

1989

Session Law 89-117

Florida Senate & House of Representatives

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S 558 GENERAL BILL/2ND ENG by Natural Resources and Conservation (Compare 1ST ENG/H 294, CS/1ST ENG/H 760, 1ST ENG/H 1532, H 1696, H 1714, H 1724, H 1727, CS/2ND ENG/S 302) Public Record Disclosure/Exemptions; (OPEN GOVERNMENT SUNSET REVIEW) amends provisions which provides exemptions from public records requirements for appraisal reports, offers & counteroffers re acquisition of state lands, certain information contained in annual audit reports of organizations & for reports re oil & gas wells, drilling & production required by D.N.R.; increases minimum amount of damage required before accident is required re vessels, etc. Amends F.S. Effective Date: 10/01/89.

03/17/89 SENATE Prefiled
04/04/89 SENATE Introduced, referred to Natural Resources and Conservation -SJ 54
04/07/89 SENATE On Committee agenda—Natural Resources and Conservation, 04/11/89, 2:00 pm. Room-2C-(301)
04/11/89 SENATE Comm. Report: Favorable with 2 amendment(s) by Natural Resources and Conservation, placed on Calendar -SJ 124
04/27/89 SENATE Placed on Special Order Calendar -SJ 210; Passed as amended; YEAS 36 NAYS 1 -SJ 235
05/02/89 HOUSE In Messages
05/09/89 HOUSE Received, placed on Calendar -HJ 419
05/16/89 HOUSE Placed on Special Order Calendar
05/24/89 HOUSE Read second time -HJ 607; Amendments adopted; Read third time; Passed as amended; YEAS 113 NAYS 0 -HJ 610
05/24/89 SENATE In Messages
05/29/89 SENATE Was taken up -SJ 553; Concurred; Passed as amended; YEAS 36 NAYS 0 -SJ 556
05/29/89 Ordered engrossed, then enrolled -SJ 556
06/12/89 Signed by Officers and presented to Governor
06/26/89 Approved by Governor; Chapter No. 89-117; See also: CS/SB 302 (Ch. 89-276)

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>JB</i>	<u>Voigt</u>	1. <u>NRC</u>	<u>Fav./2 amend.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Confidential and Privileged Information

BILL NO. AND SPONSOR:

SB 558 by Natural Resources and Conservation Committee

I. SUMMARY:

A. Present Situation:

The Open Government Sunset Review Act, ss. 119.14 and 286.0111, F.S., provides for the systematic repeal, over the 10-year period 1986-1995, of exemptions to the Public Records Act and Public Meetings Law. Each year exemptions in designated titles to chapters of the Florida Statutes certified to the presiding officers of each house by the Division of Statutory Revision of the Joint Legislative Management Committee are repealed unless reviewed and readopted after an orderly review process. Several such exemptions relating to natural resources records and reports are scheduled for repeal on October 1, 1989, pursuant to the Open Government Sunset Review Act.

The Senate Natural Resources and Conservation Committee was assigned the responsibility to review 15 such exemptions. During the interim between the 1988 and 1989 legislative sessions, the committee prepared a separate exemption analysis for each of the 15 assigned exemption reviews. The assigned exemptions included:

(1) Section 253.025(7)(c), F.S., relating to the confidentiality of Conservation and Recreation Lands appraisal reports. Confidential appraisals and appraisal summaries, which are maintained by the Bureau of Land Acquisition of the Department of Natural Resources and the Bureau of Appraisals of the Department of Natural Resources, are used only by the Board of Trustees of the Internal Improvement Trust Fund and the agency proposing land acquisition. Appraisals are confidential until an option contract is executed or two weeks before a contract or purchase agreement is considered for approval by the board.

(2) Section 253.025(8)(c), F.S., relating to the confidentiality of written offers and counteroffers for Conservation and Recreation Lands. All offers and counteroffers for state land to be held in the name of the board, whether negotiated by the Bureau of Land Acquisition of the Department of Natural Resources or other state agencies, is confidential and exempt from the public records law. This exemption applies until an option contract is executed or until two weeks before the approval of a purchase agreement is considered by the board.

