

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1765 (PCB SA 03-18) Public Necessity Statements/Florida Statutes
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	6 Y, 0 N	Williamson	Everhart
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. More specifically, every person has the right to inspect or copy any public record or to attend any public meeting of any collegial public body. The only exception to this constitutional requirement is a legislatively created public records or public meetings exemption.

A legislatively created public records or public meetings exemption must contain a statement of public necessity, which is required by the Constitution and codified in the Laws of Florida. This bill removes six public necessity statements that were inadvertently codified in the Florida Statutes.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1765.sa.doc
DATE: March 26, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution sets forth the state’s public policy regarding access to government records and meetings. The Constitution specifically states:

Every person has the right to inspect or copy any public records¹ made or received in connection with the official business . . . All meetings of any collegial public body . . . at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public² . . .

The only exception to this constitutional requirement is a legislatively created public records or public meetings exemption. A public records or public meetings exemption must be no broader than necessary and must state with specificity the public necessity justifying the exemption.³

Public necessity statements provide every justification for creating a public records or public meetings exemption, in case the exemption is challenged in court. The public necessity statement is codified in the Laws of Florida; they are not included in the Florida Statutes.

Effect of Bill

This bill cleans up language that was inadvertently codified in the Florida Statutes by removing six public necessity statements, which were required when creating public records and public meetings exemptions. Additionally, one of the public necessity statements pertains to trade secret information held by an agency. This public necessity statement has on numerous occasions been thought to be either a definition of trade secret or a public records exemption for trade secret information causing the section to be improperly cross-referenced in proposed legislation.⁴ As such, this bill removes this

¹ Section 119.011(1), F.S., defines “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

² Article I, s. 24 (a) and (b), Florida Constitution.

³ Article I, s. 24(c), Florida Constitution.

⁴ On February 12, 2003, the First District Court of Appeal entered an opinion stating certain documents were trade secrets protected from public disclosure pursuant to ss. 815.04(3) and 815.045, F.S. The court went on to state that “[w]hile Section 815.045, Florida Statutes (2001), reads more like a statement of legislative intent than a conventionally phrased provision of positive law, it makes its intended effect clear.” [See *SePRO Corporation v. Florida Department of Environmental Protection and Griffin, L.L.C.*, 28 Fla. L. Weekly D492b (Fla. 1stDCA).] After a review of chapter 94-100, L.O.F., it is clear that section 815.04(3), F.S., provides a public records exemption for certain trade secret information,

section in addition to the other sections of law, helping to alleviate any confusion that was created by the inadvertent codification of the public necessity statements in the Florida Statutes.

C. SECTION DIRECTORY:

Section 1. Repeals s. 430.015, F.S., regarding a public necessity statement for a Department of Elderly Affairs public records exemption.

Section 2. Amends s. 440.132(2), F.S., regarding a public necessity statement for an Agency for Health Care Administration public records exemption, and repeals the public necessity statement.

Section 3. Repeals s. 723.0065, F.S., regarding a public necessity statement for a Division of Florida Land Sales, Condominiums, and Mobile Homes public records exemption. Repeals s. 768.301, F.S., regarding a public necessity statement for a public records and public meetings exemption for state administered risk management programs. Repeals s. 815.045, F.S., regarding a public necessity statement for a public records exemption regarding trade secret information held by an agency.

Section 4. Amends s. 943.031(7)(a)2., F.S., regarding a public necessity statement for a public records and public meetings exemption for the Florida Violent Crime and Drug Control Council, and repeals the public necessity statement.

Section 5. Provides an effective date of "upon becoming a 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. This bill does not affect municipal or county government.
2. Other: None.

whereas s. 815.045, F.S., provides the public necessity statement for such exemption. As a result, the Department of Environmental Protection, with the assistance of the Attorney General's office, has requested that the case be reheard regarding the issue of whether s. 815.045, F.S., is truly a public records exemption.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.