

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1297

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Young

117 Y's

0 N's

**COMPANION
BILLS:** (CS/CS/HB 935, CS/SB 1496,
CS/CS/SB 1494)

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1297 passed the House on April 17, 2013, and subsequently passed the Senate on April 25, 2013. This public records bill amends the Florida False Claims Act to provide that both the complaint and information held by the Department of Legal Affairs or the Department of Financial Services pursuant to an investigation under the Act are confidential and exempt from disclosure under the public records law. The information may be disclosed by either department to a law enforcement agency or other administrative agency. The exemption expires once the investigation is completed, unless otherwise protected from disclosure.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill was approved by the Governor on June 3, 2013, ch. 2013-105, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Confidential versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.³ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁴ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁵ However, the agency is not prohibited from disclosing the documents in all circumstances where the records are only exempt.⁶

The Florida False Claims Act

The Florida False Claims Act (FFCA)⁷ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. These types of actions were recognized at common law, and have historically been called "*qui tam*" actions.⁸ Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;
- Making or using a false record to get a false or fraudulent claim paid or approved;

¹ Art I., s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁴ *Id.*

⁵ *Id.*

⁶ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

⁷ Sections 68.081 - 68.09, F.S.

⁸ The term "*qui tam*" is short for a Latin phrase given to suits brought individually to benefit the sovereign. It literally means "who as well." <http://dictionary.law.com/Default.aspx?selected=1709> (last visited April 1, 2013).

- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid; or
- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.⁹

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for the FFCA violation.¹⁰

Under current law, an agency which has been damaged by a false claim, the Department of Financial Services, or the Department of Legal Affairs may bring an action for a false claim, or may join a private action brought on the grounds set out in the statute.

Effect of the Changes

Currently the Attorney General may investigate claims but does not have subpoena powers prior to the filing of a civil action. A companion bill, CS/CS/HB 935, grants the Department of Legal Affairs discovery capabilities prior to the institution of a civil proceeding if it has reason to believe that any person has testimony or evidence relevant to the investigation. CS/CS/HB 935 provides that the department may issue subpoenas requiring the recipient to:

- Produce documents;
- Answer interrogatories under oath; and
- Give sworn testimony.

The instant bill provides that the complaint and information held by the department¹¹ pursuant to an investigation of s. 68.082, F.S., is confidential and exempt from the public records laws. Such information may be disclosed to another agency or law enforcement in the performance of its official duties. The information is no longer confidential and exempt once the investigation is completed unless the information is otherwise protected by law.

An investigation is complete when:

- The department files its own action;¹²
- Closes the investigation without filing an action;
- Upon unsealing of the action; or
- Voluntary dismissal of the action.

The exemption is repealed on October 2, 2018, unless reviewed and saved from repeal.

The bill includes a public necessity statement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

⁹ Section 68.082(2), F.S.

¹⁰ Section 68.082(2)(g), F.S.

¹¹ The "department" may mean the Department of Legal Affairs or the Department of Financial Services, according to s. 68.083(4), F.S.

¹² Note that when the state brings an action, it is not a "*qui tam*" action, since the state itself brings it.

The bill does not appear to have any impact on state expenditures.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

C. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs, the Department of Financial Services, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and the above named offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed as day-to-day duties of the departments, the court system and court clerks.