(3) Section 258.015(3), F.S., relating to the confidentiality of donors acting to benefit the Division of Recreation and Parks of the Department of Natural Resources. Section 258.015, F.S., authorizes the formation of citizen support organizations to facilitate the acquisition of personal and real property, funds, and general support services from private donors for the benefit of the State of Florida park system. Each citizen

support organization must have an annual audit of its accounts with private donors prepared by an independent certified public accountant. Section 258.015(3), F.S., requires that the name of a donor be made anonymous in the audit prepared by the citizen support organization, if so requested by that donor.

(4) Section 327.30(3), F.S., relating to the confidentiality of vessel accident reports submitted to the Division of Law Enforcement of the Department of Natural Resources and to the Game and Fresh Water Fish Commission. Section 327.30(2), F.S., requires that in the event of a boating collision or accident resulting in the death, injury, or disappearance of a person, or property damage of \$200 or more, the boat operator must file a report with the Division of Law Enforcement of the Department of Natural Resources and the Game and Fresh Water Fish Commission. The division must then notify the sheriff of the county in which the accident occurred. Section 327.30(3), F.S., provides that such accident reports must be held confidential by the division and other concerned governmental agencies. Further, such reports cannot be used as evidence in a civil or criminal proceeding.

(5) Section 370.07(5)(a), F.S., relating to saltwater products purchasing records furnished to the Department of Natural Resources. The Division of Marine Resources of the Department of Natural Resources is responsible for maintaining a marine fisheries information system providing data on which to base fishery management policies. To obtain the necessary data, the division collects certain required reports from wholesale and retail dealers in saltwater fish products. Section 370.07(5), F.S., requires that records pertaining to saltwater products collected by the division must be maintained as confidential and are exempt from the public records law.

(6) Section 373.139(3), F.S., relating to the confidentiality of appraisal reports for land being considered for purchase by water management districts. Section 373.139, F.S., empowers the governing boards of water management districts to acquire land to protect and conserve the state's water resources. To determine the value of land proposed for acquisition, a water management district contracts with an appraiser who prepares a report determining the land's relative worth on the real estate market. Section 373.139(3), F.S., requires that all appraisals are confidential and exempt from the public records law.

(7) Section 377.22(2)(h), F.S., relating to the confidentiality of oil and gas drilling records submitted to the Department of Natural Resources. Persons holding or obtaining oil and gas permits must submit certain reports to the Division of Resource Management of the Department of Natural Resources. These reports contain wire line geophysical logs, cores, and cutting samples and drilling and production records, in addition to the operator's investment plans and long-range exploration strategies. Section 377.22(2)(h), F.S., mandates that such reports be kept confidential, at the request of the operator, by the department for 90 days after the completion of the well, or for a longer period, at the division's discretion.

(8) Section 377.2408(3), F.S., relating to the confidentiality of information regarding the location of geophysical operations in search of oil, gas, or minerals. Section 377.2408, F.S., gives the Bureau of Geology, Division of Resource Management, in the Department of Natural Resources, the responsibility of processing permit applications and issuing permits authorizing operations for the exploration of oil, gas, or mineral resources. Persons conducting such explorations must submit certain information to the department. Section 377.2408(3), F.S., requires that all anticompetitive information provided by the applicant, such as statements detailing the location of exploratory operations, must be held confidential by the

department for an indefinite period of time, unless the applicant consents to its disclosure.

(9) Section 377.2409, F.S., relating to the confidentiality of reports of noninterpreted information derived from geophysical operations. This section requires that noninterpreted data derived by persons conducting geophysical activities on state-owned mineral lands must be provided, upon request, to the Bureau of Geology, Division of Resource Management, Department of Natural Resources. If the person providing such information requests that it be held confidential by the division, the department must hold such information confidential for a minimum of 10 years after its receipt.

