

By Senator Sebesta

16-851-06

1 A bill to be entitled
2 An act relating to public records and open
3 meetings; amending s. 11.0431, F.S.; creating
4 an exemption from public-records requirements
5 for user identification and passwords held by
6 the Division of Legislative Information
7 Services pursuant to s. 11.0455, F.S.; creating
8 a temporary exemption from public-records
9 requirements for reports and files stored in
10 the electronic filing system pursuant to s.
11 11.0455, F.S.; creating s. 112.32156, F.S.;
12 creating an exemption from public-records
13 requirements for user identifications and
14 passwords held by the Commission on Ethics
15 pursuant to s. 112.32155, F.S.; creating a
16 temporary exemption from public-records
17 requirements for reports and files stored in
18 the electronic system pursuant to s. 112.32155,
19 F.S.; providing for future legislative review
20 and repeal under the Open Government Sunset
21 Review Act; amending s. 112.3215, F.S.;
22 creating a temporary exemption from
23 public-records and open-meetings requirements
24 for records relating to a
25 compensation-reporting audit and an
26 investigation of possible reporting violations
27 concerning lobbying compensation and for
28 meetings held pursuant to an investigation or
29 at which a compensating-reporting audit is
30 discussed; providing for future legislative
31 review and repeal under the Open Government

1 Sunset Review Act; providing findings of public
2 necessity; providing a contingent effective
3 date.

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

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7 Section 1. Paragraphs (j) and (k) are added to
8 subsection (2) of section 11.0431, Florida Statutes, to read:

9 11.0431 Legislative records; intent of legislation;
10 exemption from public disclosure.--

11 (2) The following public records are exempt from
12 inspection and copying:

13 (j) All user identifications and passwords held by the
14 Division of Legislative Information Services pursuant to s.
15 11.0455.

16 (k) All draft lobbying compensation and expenditure
17 reports and files stored in the electronic filing system
18 pursuant to s. 11.0455, until such time as the report has been
19 submitted as filed.

20 Section 2. Section 112.32156, Florida Statutes, is
21 created to read:

22 112.32156 Electronic filing of compensation and
23 expenditure reports; confidentiality of information and draft
24 reports.--All user identifications and passwords held by the
25 commission pursuant to s. 112.32155 are confidential and
26 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution. All draft reports and files stored in the
28 electronic filing system pursuant to s. 112.32155 are exempt
29 from s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution until the report has been submitted as a filed
31 report. This section is subject to the Open Government Sunset

1 Review Act of 1995 in accordance with s. 119.15, and shall
2 stand repealed on October 2, 2011, unless reviewed and saved
3 from repeal through reenactment by the Legislature.

4 Section 3. Paragraph (d) is added to subsection (7) of
5 section 112.3215, Florida Statutes, to read:

6 112.3215 Lobbyists before the executive branch or the
7 Constitution Revision Commission; registration and reporting;
8 investigation by commission.--

9 (7)

10 (d) Records relating to the compensation-reporting
11 audit or an investigation pursuant to this section or s.
12 112.32155 are confidential and exempt from s. 119.07(1) and s.
13 24(a), Art. I of the State Constitution, and any meetings held
14 pursuant to an investigation or at which a
15 compensation-reporting audit is discussed are exempt from s.
16 286.011(1) and s. 24(b), Art. I of the State Constitution
17 until the alleged violator requests in writing that such
18 investigation and associated records and meetings be made
19 public or until the commission determines, based on the
20 investigation, whether probable cause exists to believe that a
21 violation has occurred. This paragraph is subject to the Open
22 Government Sunset Review Act of 1995 in accordance with s.
23 119.15, and shall stand repealed on October 2, 2011, unless
24 reviewed and saved from repeal through reenactment by the
25 Legislature.

