



The Florida Senate

Interim Project Report 2002-222

September 2001

Committee on Transportation

Senator Jim Sebesta, Chairman

PUBLIC RECORDS EXEMPTION FOR CERTAIN RECORDS HELD BY DEEPWATER PORTS

SUMMARY

Since 1997, proposals or counterproposals between certain deepwater ports and nongovernmental entities relating to the sale, use, or lease of land or of port facilities have, with conditions, been confidential and exempt from Florida's public records law.

In addition, any financial records submitted by any nongovernmental entity to such deepwater port for the purpose of sale, use, or lease of land or of port facilities are confidential and exempt from Florida's public records law.

Because of the proprietary and sensitive nature of this information, these exemptions are sufficiently compelling to override the strong public policy of open government.

BACKGROUND

The Public Records Law, chapter 119, F.S., requires records which are maintained by a public agency in the course of its statutory responsibilities be open and accessible to the public. The chapter authorizes the creation of an exemption to this requirement by general law if certain procedural requirements are met. However, such exemption to the Public Records Law is subject to automatic repeal by the Legislature unless a determination is made that the exception provides an identifiable public purpose sufficiently compelling to override the strong public policy of an open government.

Section 119.07, F.S., requires every person who has custody of a public record must permit such record to be inspected or examined by any person wishing to do so, unless such record is specifically exempted.

Section 24(a), Article I of the Florida State Constitution provides "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 made specifically confidential by the constitution."

Section 315.18, F.S., was created in 1997, and provides information relating to "any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use, or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of sale, use, or lease of land or of port facilities, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, 30 days before any such proposal or counterproposal is considered for approval by the governing body of such a deepwater port, the proposal or counterproposal shall cease to be exempt. If no proposal or counterproposal is submitted to the governing body for approval, such a proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations."

This section specifies the exemption is repealed effective October 2, 2002, and must be reviewed by the Legislature before that date in accordance with the Open Government Sunset Review Act.

METHODOLOGY

To complete this review staff questioned interested parties concerning the use and need for the exemption, and reviewed the history of the public records exemption.

FINDINGS

The 1997 Legislature found it is a public necessity that any proposal or counterproposal exchanged between a nongovernmental entity and any deepwater port listed in s. 311.09(1), F.S., relating to the sale, use, or lease

of land or port facilities, be held confidential and exempt from public records requirements until 30 days before any such proposal or counterproposal is considered for approval by the governing body of the deepwater port. Proposals and counterproposals submitted to a deepwater port contain sensitive business and financial information. Competing entities can gain access to such proposals, and, in some instances, the affected nongovernmental entity has abandoned its contractual efforts with the deepwater port, to the deepwater port's financial detriment. Also, the 1997 Legislature found it is a public necessity that financial records submitted to a deepwater port for purposes of the sale, use, or lease of land or of port facilities be held confidential and exempt. Financial information is sensitive, proprietary information the release of which would give competitors an unfair economic advantage. In addition, such exemptions are necessary in order that Florida deepwater ports can more effectively and efficiently negotiate contracts for the sale, use, or lease of land or of port facilities.

The exemption provided for deepwater ports continues to be sufficiently compelling to override the strong public policy of open government.

RECOMMENDATIONS

Staff recommends the exemptions found in s. 315.18, F.S. be readopted. The exemptions are sufficiently compelling to override the strong public policy of open government.