

STORAGE NAME: h3705s1.go

DATE: March 23, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3705

RELATING TO: Public Records

SPONSOR(S): Committee on Environmental Protection, Representative Edwards and others

COMPANION BILL(S): SB 814(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 11 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3) FINANCE AND TAXATION
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill provides exemptions from public records disclosure requirements for information provided by a stationary source subject to the Accidental Release Prevention Program under the Federal Clean Air Act. The bill includes a finding of public necessity and an expiration date for the exemptions.

The bill provides the act will take effect the date CS/HB 3717 takes effect.

Comments by the Committee on Governmental Operations:

*Subsection (1) of this bill exempts certain trade secret information held by the State Hazardous Materials Emergency Response Commission. Subsection (2) exempts certain "specific information". That exemption does not address what the specific information would cover, which agency would be in possession of such information, or the duration of the exemption. Subsection (3) exempts certain inspection, audit, and investigation information held by the Department of Community Affairs. There is no time limitation on this exemption. None of the exemptions cross-reference Art. I, s. 24 of the State Constitution. In addition, the public necessity statement, required by Art. I, s. 24, only addresses the need for the exemption regarding trade secret information. In sum, **two of the three exemptions are clearly over broad, and the public necessity statement is defective.** Those involved with drafting this bill have been advised of these concerns, and are working on amendatory language.*

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 112(r) of the Federal Clean Air Act establishes the Accidental Release Prevention Program, which is intended to prevent accidental releases of listed toxic, flammable, and explosive substances and to minimize the consequences of such releases. The program, codified in 42 USCS s.7412, sets out a general duty for owners and operators of stationary sources who produce, process, handle, or store listed substances or any other extremely hazardous substances to initiate specific activities to prevent and mitigate accidental releases. Among these requirements is the development of Risk Management Plans, which require that listed substances be reported if on the premises.

Section 112 creates an independent safety board, the Chemical Safety and Hazard Investigation Board. Among other duties, the board investigates and reports to the public the causes and circumstances of serious accidental releases. Because making public certain information regarding specific substances and their uses could reveal trade secrets, section 112 exempts such information from being released, upon a determination by the board that releasing such information would cause substantial harm to a person's competitive position.

The federal program may be delegated to a state upon a showing that the state has in place a program meeting federal requirements. CS/HB 3717 would establish the Accidental Release Prevention and Risk Management Planning Program that would enable Florida to seek delegation from the US Environmental Protection Agency. If CS/HB 3717 is enacted, this bill or similar legislation must be enacted to provide for the necessary confidentiality under Florida law. Although s. 119.07, F.S., generally establishes the right of the public to inspect any public record, the State Constitution authorizes exemptions to be created under general law.

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records 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.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

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Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

B. EFFECT OF PROPOSED CHANGES:

This bill creates public records exemptions. The exemptions are applicable under certain circumstances:

- Whenever Section 112(r) of the federal Clean Air Act authorizes a stationary source subject to Section 112(r)(7) to exclude trade secret information from its Risk Management Plan, the owner or operator must furnish the information so excluded to the State Hazardous Materials Emergency Response Commission upon request. Such information is confidential and exempt from the provisions of s. 119.07(1), F.S. The commission may not disclose such information except under a final determination by the EPA Administrator that such information is not entitled to trade secret protection, or pursuant to an order of court.
- Whenever Section 112(r) of the federal Clean Air Act authorizes an owner or operator of a stationary source subject to Section 112(r)(7) to elect to withhold from disclosure specific information, such information is confidential and exempt from the

provisions of s. 119.07(1). Any information that is provided to the Department of Community Affairs (DCA) or its agent, in the process of conducting an inspection, audit, or investigation which is authorized under Section 112(r) is exempt from the provisions of s. 119.07(1), F.S.

These exemptions are subject to the Open Government Sunset Review Act of 1995 in accordance with s.119.15, F.S., and will stand repealed on October 2, 2003, unless reviewed and re-enacted by the Legislature.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

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(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 252.943, F.S. Public Records

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 252.943, F.S. Provides exemptions from s. 119.07(1), F.S., for specified information. These exemptions are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S.

Section 2: Legislative finding is provided that it is a public necessity that information provided by a stationary source subject to the Accidental Release Prevention Program under the federal Clean Air Act be held confidential in order to protect legitimate property rights associated with trade secrets while allowing state officials to review and oversee Risk Management Plans, and that disclosure of the information is likely to cause substantial harm to the competitive position of a stationary source.

Section 3: Provides an effective date as the same date as CS/HB 3717, or similar legislation will take effect if such legislation is adopted in the same legislative session or an extension thereof.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Companies using listed chemicals may benefit by not having to disclose information that could reveal trade secrets.

3. Effects on Competition, Private Enterprise and Employment Markets:

Companies using listed chemicals may benefit by not having to disclose information that could reveal trade secrets.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

This bill will only become a law if CS/HB 3717, or similar legislation, is enacted.

Comments by the Committee on Governmental Operations:

*Subsection (1) of this bill exempts certain trade secret information held by the State Hazardous Materials Emergency Response Commission. Subsection (2) exempts certain "specific information". That exemption does not address what the specific information would cover, which agency would be in possession of such information, or the duration of the exemption. Subsection (3) exempts certain inspection, audit, and investigation information held by the Department of Community Affairs. There is no time limitation on this exemption. None of the exemptions cross-reference Art. I, s. 24 of the State Constitution. In addition, the public necessity statement, required by Art. I, s. 24, only addresses the need for the exemption regarding trade secret information. In sum, **two of the three exemptions are clearly over broad, and the public necessity statement is defective.** Those involved with drafting this bill have been advised of these concerns, and are working on amendatory language.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1998, the Committee on Environmental Protection heard HB 3705 and adopted 5 amendments.

Amendment 1: Removed a reference to s. 24(a), Article I of the State Constitution.

Amendment 2: Removed the section of the bill providing the department, SERC, and local emergency planning committees disclose nonconfidential information to the public. This section also provided fees for copying.

Amendment 3: Inserts the term "HB 3717" into section 3 of the bill, making this bill take effect at the same time as HB 3717.

Amendment 4: Added the term "certain" to better specify what information be held confidential.

Amendment 5: Provides that the disclosure of trade secret information is likely to cause substantial harm to the competitive position of a stationary source.

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These amendments were adopted by the Committee and the bill became a committee substitute.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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