(10) Section 377.2424(3), F.S., relating to the confidentiality of geophysical permit information shared by the Department of Natural Resources with local governments. Section 377.2424, F.S., provides that before commencing the exploration of oil, gas, or mineral resources in Florida, a person must obtain a permit from the Department of Natural Resources. Further, any county or municipality may request and receive any geophysical application information maintained by the department. Such information obtained by counties and municipalities must be held confidential pursuant to an exemption from the public records law found in s. 377.2408(3), F.S. Section 377.2408(3), F.S., requires that all anticompetitive information provided by the applicant is to be held confidential for an indefinite period of time, unless the applicant consents to the disclosure of such information.

(11) Section 377.606, F.S., relating to the confidentiality of information or records of individual persons obtained by the Energy Data Center. The Energy Data Center in the Executive Office of the Governor is authorized to collect data from persons who transport, sell, import, or otherwise deal in energy resources in Florida. The center uses such information to develop and implement an energy resource management profile which delineates present and future demands of energy in terms of quantity and types of resources imported and used in this state. This information is of a proprietary nature and, at the request of the reporting individual, must be held as confidential and exempt from the public records law pursuant to s. 377.606., F.S. Certain exceptions are provided.

(12) Section 377.701(4), F.S., relating to the proprietary information submitted to the Governor's Office regarding the consumption of and demand for petroleum. Section 377.701, F.S., authorizes the Executive Office of the Governor to assume the state's role in petroleum allocation and conservation including the development of a fair and equitable petroleum plan. In order to determine present and future consumption and supplies of petroleum products in the state, the Executive Office of the Governor may require public and private entities to report data detailing petroleum usage and inventory amounts and certain other information. Proprietary information reported to the Governor's Office is exempt from the public records law pursuant to s. 377.701(4), F.S. Exceptions to this confidentiality provision are provided.

(13) Section 378.101(3)(b), F.S., relating to the confidentiality of information in the possession of the Florida Institute of Phosphate Research. Section 378.101, F.S., created the Florida Institute of Phosphate Research. This institute is responsible for researching or contracting with other entities to devise more efficient, safe, and environmentally sound technologies for phosphate mining, recovery, and reclamation. The institute is empowered to develop, in its research efforts, work products which are eligible for copyright, patent, or trademark protection. Section 378.101(3)(b), F.S., provides an exemption from the public records law for records which contain information

pertaining to methods of manufacture or production, actual or potential trade secrets, patentable or potentially patentable materials, business transactions, or proprietary information pertaining to research conducted by or on behalf of the institute. The exemption allows the institute to receive and evaluate confidential technical information and data from phosphate research for determining whether funds will be expended from the Phosphate Research Trust Fund to provide for more research in a specific area. If requested, certain information pertaining to the subject matter and funding involved with research programs and the identity of researchers must be revealed by the institute.

(14) Section 378.208(6), F.S., relating to the confidentiality of financial statements furnished to the Department of Natural Resources by operators of phosphate mines. The Phosphate Land Reclamation Act, enacted in 1986, authorizes the Department of Natural Resources to execute a regulatory scheme to ensure that lands mined for phosphate are reclaimed in a timely manner while ultimately yielding a beneficial use to the environment. Section 378.208, F.S., directs the department to require financial assurance from mine operators that the mined land will be properly reclaimed pursuant to s. 378.209, F.S. Mine operators must submit certain financial statements and reports to the department. Section 378.208(6), F.S., provides that such statements and reports are exempt from disclosure under the public records law.

(15) Section 378.406(1), (a), (b), F.S., relating to the confidentiality of information regarding the phosphate industry. The Resource Extraction Reclamation Act, (ss. 378.401 - 378.412, F.S.), authorizes the Department of Natural Resources through its Bureau of Mine Reclamation, to collect information on reclamation plans and to conduct investigations and inspections to insure that reclamation plans and activities are in accordance with the act's purpose of protecting the environment and citizens of the state from deleterious mining effects. Information concerning prospecting, rock grades, or secret processes or methods of operation acquired by the department is exempt from the public records law. This information is used for evaluating and recommending final action on documents related to reclamation plans for mining operations statewide.

