

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7211 PCB EUP 10-05 Public Records Exceptions - Office of Regulatory Staff
SPONSOR(S): Energy & Utilities Policy Committee and Precourt
TIED BILLS: CS/HB 7209 IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Energy & Utilities Policy Committee, 12 Y, 0 N, Keating, Collins. Row 2: General Government Policy Council, Keating, Hamby.

SUMMARY ANALYSIS

CS/HB 7209, which passed the Energy & Utilities Policy Committee on March 25, 2010, reorganizes the Public Service Commission (commission) into two structurally separate entities: the commission, whose primary role is to serve as an independent and impartial decision maker; and the Office of Regulatory Staff (office), whose primary role is to advocate for the public interest in proceedings before the PSC and proceedings related to matters within the PSC's jurisdiction.

Consistent with CS/HB 7209, HB 7211 reflects the authority of the office to access records of telecommunications companies, public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, and places certain limits on the commission's authority to access records.

The bill provides that the exemptions established for proprietary confidential business information received by the office are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed in five years unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a finding that it is a public necessity that proprietary confidential business information received by the office from telecommunications companies, public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, be made confidential and exempt from disclosure as public records.

The bill has no fiscal impact on state or local governments.

The bill provides that it will take effect October 1, 2010, if HB 7209 or similar legislation establishing an Office of Regulatory Staff separate from the Public Service Commission, for purposes of representing the public interest on matters within the jurisdiction of the Public Service Commission, is adopted in the same legislative session or an extension thereof and becomes law.

The bill requires a two-thirds vote of the members present and voting for passage.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Public Records Law*

Article I, s. 24(a) of the 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) of the 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may 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.

###### *Current Public Records Exemptions for Information Provided to the Public Service Commission*

In exercising its powers and duties, the Public Service Commission is authorized by law to access the books and records of the entities subject to its jurisdiction, including telecommunications companies, public utilities providing electricity and natural gas service, utilities providing water and wastewater

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<sup>1</sup> Article I, s. 24(c) of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

service, natural gas transmission companies, and affiliates of these entities.<sup>3</sup> The law provides mechanisms for these entities to seek an exemption from the public records law for records provided to the commission that constitute proprietary confidential business information.<sup>4</sup>

For purposes of these exemptions, “proprietary confidential business information” is defined as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

The term includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.<sup>5</sup>

For records received by the commission from public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, the person seeking an exemption must demonstrate to the commission, and the commission must find, that the records constitute proprietary confidential business information.<sup>6</sup> For records received by the commission from telecommunications companies or their affiliates, the person seeking an exemption is required only to claim that the records constitute proprietary confidential business information.<sup>7</sup>

HB 7209 structurally separates the commission into two entities: the Public Service Commission and the Office of Regulatory Staff (office). Under that bill, the role of the office is to represent the public interest in matters within the jurisdiction of the commission. In establishing the roles and duties of both entities, that bill provides the office the same access to books and records of public utilities and regulated companies that the commission currently has. That bill specifically transfers from the commission to the office the authority to conduct inspections, examinations, and audits and to conduct discovery. Thus, to the extent the commission required access to proprietary confidential business information, the office will require the same access.

### **Effect of Proposed Changes**

Consistent with CS/HB 7209, which passed the Energy & Utilities Policy Committee on March 25, 2010, HB 7211 reflects the authority of the office to access records of telecommunications companies, public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, and places certain limits on the commission's authority to access records.

The bill provides mechanisms for these entities to seek an exemption from the public records law for records provided to the office that constitute proprietary confidential business information. These mechanisms mirror the existing mechanisms for seeking an exemption when such records are provided

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<sup>3</sup> Sections 364.183, 366.093, 367.156, and 368.108, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Section 366.093, 367.156, and 368.108, F.S.

<sup>7</sup> Section 364.183, F.S.

to the commission. Thus, for records of telecommunications companies and their affiliates, the person seeking an exemption must claim that the records constitute proprietary confidential business information. For records of public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, the person seeking an exemption must demonstrate to the commission, and the commission must find, that the records constitute proprietary confidential business information.

The bill provides that the exemptions established for proprietary confidential business information received by the office are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed in five years unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a finding that it is a public necessity that proprietary confidential business information received by the office from telecommunications companies, public utilities providing electricity and natural gas service, utilities providing water and wastewater service, natural gas transmission companies, and affiliates of these entities, be made confidential and exempt from disclosure as public records. This finding notes that, to effectively carry out its duties and responsibilities to represent the public interest in proceedings before the commission, it is necessary for the office to request and obtain records from entities subject to the regulatory jurisdiction of the commission and from related business entities and that many of these records contain proprietary confidential business information. The finding states that these records, if disclosed to the public, could harm the competitive interests of the regulated entity and its affiliates and the competitive interests of private entities with which a regulated entity does business. The finding further states that disclosure of proprietary confidential business information could impair the efforts of the regulated entity or its affiliates to contract for goods or services on favorable terms, in turn increasing costs to utility ratepayers, or could compromise security measures, systems, and procedures related to the provision of the essential services provided by these regulated entities.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 364.183, F.S., relating to access to telecommunications company records.

**Section 2.** Amends s. 366.093, F.S., relating to public utility records and confidentiality.

**Section 3.** Amends s. 367.156, F.S., relating to public utility records and confidentiality.

**Section 4.** Amends s. 368.108, F.S., relating to confidentiality and discovery of natural gas transmission company records.

**Section 5.** Provides a legislative finding of public necessity for public records exemptions.

**Section 6.** Provides an effective date of October 1, 2010, if a tied bill or substantially similar legislation becomes law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill applies existing exemptions to information provided to the newly created office; thus, it requires a two-thirds vote for passage.

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill applies existing exemptions to information provided to the newly created office and includes a public necessity statement.

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides the purpose for the public record exemption, which is to allow the Office of Regulatory Staff to effectively carry out its duties to represent the public interest in proceedings before the Public Service Commission. To reflect the transfer of most of the auditing, inspecting, and information-gathering functions of the commission to the office (accomplished through CS/HB 7209), the bill applies existing public records exemptions for proprietary confidential business information provided to the commission to proprietary confidential business information provided to the newly created office. Proprietary confidential business information, for purposes of this exemption, is defined in existing law. The bill does not expand the type of information that is currently exempt as proprietary confidential business information when received by the commission. Thus, it appears that the exemption is no broader than necessary to accomplish its stated purpose.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES