

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 654

SPONSOR: Governmental Oversight & Productivity Committee and Senator Garcia

SUBJECT: Public Records Exemption/Invitations to Negotiate

DATE: March 5, 2002 REVISED: _____

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

I. Summary:

This committee substitute amends a current exemption for sealed bids and proposals by adding invitations to negotiate to the exemption. Sealed bids, proposals, replies, requests for proposals, or invitations to negotiate are made exempt until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a), F.S.

This committee substitutes amends s. 119.07(3)(m), of the Florida Statutes.

II. Present Situation:

Public Records Requirements - Florida has a long history of granting public access to governmental records. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.¹ Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.² The act has been amended numerous times since its enactment.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

Every person has 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 this

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

² Chapter 67-125 (1967 L.O.F.).

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.³

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.⁴

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24 (c) of the State Constitution authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. An exemption may be no broader than necessary to comport with the stated public necessity. Further, a law that creates a public record exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

The Open Government Sunset Review Act of 1995⁵ provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after the creation of, or substantial modification to, an exemption. The repeal cycle began in 2001. The 1995 act also specifies the conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not

³ Article I, s. 24 of the State Constitution.

⁴ Article I, s. 24(d) of the State Constitution.

⁵ Sections 119.15 and 286.0111, F.S.

know or use it, the disclosure of which would injure the affected entity in the marketplace.⁶

Thus, 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.

Currently, under s. 119.07(3)(m), F.S., sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the inspection and copying requirements of Art. I, s. 24 of the State Constitution, until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a), F.S., or within 10 days after bid or proposal opening, whichever is earlier.

III. Effect of Proposed Changes:

The committee substitute modifies the current exemption in s. 119.07(3)(m), F.S., by adding invitations to negotiate to the exemption and by changing the time period when sealed bids or proposals or replies may be inspected or copied. The exemption, as amended, provides that sealed bids, proposals, or replies received by an agency pursuant to an invitation to bid, requests for proposals, or invitations to negotiate are exempt until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a), F.S.

A statement of public necessity is provided. The public necessity for the exemption is that these documents contain information relating to the business practices of vendors and premature disclosure would offer competitors an unfair advantage in the procurement process.

The act takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ Section 119.15(4)(b), F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.