B. Effect of Proposed Changes:

Section 1 of the bill provides that appraisal reports of prospective land purchases by the state will remain confidential and exempt from the public records law until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees of Internal Improvement Trust Fund. This also provides that all offers and counteroffers must be in writing and will be confidential and exempt from the provisions of the public records law.

Section 2 of the bill provides that certain donor information obtained by citizen support organizations which are created to benefit the State of Florida park system will remain confidential and exempt from the public records laws. However, all other information maintained by the citizen direct support organization is considered public records under the public records law.

Section 3 of the bill requires a boat operator to file an accident report with the Division of Law Enforcement of the Department of Natural Resources in the case of a collision, accident, or other casualty involving a boat. An accident report is also required whenever an accident involves damage to the boat or other property amounting to at least \$500.

However, if an investigating officer has made a written report, no report need be made by the operator to the division. An accident report may not be used as evidence in any civil trial arising out of an accident. The evidentiary privilege provided by this section may not be applied in an administrative disciplinary proceeding to exclude from evidence an accident report made by an employee involved in an accident. This section further deletes the requirement that such accident reports be held confidential by the division and other concerned governmental agencies.

Section 4 of the bill retains the exemption from the public records law regarding reports received by the Department of Natural Resources from wholesale and retail dealers in saltwater fish and products.

Section 5 of the bill retains the exemption from the public records law regarding land appraisals received by the governing boards of the water management districts.

Section 6 of the bill retains the exemption from the public records law regarding certain oil and gas drilling reports received by the Department of Natural Resources from oil and gas permitholders.

Section 7 of the bill retains the exemption from the public records law regarding certain anticompetitive information received by the Department of Natural Resources from applicants for permits to explore for oil, gas, or mineral resources.

Section 8 of the bill retains the exemption from the public records law regarding certain noninterpreted data from geophysical operations received by the Department of Natural Resources from persons conducting geophysical activities on state-owned land.

Section 9 of the bill retains the exemption from the public records law regarding certain information received by the Department of Natural Resources from applicants desiring to explore for oil, gas, or minerals. A county or municipality may request and receive such information from the department that such information must be held confidential, unless the applicant consents to the disclosure of such information.

Section 10 of the bill retains the exemption from the public records law regarding certain information received by the Energy Data Center from persons who transport, sell, import, or otherwise deal in energy resources in Florida.

Section 11 of the bill retains the exemption from the public records law regarding certain petroleum usage and inventory information received by the Governor's Office. The Attorney General, members of the Legislature, and certain interested agencies may inspect such information and records; however, such agencies and their members and employees must maintain the confidentiality of such records.

Section 12 of the bill retains the exemption from the public records law regarding certain proprietary information received by the Florida Institute of Phosphate Research.

Section 13 of the bill retains the exemption from the public records law regarding certain financial statements received by the Department of Natural Resources from phosphate mine operators.

Section 14 of the bill retains the exemption from the public records law regarding certain mining information received by the Department of Natural Resources from the phosphate industry. Under certain conditions, the Executive Director of

the Department of Natural Resources may release such information.

Section 15 of the bill provides an effective date of October 1, 1989.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Section 258.015(3), F.S.--Retention of this exemption assures potential donors of citizen support organizations that their privacy will not be interfered with by outside solicitations after donating money or property to Florida's park system. Without this exemption, potential donors may not be as generous.

Section 370.07(5)(a), F.S.--Retention of this exemption protects wholesale seafood dealers' and individual fishermen's production records from use by competitors which could gain an unfair advantage in the market with the disclosure of private business information. Also, the exemption protects information which is of a sensitive personal nature pertaining to the reporting of an individual's personal income and other private matters.

