

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 Community Affairs Committee

BILL: SB 994

INTRODUCER: Senator Latvala

SUBJECT: Public Records/Public Airports

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Pre-meeting
2.			CM	
3.			GO	
4.				
5.				
6.				

I. Summary:

This bill makes proprietary confidential business information submitted to or held by a public airport confidential and exempt from public records requirements.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.¹ The bill contains a statement of public necessity.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.²

This bill creates section 332.16 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record³ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency⁴ records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public records” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁵

Only the Legislature is authorized to create exemptions to open government requirements.⁶ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption⁸ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁹

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or

³ Section 119.011(12), F.S.

⁴ Section 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ Article I, s. 24(c) of the State Constitution.

⁷ *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).

⁸ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁹ Section 24(c), Art. I of the State Constitution.

entities designated in the statute.¹⁰ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Public Records Exemptions

Proprietary confidential business information under various definitions is confidential and exempt from s. 119.07, F.S., as it relates to the following:

- Alternative investments for state funds (s. 215.44, F.S.)
- Institute for Commercialization of Public Research (s. 288.9626, F.S.)
- Communications services tax (s. 202.195, F.S.)
- Economic development agencies (s. 288.075, F.S.)
- Electric utility interlocal agreements (s. 163.01, F.S.)
- Emergency communications number E911 system (s. 365.174, F.S.)
- H. Lee Mofitt Cancer Center and Research Institute (s. 1004.43, F.S.)
- Natural gas transmission companies (s. 368.108, F.S.)
- Opportunity Fund (s. 288.9626, F.S.)
- Prison work program corporation records (s. 946.517, F.S.)
- Public utilities (s. 366.093, F.S.)
- Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S. – exempt only, not confidential and exempt)
- Telephone companies (s. 364.183, F.S.)
- Tobacco companies (s. 569.215, F.S.)
- Water and wastewater systems (s. 367.156, F.S.)

There is currently no public records exemption for proprietary confidential business information submitted to or held by an airport.

III. Effect of Proposed Changes:

Section 1 creates s. 332.16, F.S., to make proprietary confidential business information submitted to or held by a public airport confidential and exempt from public records requirements, until it is no longer considered to be proprietary confidential business information by the proprietor.

¹⁰ Op. Att’y Gen. Fla. 85-62 (1985).

¹¹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

The bill defines:

- “Airport facilities” to mean airports, buildings, structures, terminal buildings, parking garages and lots, hangars, land, warehouses, shops, hotels, other aviation facilities of any kind or nature, or any other facility of any kind or nature related to or connected with a public airport and other aviation facility that a public airport is authorized by law to construct, acquire, own, lease, or operate, together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto.
- “Governing body” means the board or body in which the general legislative powers of a public airport are vested.
- “Proprietor” means a self-employed individual, proprietorship, corporation, partnership, limited partnership, firm, enterprise, franchise, association, trust, or business entity, whether fictitiously named or not, authorized to do or doing business in this state, including its respective authorized officer, employee, agent, or successor in interest, which controls or owns the proprietary confidential business information provided to a public airport.
- “Proprietary confidential business information” means information that has been designated as confidential by the proprietor and includes:
 - Business plans;
 - Internal auditing controls and reports of internal auditors;
 - Reports of external auditors for privately held companies;
 - Trade secrets as defined in s. 688.002, F.S.;¹²
 - Client and customer lists;
 - Potentially patentable material;
 - Business transactions; or
 - Financial information of the proprietor or projections of financial results for the proprietor or the airport facilities project for which the information is provided.
- “Public airport” has the same meaning as provided in s. 330.27, F.S.,¹³ and includes areas defined in s. 332.01(3), F.S.¹⁴

In addition, a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities is confidential and exempt from public records requirements until ten days after the proposal is approved by the public airport. If no proposal or counterproposal is submitted to the governing body of the public airport for approval, such proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

¹² “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

¹³ “Airport” means an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.

¹⁴ “Airport” means any area, of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving and discharging passengers or cargo, and all appurtenant areas used or suitable for access to airport facilities, airport buildings, or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing a statement of Legislative intent supporting the constitutionally required public necessity statement. Essentially, divulging the proprietary confidential business information destroys the value of that property to the proprietor, causing a financial loss not only to the proprietor, but also to the airport and to the state and local governments due to a loss of tax revenue and employment opportunities for residents. Release of that information gives business competitors an unfair advantage and would injure the affected entity in the marketplace. Therefore, the Legislature provides a statement of public necessity that proprietary confidential business information that is received or held by a public airport be made confidential and exempt from public-records requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁵ This bill applies to all information designated as confidential by the proprietor. To survive constitutional scrutiny, the bill must be narrowly tailored to alleviate concerns about disclosure of proprietary confidential business information resulting in lost value to airports and local governments.

C. Trust Funds Restrictions:

None.

¹⁵ *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).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could result in a cost savings to public airports.

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.)

None.

B. Amendments:

None.