

By Senator Campbell

32-983A-04

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 44.407, F.S.; creating an exemption from
 4 public-records requirements for documents
 5 produced during mediation proceedings;
 6 providing for exceptions to the exemption;
 7 providing for future legislative review and
 8 repeal; providing findings of public necessity;
 9 repealing ss. 44.102(3) and (4), 44.201(5), and
 10 61.183(3), F.S., relating to communications or
 11 materials made during a mediation proceeding;
 12 providing a contingent effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Section 44.407, Florida Statutes, is
 17 created to read:

18 44.407 Exemption from public disclosure.--All
 19 documents made or produced in the course of a court-ordered
 20 mediation, including documents of the mediator, are
 21 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 22 of the State Constitution. However, the documents may be
 23 disclosed upon the consent of all mediation participants. An
 24 executed settlement agreement described in s. 44.405(4) is not
 25 confidential or exempt from disclosure.

26 Section 2. Section 44.407, Florida Statutes, is
 27 subject to the Open Government Sunset Review Act of 1995 in
 28 accordance with section 119.15, Florida Statutes, and shall
 29 stand repealed on October 2, 2009, unless reviewed and saved
 30 from repeal through reenactment by the Legislature.

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1 Section 3. The Legislature finds that it is a public
2 necessity to exempt from public disclosure all documents
3 concerning mediation in order to promote the effective and
4 efficient use of mediation. Specifically, confidentiality
5 promotes candor within a mediation. It is through candid
6 discussions that mediation participants can develop creative
7 solutions to their issues. Candid discussion would be stifled
8 unless mediation participants are assured that documents
9 produced in the course of a mediation will not be used against
10 them. State legislatures across the country have recognized
11 this fact and have enacted 250 statutes granting participants
12 to mediation the privilege of refusing to disclose documents
13 produced during mediation. Preservation of mediator
14 neutrality, necessary to promote public confidence in the use
15 of mediation, is supported by confidentiality. If presuit or
16 voluntary mediation does not result in an agreement, the
17 mediation participants may file suit to resolve their issues
18 and should be able to do so on the merits of the action
19 without being prejudiced by discussions that occurred during
20 the mediation.

21 Section 4. Subsections (3) and (4) of section 44.102,
22 subsection (5) of section 44.201, and subsection (3) of
23 section 61.183, Florida Statutes, are repealed.

24 Section 5. This act shall take effect on the same date
25 that SB ____ or similar legislation takes effect, if such
26 legislation is adopted in the same legislative session or an
27 extension thereof and becomes law.

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SENATE SUMMARY

Creates an exemption from public-records requirements for documents produced during mediation proceedings. Provides exceptions to the exemption. Provides for future legislative review and repeal under the Open Government Sunset Review Act of 1995. Provides findings of public necessity. Repeals specified laws relating to material produced during mediation. (See bill for details.)