Section 377.22(2)(h), F.S.--Retention of this exemption protects the reporting entity from competitors who otherwise could use the data to secure an edge in the oil and gas market. Without the exemption, oil companies would be reluctant to submit certain proprietary information.

Section 377.2408(3), F.S.--Retention of this exemption prevents the divulgence of anticompetitive information which, if released, would potentially injure the reporting entity in the marketplace.

Section 377.2409, F.S.--Retention of this exemption ensures that proprietary data furnished to the Department of Natural Resources from persons conducting geophysical activities on state lands will not be disclosed to rival companies. Such information is generally of a sensitive nature and obtained often at a great cost by the company furnishing such information.

Section 377.2424(3), F.S.--Retention of this exemption prevents the divulgence of anticompetitive information which if released could potentially injure the reporting entity in the marketplace. Further, without the exemption, oil and gas companies would be discouraged from freely disclosing certain geophysical information to the Department of Natural Resources and affected local governments.

Section 377.606, F.S.--Retention of this exemption affords petroleum transporters a certain degree of protection from competitive injury due to the release of proprietary information.

Section 377.701(4), F.S.--Retention of this exemption allows petroleum distributors to report accurate usage and inventory information to the Executive Office of the Governor while protecting such proprietary information in the competitive marketplace.

Section 378.101(3)(b), F.S.--Retention of this exemption allows the Florida Institute of Phosphate Research to gather from phosphate companies information pertaining to patentable or potentially patentable work products. This preserves the right of the person furnishing such information to obtain a Federal patent for his work.

Section 378.208(6), F.S.--Retention of this exemption provides that certain financial statements submitted by phosphate mine operators to the Department of Natural Resources will remain confidential. As a practical matter, this exemption protects privately-owned businesses and closed corporations from disclosure of certain financial information. For publicly-held companies, such information can be obtained elsewhere, e.g., the Securities and Exchange Commission. Without this exemption, privately-held companies may not submit such information to the department.

Section 378.406(1)(a), (b), F.S.--Retention of this exemption protects a phosphate company's competitive advantage regarding prospecting, rock grades, or secret processes or methods of operations when submitting such information to the Department of Natural Resources.

B. Government:

Sections 253.025(7)(c) and (8)(d), F.S.--Retention of these exemptions allow the state to negotiate with sellers of private lands at an optimum bargaining position. As a result, lands can be acquired at a cost below the appraised value thereby saving the state large amounts of money.

Section 370.07(5)(a), F.S.--Retention of this exemption allows the Division of Marine Resources of the Department of Natural Resources to administer effective and efficient marine resource policies for Florida.

Section 373.139(3), F.S.--Retention of this exemption enables the water management districts to negotiate for private lands in a cost effective manner, thereby making more efficient use of the taxpayer's money. Money saved through negotiations can be used for buying additional lands for the protection of the state's water resources.

Section 377.22(2)(h), F.S.--Retention of this exemption facilitates the acquisition of significant geological information by the Department of Natural Resources. The department uses such information to promulgate oil drilling permit conditions and resource management policies.

Section 377.2408(3), F.S.--Retention of this exemption facilitates the efficient and effective administration of the state's program to conserve and manage oil and gas resources. If certain information was released, the state could experience a drop in the exploration of lands.

Section 377.2409, F.S.--Retention of this exemption facilitates the compilation of information regarding exploration of mineral and leasing plans by assuring the confidential treatment of that information. Further, without the exemption, the state may be deprived of information regarding state-owned lands used in the formation of effective resource management policies.

Section 377.2424(3), F.S.--Retention of the exemption allows the Department of Natural Resources to efficiently and effectively regulate geophysical activities within the state with the benefit of input from local governmental entities.

Section 377.606, F.S.--Retention of this exemption ensures the accuracy of certain information received by the Energy Data Center from petroleum transporters. The Energy Data Center must be able to rely on the accuracy of the information in order to determine the quantities and types of energy resource demands and supplies in the state.

