

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 1562

SPONSOR: Regulated Industries Committee and Senator Burt

SUBJECT: Public Records/Tobacco Industry

DATE: April 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	RI	Favorable/CS
2.	Rhea	Wilson	GO	Favorable
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute provides an exemption from public records requirements for information used to calculate the annual tobacco-settlement payments. It contains a statement of public necessity and also provides for future review and repeal of the exemption.

This committee substitute creates section 569.215 of the Florida Statutes.

II. Present Situation:

On March 28, 2001, the Task Force on Tobacco Settlement Revenue Protection (“Task Force”) issued its Final Report to the President of the Senate and Speaker of the House of Representatives. The first recommendation of the Task Force was for the Legislature to “. . . provide a process for verifying that the tobacco settlement payments received are in accordance with the Florida Settlement Agreement.” The report further recommends that the “. . . Legislature should also provide an exemption from the Florida Public Records Act for information considered necessary to verify the accuracy of the payments made by the tobacco companies if such information is considered a trade secret or insider information at the time of its receipt.”

Article I, s. 24(a) of the State Constitution guarantees every person 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 section 24 or specifically made confidential by the Constitution.” Subsection (c) allows the Legislature to provide for exemptions by general law if the purpose of the exemption is stated specifically and if the public necessity justifying the exemption is no broader than necessary to accomplish the stated purpose.

Senate Bill 1580 requires the Comptroller to receive representations from the tobacco industry regarding calculations of the annual tobacco-settlement payments. The Comptroller is authorized to contract for services necessary to verify the representations made by the tobacco industry. The Auditor General is required to review the Comptroller's verification of the representations each year.

III. Effect of Proposed Changes:

The bill creates s. 569.215, F.S., to exempt from public records proprietary confidential business information received by the Governor, Attorney General, or outside counsel representing Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement or received by the Comptroller or the Auditor General for purposes of accomplishing their responsibilities relating to the settlement payments submitted to the Comptroller under s. 569.21, F.S. In addition, any state or federal agency that currently is authorized to have access to the documents by a provision of law is granted access despite the exemption. Information that is made public loses its exemption. The exemption is subject to the Sunset Review Act of 1995 and shall be repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

The term "proprietary confidential information" is defined by the bill.

A constitutionally-required legislative finding of public necessity is provided. The bill states that it is in the public interest that information be obtained for the purpose of negotiating and verifying the calculation of annual tobacco settlement payments. If the information provided to the state were disclosed, the tobacco companies could be harmed in the market place, affecting their annual sales, which could cause a reduction in the amounts paid to the state under the agreement. This reduction in payment could harm the financial interests of the state and the people of Florida. The public and private harm in disclosing the information significantly outweighs any public benefit derived from its ability to scrutinize and monitor governmental action with regard to the settlement payments.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article 1, s. 24(a) of the Florida Constitution, requires the Legislature to state with specificity the public necessity justifying the exemption and requires that the exemption be no broader than necessary to accomplish the stated purpose of the law. The purpose of this bill is to verify the annual tobacco-settlement payments and to provide an exemption. The legislative finding that the public's need to scrutinize and monitor governmental actions is outweighed by the public and private harm that could occur if the information were

disclosed. The bill sufficiently tailors the exemption to information that, if released, would create the harm.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tobacco companies subject to the settlement may disclose sensitive information without jeopardizing its competitive standing.

C. Government Sector Impact:

The Comptroller will be provided with information he may not have otherwise received but that is necessary to verify the settlement payments.

VI. Technical Deficiencies:

The bill provides an effective date “upon becoming law.” It should instead be linked to Senate Bill 1580, which is the substantive bill to which the exemption is related.

VII. Related Issues:

None.

VIII. Amendments:

None.