or outside of Florida as it deems necessary to:

¹ Section 24(c), Art. I, Fla. Const.

² Section 119.15, F.S.

³ *Id.*

⁴ The act is codified in chapter 517, F.S.

- determine whether a person has violated or is about to violate any provision of the Act or a rule or order under the Act; or
- aid in the enforcement of the Act.⁵

Investigations and Examinations

Current law provides a public records exemption for certain information related to investigations and examinations conducted by the OFR pursuant to the Act.⁶ Information relative to an investigation or examination by the OFR, including any consumer complaint, is confidential and exempt⁷ from public records requirements until the investigation or examination is completed or ceases to be active. However, the information remains confidential and exempt if the OFR submits it to any law enforcement or administrative agency or regulatory organization for further investigation.⁸ In addition, certain information remains confidential and exempt after the investigation or examination is completed or ceases to be active,⁹ including information that would disclose investigative techniques or procedures. Protection is not provided for information that would reveal examination techniques or procedures.¹⁰

III. Effect of Proposed Changes:

Section 1. The bill amends s. 517.2016, F.S., and creates a public record exemption for information that would reveal examination techniques or procedures¹¹ used by the OFR pursuant to the Act. It provides for retroactive application of the exemption.¹² Information that would reveal such examination techniques or procedures may be provided by the OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature.

⁵ Section 517.201(1)(a), F.S.

⁶ Section 517.2015, F.S.

⁷ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *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 a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

⁸ Section 517.2015(1)(a), F.S.

⁹ For purposes of the exemption, an investigation or examination is considered “active” so long as OFR or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. Section 517.2015(1)(a), F.S.

¹⁰ Section 517.2015(1)(b), F.S.

¹¹ The bill defines “examination techniques and procedures” to mean “the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and testimony for the purpose of documenting violations” of the Act and rules promulgated under the Act.

¹² In 2001, the Supreme Court of Florida ruled that a public records exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

Section 2. The bill provides a statement of public necessity as required by the State Constitution. The bill finds that the exemption is necessary to “effectively and efficiently administer the examination programs.” Additionally, the bill finds that the examinations are “essential component[s] of securities regulation” that foster regulatory compliance. Additionally the bill determines that the revelation of the techniques and procedures would “undermine the examination process and facilitate evasion of the law.” Finally, without the exemption, the OFR would not be able to participate in joint examinations with other securities regulators without compromising the integrity of the joint examinations and the techniques used by other regulators.

Section 3. This act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public records or public meetings exemption. This bill includes the required public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 24, 2010:

The committee substitute :

- Relocated the proposed exemption from existing statute to a new section of statute;
- Provided for retroactive application of the exemption; and
- Amended the enactment date to provide for enactment upon becoming law.

- B. **Amendments:**

None.