26 Section 4. (1) The Legislature finds that it is a
27 public necessity to exempt from public-records requirements
28 all user identifications and passwords held by the Division of
29 Legislative Information Services pursuant to s. 11.0455,
30 Florida Statutes, and by the Commission on Ethics pursuant to
31 s. 112.32155, Florida Statutes, as created in Senate Bill

1 or similar legislation. The public-records exemption is
2 necessary to ensure accountability for the filing of false or
3 inaccurate information. Under current law, the lobbyist, or
4 the designated lobbyist and principal, must certify and bear
5 responsibility for the correctness of each expenditure report
6 filed with the Division of Legislative Information Services
7 and the Commission on Ethics under pain of penalty or fine.
8 The law uses the physical signatures of such individuals on
9 the paper reports as evidence of attestation to the veracity
10 of the report. Electronic reporting eliminates the evidentiary
11 advantages of hard-copy signatures by persons submitting
12 reports, so the provisions of law creating the electronic
13 filing system provide for the issuance of secure sign-on
14 information to the individuals designated, and provide that
15 such individuals are responsible for all filing using such
16 sign-on credentials unless they have notified the division or
17 commission, whichever is applicable, that their credentials
18 have been compromised. Without a public-records exemption for
19 this information, there would be no accountability for
20 lobbying compensation and expenditure reporting.

21 (2) In addition, the public-records exemption is
22 necessary to protect against the unwarranted submission of
23 false or erroneous data concerning lobbying compensation and
24 expenditures. Limiting access to the electronic filing system
25 will prevent unauthorized users from changing or submitting
26 false or inaccurate information that could be damaging to the
27 reporting persons and result in fines and penalties being
28 levied against the persons accountable by statute for the
29 veracity of the information.

30 (3) The Legislature also finds that it is a public
31 necessity to exempt from public-records requirements draft

1 reports and files entered into the electronic filing system by
2 persons subject to the electronic-reporting requirements until
3 a final report is due pursuant to law. The public-records
4 exemption for draft reports and files will allow all lobbying
5 firms, principals, lobbyists, and lobbying firms to update
6 reports and subject the reports to internal verifications to
7 check for errors prior to submission. Also, the public-records
8 exemption will provide each principal the opportunity to
9 review and verify the expenditure report of his or her
10 designated lobbyist, especially lobbying expenditures made
11 directly by the principal for which the principal is
12 responsible. Principals are deemed to certify to the accuracy
13 of such expenditures submitted by operation of law pursuant to
14 s. 11.0455 or s. 112.32155, Florida Statutes, whichever is
15 applicable.

16 (4) The Legislature also finds that this
17 public-records exemption will accelerate the public's access
18 to expenditure information compared with current law, which
19 allows for the filing of paper reports by mail on the
20 designated due date and may result in both mailing and
21 data-entry delays in processing the information to the
22 Internet. Information concerning lobbying compensation is not
23 currently reported at all.

24 (5) Finally, the Legislature finds that it is a public
25 necessity to exempt from public-records requirements those
26 records that relate to a compensation-reporting audit and the
27 investigation of violations of compensation-reporting laws
28 relating to executive lobbying, and to exempt from
29 open-meetings requirements those meetings that are held
30 pursuant to an investigation at which a compensation-reporting
31 audit is discussed or at which such records are discussed,

1 until the alleged violator requests in writing that the
2 associated records and materials be made public or until the
3 Commission on Ethics has made a determination of probable
4 cause. The release to the public of records and investigative
5 information in connection with possible violations before the
6 commission makes a determination of probable cause may have an
7 adverse effect upon the person who is the subject of the
8 investigation. Also, making such records and information
9 available to the public could hamper the commission's ongoing
10 investigation and its ability to gather pertinent documents
11 and information crucial to making a determination of probable
12 cause. Further, the exemption is of limited scope so that the
13 alleged violator's rights are protected while, at the same
14 time, the right of the public to ultimately obtain the
15 information is preserved.

16 Section 5. This act shall take effect on the same date
17 that Senate Bill ____ or similar legislation takes effect,
18 creating section 11.0455 and section 112.32155, Florida
19 Statutes, to provide for electronic filing of lobbying
20 compensation and expenditure reports, and amending section
21 112.3215, Florida Statutes, to provide for the investigation
22 of possible reporting violations concerning lobbying
23 compensation, if such legislation is enacted in the same
24 legislative session or an extension thereof and becomes law.

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