Section 377.701(4), F.S.--Retention of this exemption allows the Executive Office of the Governor to gather proprietary

information in order to effectively and efficiently develop and coordinate a petroleum allocation plan for the state.

Section 378.406(1)(a), (b), F.S.--Retention of this exemption provides the Department of Natural Resources assurance that the department has access to all information concerning an applicant's mining activities necessary for assessing the applicant's proposed reclamation plans.

III. COMMENTS:

None

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IV. AMENDMENTS:

#1 by Natural Resources & Conservation:
Allows the Division of State Lands of the Department of Natural Resources to release certain land appraisal information to local governments and certain nonprofit organizations under certain conditions. Such local governments and nonprofit organizations must maintain the confidentiality of the information which is provided by the division.

#2 by Natural Resources & Conservation:
Title Amendment.

None.

STORAGE NAME: h1743-f.go
DATE: July 6, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1743 (PCB GO 89-4) (enacted as CS/SB 116 and part of SB 558)
RELATING TO: Confidentiality of Accident Reports Made by Individuals
SPONSOR(S): Committee on Governmental Operations and Representative Martin
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: CS/SB 116: July 5, 1989
SB 558: June 26, 1989
CHAPTER #: CS/SB 116: 89-271, Laws of Florida
SB 558: 89-117, Laws of Florida
COMPANION BILL(S): CS/SB 116 (compare for motor vehicle accidents)
SB 558 (compare for vessel accidents)

OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SHORT SUMMARY:

Sections 316.066(4) and 324.051(1)(b), Florida Statutes, 1988 Supplement, provide that accident reports made by individuals involved in motor vehicle accidents are confidential. Because removing the exemptions would neither significantly impair the program's efficiency or effectiveness nor cause unwarranted damage to an individual if an accident report were released, this bill repeals the exemptions. Additionally, using motor vehicle accident reports for commercial solicitation purposes is prohibited. Sections 316.066(1) and (3), Florida Statutes, 1988 Supplement, are amended to increase the monetary threshold over which motor vehicle accidents must be reported to \$500.

Section 327.30(3), Florida Statutes, provides that accident reports made by individuals involved in vessel accidents are confidential. Staff in the Department of Natural Resources and the Game and Fresh Water Fish Commission reported that the efficiency or effectiveness of their programs would not be significantly impaired if this exemption were repealed. Accordingly, this bill repeals the exemption. Additionally, the monetary threshold over which vessel accidents must be reported is increased from \$200 to \$500.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to

governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified at s. 119.01, Florida Statutes:

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in s. 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that section, but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Second, the law requires that the exemption will be maintained only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; or
- protect information of a sensitive personal nature concerning

individuals if its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or its release would jeopardize the safety of such individuals; or

- protect information of a confidential nature concerning entities which include formulas, patterns, devices, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it if its disclosure would injure the affected entity in the marketplace.

The review included in this report examines the following exemption(s):

Sections 316.066(4) and 324.051(a)(b), Florida Statutes, 1988 Supplement, and s. 327.30, Florida Statutes.

B. PRESENT SITUATION:

Motor vehicle accidents:

Section 316.066(1), Florida Statutes, 1988 Supplement, requires that drivers involved in vehicle accidents resulting in death, injury, or property damage in excess of \$100 file a written report with the Department of Highway Safety and Motor Vehicles, unless a law enforcement officer has filed a report. Subsection (4) provides that reports made by individuals are confidential.

Section 316.066(3), Florida Statutes, 1988 Supplement, requires law enforcement officers to file written accident reports for all accidents covered by the section. Reports filed by law enforcement officers are not confidential under this subsection.

