

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 410

SPONSOR: Governmental Oversight & Productivity Committee and Senator Bennett

SUBJECT: Public Records Requirement/Exemption

DATE: January 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams of an attractions and recreation facility, entertainment/resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which documents are held by a governmental agency. The committee substitute provides definitions for the structures identified in the exemption and provides for exceptions to the public records exemption. The committee substitute makes explicit that the exemption does not apply to comprehensive plans or site plans or amendments to them that are submitted under local land development regulations, local zoning regulations, or development-of-regional-impact review.

The bill redesignates present paragraphs (ff) and (gg) of subsection (3) of section 119.07, F.S., as paragraphs (gg) and (hh) respectively, and adds a new paragraph (ff) to that subsection.

II. Present Situation:

Public Records Laws: Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. ¹ The Public Records Law² specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies.

Section 119.07(1)(a), F.S., provides that every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any

¹ Section 1, ch. 5942, 1909; RGS 424; CGL 490.

² Chapter 119, F.S.

reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. Section 119.011, F.S., broadly defines the term "public records" to mean:

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.

Section 119.011, F.S., defines "agency" to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

In 1992, Floridians enacted an amendment that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), Florida Constitution, contains provisions similar to those of the Public Records Law and those provisions apply to the legislative, executive, and judicial branches of government.

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24(c), Florida Constitution, permits the Legislature to provide by general law for the exemption of records. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains a public records exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995³ provides for the systematic repeal of exemptions to the Public Records Law five years after creation of, or substantial modification to, the exemption. The 1995 law also provides criteria for the Legislature to consider prior to creating or reenacting an exemption.

The act authorizes the creation or expansion of an exemption only if the exemption:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

³ Sections 119.15 and 286.011, F.S.

information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁴

Under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

Related Exemptions: Section 119.07(3)(ee), F.S., provides a public records exemption for building plans, blueprints, schematic drawings, and diagrams of buildings or other structures that depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by a governmental agency. Drafts, preliminary and final formats are included within this exemption.

This section provides for exceptions to the public records exemption. Such exempt information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other agency owned or operated structure; or
- Upon a showing of good cause before a court of competent jurisdiction.

Under s. 119.071, F.S., documents relating to security system plans of a public or private entity that are in the possession of a public agency are exempt from the public record requirements. A “security system plan” is defined by statute and includes, but is not limited to: information or portions thereof relating directly to the physical security of a facility or revealing security systems, threat assessments, threat-response plans, emergency-evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training. Information made confidential and exempt under this section may be disclosed by the custodial agency to another state or federal agency; the confidential and exempt status of the information is retained while in the possession of the receiving agency.

III. Effect of Proposed Changes:

The committee substitute creates a new exemption for building plans, blueprints, schematic drawings, and diagrams that depict the internal layout or structural elements of an attractions and recreation facility, entertainment/resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which are held by a governmental agency. Drafts, preliminary, and final formats are included within the exemption, and the exemption applies to any documents held either permanently or temporarily by an agency.

⁴ Section 119.15(4)(b), F.S.

The bill limits and defines the types of entities that are included within the exemption.

“Attractions and recreation facility” is defined to mean:

. . . any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

- a. for single-performance facilities:
 - (I) Provides single-performance facilities; or
 - (II) Provides more than 10,000 permanent seats for spectators.
- b. For serial-performance facilities:
 - (I) Provides parking spaces for more than 1,000 motor vehicles; or
 - (II) Provides more than 4,000 permanent seats for spectators.

“Entertainment/resort complex” is defined to mean:

. . . a theme park comprised of at least 25 acres of land with permanent exhibitions of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park.

“Industrial complex” is defined to mean:

. . . any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership which:

- a. Provides onsite parking for more than 250 motor vehicles;
- b. Encompasses 500,000 square feet or more of gross floor area; or
- c. Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

“Retail and service development” is defined to mean:

. . . any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under common property ownership, development plan, or management that:

- a. Encompasses more than 400,000 square feet of gross floor area; or
- b. Provides parking spaces for more than 25,000 motor vehicles.

“Office development” is defined to mean:

. . . any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

“Hotel or motel development” means any hotel or motel development that accommodates 350 or more units.

The bill provides for exceptions to the public records exemption. Such exempt information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To the owner or owners of the structure in question; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill defines the structures referred to in the exemption, providing definitions for “attractions and recreation facility,” “entertainment/resort complex,” “industrial complex,” and “hotel or motel development.”

The committee substitute makes explicit that the exemption does not apply to comprehensive plans or site plans or amendments to them that are submitted under local land development regulations, local zoning regulations, or development-of-regional-impact review.

As required by s. 24, Article I of the Florida Constitution, the committee substitute provides a statement of public necessity.

This committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution requires new exemptions to pass each house of the Legislature by a two-thirds vote.

Exemptions must be narrowly-tailored in order to meet the public necessity for that exemption. An exemption which captures more records than required by the stated public necessity may be overturned by the courts on grounds of being overbroad. The bill narrowly tailors the exemption to ensure that every privately-owned structure in the state is not captured by the exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local agencies will have to make procedural changes to comply with the exemption provided in this bill. The cost of implementing these changes is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
