

STORAGE NAME: h0099a.tr

DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 99

RELATING TO: Public Records Exemption/Certain Port and Financial Records

SPONSOR(S): Representative Miller

STATUTE(S) AFFECTED: Creates s. 315.18

COMPANION BILL(S): SB 450(i)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 3 NAYS 0
- (2) TRANSPORTATION YEAS 8 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

HB 99 creates a public records exemption for any proposal or counterproposal exchanged between a deepwater port and any nongovernmental entity, relating to the sale, use, or lease of land or port facilities. In the 30 day period prior to a proposal or counterproposal being considered by the port's governing body, such information would be subject to public disclosure. If the proposal or counterproposal is not submitted to the governing body for approval, the information would be subject to disclosure after 90 days following the end of negotiations.

Additionally, HB 99 creates a public records exemption for financial records received by a port from a nongovernmental entity pursuant to the sale, use, or lease of land or of port facilities. Businesses dealing with a port often must submit financial information to substantiate the businesses' financial viability, and competing businesses could have an economic advantage over the negotiating firm if there were public access to such financial information.

HB 99 does not appear to have a fiscal impact on state or local governments other than deepwater ports, however, proponents assert that, to the extent that these exemptions allow more flexible negotiations between deepwater ports and businesses, the ports may benefit from increased trade and additional revenues from sales, use, or leases of land and port facilities.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 311.07, F.S., creates the Florida Seaport Transportation and Economic Development (FSTED) Program within the Department of Transportation. The purpose of the FSTED Program is to finance deepwater port projects that will improve transportation of cargo and passengers in commerce and trade. Section 311.09, F.S., creates the FSTED Council which is made up of representatives of the eligible ports and affected state agencies. The 14 public deepwater ports which can participate in the FSTED Program are the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

Sections 311.07(2) and 320.20(3), F.S., provide that at least \$23 million per year be made available from State Transportation Trust Fund revenues for the seaport program to fund approved projects on a 50-50 matching basis. Each year the FSTED Council approves a list of port projects to be funded under the program. The project approval process is set out in s. 311.09, F.S.

The ports generate matching monies through the sale, use, or lease of land or of port facilities. For example, ports lease storage facilities so that ships have a place to store off-loaded cargo prior to further transportation to the end destination. Other deepwater ports, in and outside of Florida, compete for such business.

Current law does not provide a public records exemption for proposals or counter-proposals related to the sale, lease, or use of land of port facilities.

According to Florida Ports Council representatives, this impedes a deepwater port's ability to effectively negotiate contracts for the sale, use, or lease of land (either port land or nongovernmental land) as well as for the sale, use, or lease of port facilities. Other deepwater ports can access such information, which potentially could interfere with negotiations. Businesses are reluctant for such information to become publicly available because their competitors would then have access to business information that could give the recipient a competitive advantage.

Finally, deepwater ports often receive financial information from nongovernmental entities pursuant to the negotiation of a contract for sale, use, or lease of land or of port facilities. For example, if a particular nongovernmental entity wanted to enter into a long-term lease of port facilities, that port's staff and/or board may request financial information from that nongovernmental entity showing its financial viability, which may include income statements, other lease agreements, or tax records. This is sensitive proprietary business information that a competitor could use to its economic advantage, and to the detriment of the nongovernmental entity which submitted such information to the port. Currently there is no public records exemption for this type of information.

B. EFFECT OF PROPOSED CHANGES:

HB 99 creates a public records exemption for any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1), F.S., and any nongovernmental entity, relating to the sale, use, or lease of land (the port's or the nongovernmental entity's) or of port facilities. However, the exemption is limited in that 30 days before a proposal or counterproposal is considered for approval by the governing body of the port, the proposal or counterproposal is subject to public disclosure. Additionally, if the proposal or counterproposal is not submitted to the governing body for approval, the information would be subject to disclosure after 90 days following the end of negotiations.

HB 99 also creates a public records exemption for financial records received by a deepwater port pursuant to the sale, use, or lease of land or of port facilities. Businesses dealing with a deepwater port regarding potential sale, use, or lease of land or of port facilities often must submit financial information to substantiate their financial viability and ability to make required payments. If competing businesses gain access to such financial information they could have an economic advantage over the company whose records were made publicly available.

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?

HB 99 does not appear to affect any authority to make or adjudicate rules or disputes.

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

HB 99 does not add obligations, responsibilities, work, nor require additional government or private organization employment.

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

None .

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?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

There is no apparent direct affect on taxes. Florida Ports Council representatives assert that HB 99 will eliminate an impediment to doing business with nongovernmental entities which will result in more contracts and increased revenues.

- 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?

HB 99 makes no changes to governmental entitlements, and only affects services to the extent that there is a limited time for public access to proposals

and counter-proposals, and no public access to nongovernmental entities' financial information.

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

The deepwater ports assume any costs associated with the protection of information during period(s) they are exempt from disclosure.

4. Individual Freedom:

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

HB 99 does not appear to have a significant affect on individuals or private organizations' ability to conduct their own affairs except, according to representatives of the Tampa Port Authority, HB 99 will significantly enhance private organizations' willingness to conduct business with the deepwater ports.

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

This bill does not appear to prohibit, or create new government interference with any presently lawful activity.

5. Family Empowerment:

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

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

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Creates s. 315.18, F.S., to provide a public records exemption for proposals or counter-proposals exchanged between a deepwater port and any nongovernmental entity relating to the sale, use, or lease of land or of port facilities. Such proposals become public 30 days before they are considered for approval by the deepwater port's governing board; and if not submitted to the governing body for approval, the information would be subject to disclosure after 90 days following the end of negotiations. This section also creates a public records exemption for financial information submitted to a deepwater port by a nongovernmental entity for the purpose of the sale, use or lease of land or of port facilities. These exemptions are made subject to the Open Government Sunset Review Act of 1995.

Section 2 -- Provides a public necessity statement for the public records exemptions discussed in section 1 above.

Section 3 -- Provides an effective date of "upon becoming law".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To the extent that these exemptions allow more flexible negotiations between deepwater ports and businesses, the ports may benefit from increased trade and more revenues.

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:

None.

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

HB 99 should eliminate any economic advantage that a competing port or business may gain from having access to business proposals between a port and a business, or to a business's financial records and information.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 99 does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 99 does not reduce the authority of counties or municipalities to raise revenues.

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

HB 99 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

This same bill was introduced last session as HB 183. That bill was passed by the House on April 23, 1996, but died in the Senate Committee on Commerce and Economic Opportunity on May 4, 1996.

Representatives of the Tampa Port Authority have indicated that they may be able to provide examples, or anecdotal information, of situations which illustrate the need for HB 99.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

STORAGE NAME: h0099a.tr

DATE: March 4, 1997

PAGE 9

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

Prepared by:

Legislative Research Director:

Phillip B. Miller

John R. Johnston