Accident reports are also required by s. 324.051, Florida Statutes, 1988 Supplement, which concerns financial responsibility. Section 324.051(1)(b), Florida Statutes, 1988 Supplement, authorizes the department to require accident reports from individual owners or operators whenever the department deems necessary. These reports are confidential. However, s. 324.051(1)(a), Florida Statutes, 1988 Supplement, provides that whenever a law enforcement officer investigates a motor vehicle accident and is required to file a report pursuant to s. 316.066, Florida Statutes, the law enforcement officer must forward a copy of the report to the Bureau of Financial Responsibility in the Department of Highway Safety and Motor Vehicles. Law enforcement officers' reports received by the Bureau under this paragraph are public records and therefore are not confidential.

However, the Second District Court of Appeal has held that statements made by a person involved in an accident to a law enforcement officer that are included in the officer's report are both confidential and privileged (not admissible in court), even though the entire report is public record. The court stated that the custodian of such a record must delete or excise such

statements from the report and then disclose it pursuant to the public records law, as required in s. 119.07(2)(a), Florida Statutes. Spurlin v. Scheiner, 531 So. 2d 988, 989 (Fla. 2d DCA 1988). Earlier cases discussed the question of whether such statements are privileged, but not whether such statements are confidential when included in the officer's report.

Attorney's soliciting business by mailing advertising to individuals involved in motor vehicle accidents was one of the issues discussed during the committee's consideration of this bill. Although the Florida Bar has no position on this issue, such advertisements are permissible within Florida Bar Association rules. Furthermore, the United States Supreme Court held that such solicitations are legal: ". . . a State may not, consistent with the First and Fourteenth amendments, categorically prohibit lawyers from soliciting business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular legal problems." Shapiro v. Kentucky Bar Association, 56 U.S.L.W. 4532 (U.S. June 14, 1988).

This bill repeals the public records exemptions for accident reports filed by individuals in ss. 316.066(4) and 324.051(1)(b), Florida Statutes, 1988 Supplement, as the exemptions do not fulfill any of the criteria specified in the Public Records Act. Repealing the exemptions would neither significantly impair the efficiency or effectiveness of the Department's program nor cause unwarranted damage to an individual if accident reports filed by an individual were released. The Department of Highway Safety and Motor Vehicles recommended repeal in October 1988 but did not favor either repeal or retention of the exemptions as the time the House Governmental Operations Committee voted on this bill. Additionally, this bill amends s. 316.066(4), Florida Statutes, 1988 Supplement, to make it clear that statements made to an officer by a person involved in an accident shall not be admissible in court but shall otherwise be public record. This bill also prohibits using accident reports for commercial solicitation purposes.

Vessel (boating) accidents:

Section 327.30, Florida Statutes, pertains to duties and reporting requirements of individuals involved in vessel (boating) accidents. Section 327.30(2), Florida Statutes, requires that if a vessel collision or accident results in a person's death, injury, or disappearance, or property damage of \$200.00 or more, the vessel operator must file a report with the Game and Fresh Water Fish Commission and the Division of Law Enforcement in the Department of Natural Resources. The Division must then notify the sheriff of the county in which the accident occurred. Section 327.30(3), Florida Statutes, provides that all accident reports made by persons involved in vessel accidents are confidential.

The Game and Fresh Water Fish Commission uses these reports to

train boating investigators and for accident prevention purposes. However, Commission personnel assert that reports filed by vessel operators may offer personal opinions or biased accounts of an accident, have limited training value, and are used infrequently. Additionally, Department of Natural Resources staff reports that their confidence in the reliability of operator generated reports is "very low." Department staff also estimates that it receives less than 10 percent of the reports that are required under this section, as reports are filed only when insurance companies require them before paying for an accident. Neither Commission nor Department staff could determine what effect, if any, repeal of confidentiality would have on the number of reports submitted.

Removing these exemptions would not significantly impair the efficiency or effectiveness of either agency's program. Additionally, if the assessment by Commission and Department staff of the reports' reliability is correct, repealing the confidentiality of the reports would not result in revealing information of a sensitive personal nature that would cause unwarranted damage to individuals if the information were released. Therefore, this bill repeals the exemption provided in s. 327.30(3), Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

CS/SB 116 repeals the public records exemptions provided for motor vehicle accident reports by ss. 316.066(4) and 324.051(1)(b), Florida Statutes, 1988 Supplement, effective October 1, 1989. Additionally, using motor vehicle accident reports for commercial solicitation purposes is prohibited. The bill also clarifies that statements made to an officer for the purpose of completing an accident report are inadmissible. Finally, the monetary threshold over which motor vehicle accidents must be reported is increased to \$500.

SB 558 repeals the public records exemptions provided for vessel accident reports by s. 327.30(3), Florida Statutes, effective October 1, 1989. An individual is not required to file an accident report if the investigating officer makes a written accident report. Finally, the monetary threshold over which vessel accidents must be reported is increased from \$200 to \$500.

D. SECTION-BY-SECTION ANALYSIS AS ENACTED IN CS/SB 116 AND SB 558:

CS/SB 116:

Section 1 - Amends s. 316.065(1), Florida Statutes, to establish a monetary threshold of \$500 over which motor vehicle accidents must be reported.

Section 2 -- Amends ss. 316.066(1), (3), and (4), Florida Statutes, 1988 Supplement, to increase the monetary threshold over which motor vehicle accident reports must be filed from \$100 to \$500. Removes the public records exemption for motor vehicle accident reports and prohibits using motor vehicle accident

reports for commercial solicitation purposes. Clarifies that statements made to an officer for the purpose of completing an accident report shall be inadmissible in court.

Section 3 -- Amends s. 324.051(1)(b), Florida Statutes, 1988 Supplement, to remove the public records exemption for motor vehicle accident reports.

Section 4 -- Provides an effective date of October 1, 1989.

SB 558:

Section 3 -- Amends ss. 327.30(2) and (3), Florida Statutes, to remove the public records exemption for vessel accident reports. Clarifies that an individual does not have to file an accident report if an investigating officer has made a written accident report. Increases the monetary threshold over which accident reports must be filed from \$200 to \$500.

Section 15 -- Provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Staff in the Department of Natural Resources and Highway Safety and Motor Vehicles reported that this bill has no fiscal impact on their respective agencies.

2. Recurring or Annualized Continuation Effects:

See 1, above.

3. Long Run Effects Other Than Normal Growth:

See 1, above.

4. Appropriations Consequences:

See 1, above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

By prohibiting using motor vehicle accident reports for commercial solicitation purposes, competition may be reduced.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

The State Comprehensive Plan does not address the issues covered in this bill.

IV. COMMENTS:

The Department of Highway Safety and Motor Vehicles requested that language be added to s. 316.066(4), Florida Statutes, 1988 Supplement, to allow the Department to use an employee's statements about or report of a motor vehicle accident against the employee in a disciplinary administrative proceeding. The Department was prohibited from doing this by the First District Court of Appeal. Department of Highway Safety and Motor Vehicles v. Corbin, 527 So. 2d 868 (Fla. 1st DCA 1987). Adding the Department's requested language would have resulted in employees being forced to reveal information of a sensitive personal nature that other persons in similar circumstances do not have to reveal. The justification for the privilege against admissibility (to ensure accuracy of reporting) applies equally to employees as to anyone else. Therefore, CS/SB 116 does not include the Department's requested language.

The House's Issues Conference Policy Statement does not address open government exemptions.

This bill is relevant to the Governmental Operations Committee's mission statement, specifically: "Review exemptions to public record and public meeting laws pursuant to the Open Government Sunset Review Act to determine whether the continued existence of each exemption is compelled by justifications strong enough to override Florida's strong public policy of open government."

STORAGE NAME: h1743-f.go

DATE: July 6, 1989

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V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Lyn Davis
Lyn Davis

Staff Director:

Barry Kling
Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

APPROPRIATIONS:

Prepared by:

Staff Director:

Staff Director:
