

1989

Session Law 89-213

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-213" (1989). *Staff Analysis*. 905.
<https://ir.law.fsu.edu/staff-analysis/905>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

B
I
L
L

H
I
S
T
O
R
Y

**H 1643 GENERAL BILL/1ST ENG by Governmental Operations;
Martin**

Saltwater Products Dealers; (OPEN GOVERNMENT SUNSET REVIEW) replaces references to "division" with references to D.N.R. in provisions re enforcement of requirements applicable to transportation of saltwater products, issuance of wholesale dealers' licenses, license revocation, & required dealers' records; saves exemption from public records requirements for wholesale dealers' reports on sale of saltwater products from repeal, etc. Amends 370.07,.021. Effective Date: 10/01/89.

03/29/89 HOUSE Prefiled
04/04/89 HOUSE Introduced, placed on Calendar -HJ 155
04/19/89 HOUSE Placed on Special Order Calendar; Read second time; Amendments adopted -HJ 243
04/25/89 HOUSE Read third time -HJ 265; Passed as amended; YEAS 117 NAYS 0 -HJ 266
04/27/89 SENATE In Messages
05/05/89 SENATE Received, referred to Natural Resources and Conservation -SJ 272; On Committee agenda—Natural Resources and Conservation. 05/09/89, 1:15 pm, Room-2C-(301)
05/09/89 SENATE Comm. Report: Favorable by Natural Resources and Conservation, placed on Calendar -SJ 293
05/31/89 SENATE Placed on Special Order Calendar -SJ 618; Passed; YEAS 36 NAYS 0 -SJ 661
05/31/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/28/89 Approved by Governor; Chapter No. 89-213

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.

STORAGE NAME: h1643-f.go
DATE: June 30, 1989

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

BILL #: HB 1643 (PCB GO 89-21)

RELATING TO: Confidentiality of Reports of Saltwater Products Dealers

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 28, 1989

CHAPTER #: 89-213, Laws of Florida

COMPANION BILL(S):

OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SHORT SUMMARY:

Section 370.07(5)(a), Florida Statutes, provides an exemption from disclosure under the public records law for certain information reported to the Division of Marine Resources of the Department of Natural Resources (DNR) by wholesale saltwater products dealers. The information consists of records maintained by the wholesale dealers on the catch and sale of saltwater products that are used by the division as part of the state's marine fisheries information system. The bill would reenact the exemption found in s. 370.07(5)(a), F.S., because the exemption serves an identifiable public purpose by protecting information of a confidential nature from being disclosed to competitors and because the information allows for the effective and efficient administration of the state's marine fisheries programs that would otherwise be impaired without the exemption.

The bill also: (1) amends ss. 370.07(3), (4), and (5), F.S., to replace the term "division" with the term "department" where appropriate; (2) amend s. 370.07(4), F.S., to modify the penalties the DNR may impose for violations of laws or regulations relating to saltwater products; and (3) amend s. 370.07(5)(b), F.S., to modify the penalties the DNR may impose for violations of the reporting requirements relating to records maintained by wholesale saltwater products dealers.

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 section 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 section 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. 370.07(5)(a), Florida Statutes.

B. PRESENT SITUATION:

Public Records Exemption

The Division of Marine Resources of the Department of Natural Resources is responsible under s. 370.02(2), Florida Statutes, for conducting scientific, economic, and other studies and research that are directed toward preserving, managing, and protecting the marine resources of the state. As part of its research duties, the division maintains a marine fisheries information system for collecting and analyzing data upon which fisheries management policy decisions are based. Data used in the marine fisheries information system come in part from reports that are required to be filed with the division by wholesale saltwater products dealers under the provisions of s. 370.07(5), Florida Statutes. (The term "saltwater products" is defined as any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.)

Section 370.07(5), Florida Statutes, was created in 1971 by chapter 71-136, Laws of Florida. This section requires wholesale saltwater products dealers to maintain records relating to the purchase and sale of saltwater products. The wholesale dealer must prepare a record, or trip ticket, of each transaction and submit copies of the trip ticket to the Division of Marine Resources each month or as often as required by rule. Information from the trip tickets is computerized and analyzed by the division for use as part of the state's marine fisheries information system. Trip ticket data also are summarized and published in aggregate form in annual and monthly fisheries landings reports. The Department of Natural Resources reports that about 30,000 to 40,000 trip tickets are submitted per month to the division.

The trip ticket must, by rule, contain certain information including the seller's saltwater products license number, the wholesale dealer's license number, the date the products were sold or purchased, the duration of the fishing trip, the county where the products were landed, the list of species landed, and

the number of pounds of product sold. The trip ticket may also contain optional reporting information including the area fished, the depth where the saltwater product was caught, and the price per pound of saltwater product. (Chapter 16R-5.003, Florida Administrative Code).

Section 370.07(5)(a), Florida Statutes, provides that the trip ticket information reported to the Division of Marine Resources by a wholesale saltwater products dealer is exempt from disclosure under the public records law. The division maintains the original trip ticket information in locked files and protects computerized trip ticket information with computer passwords.

The Department of Natural Resources has indicated that it is necessary to maintain the confidentiality of this information because it contains personal production records of wholesale saltwater products dealers and individual fishermen that could be used to a competitor's advantage if such records were released. The department also has indicated that its access to this data is necessary for determining fisheries management information needed for regulation and protection of marine resources. Without the assurance of confidentiality of trip ticket information, there is some concern that wholesalers and individual fishermen would be reluctant to provide accurate information or, in the case of voluntary information, to provide the information at all. This could hamper the state's fisheries management decision-making capability.

All of the respondents to a committee questionnaire indicated that the exemption provided in s. 370.07(5)(a), Florida Statutes, should be retained because it protects information of a confidential nature concerning the businesses of wholesale saltwater products dealers and individual fishermen from disclosure to competitors. The Department of Natural Resources also indicated that the exemption allows for the effective and efficient administration of the state's marine fisheries programs that would otherwise be impaired without the exemption.

For these reasons, it is recommended that the exemption from the public records law provided in s. 370.07(5)(a), Florida Statutes, be reenacted.

Other Provisions of Section 370.07, Florida Statutes

Section 370.07, Florida Statutes, provides requirements, procedures, and penalties relating to the licensing and regulation of wholesale and retail saltwater products dealers. This section: (1) authorizes licensing of dealers of saltwater products in Florida by the Department of Natural Resources and makes it unlawful for a person or corporation to deal in saltwater products without a license; (2) establishes the types of licenses required and the amount of license tax for each type of license; (3) establishes requirements for the transport and sale of saltwater products; (4) provides for revocation of licenses for certain violations of saltwater products laws and

regulations; and (5) requires certain records to be kept and reports made by wholesale and retail saltwater products dealers.

Throughout s. 370.07, Florida Statutes, the terms "division" and "department" are used interchangeably, and the term "division" appears to be used to refer to different divisions within the Department of Natural Resources. This practice has led to confusion as to which division is being referred to in the law and, in the case of reports required to be filed or records kept, whether all divisions of the Department of Natural Resources or just a particular division have access to such reports or records.

Section 370.07, Florida Statutes, contains provisions for the revocation of saltwater products licenses for certain violations of saltwater products laws and regulations [s. 370.07(4), Florida Statutes] and for noncompliance with reporting requirements [s. 370.07(5)(b), Florida Statutes]. In the first instance, revocation of a license is optional. In the second instance, revocation is mandatory. Section 370.021, Florida Statutes, provides penalties for violations of any provision of Chapter 370, Florida Statutes, any rule of the Department of Natural Resources adopted under Chapter 370, or any rule of the Marine Fisheries Commission. The penalties provided in s. 370.021, Florida Statutes, are to be applied for such violations unless otherwise provided by law. It is not clear whether this limiting language means that the provisions for revocation of licenses for certain violations in ss. 370.07(4) and 370.07(5)(b), Florida Statutes, are the only penalties that can be applied for such violations.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records law exemption provided by s. 370.07(5)(a), Florida Statutes. The exemption would become effective October 1, 1989, and would be subject to sunset review in ten years as provided by s. 119.14, Florida Statutes.

The bill also amends ss. 370.07(3), (4), and (5), Florida Statutes, to replace the term "division" with the term "department", where appropriate, to clarify that the entire Department of Natural Resources and not a particular division is responsible for carrying out the provisions of s. 370.07, Florida Statutes. This change will also make it clear that the entire department, rather than one particular division, has access to the reports and records prepared by saltwater products dealers pursuant to s. 370.07(5), Florida Statutes.

The bill amends ss. 370.07(5)(b) and 370.07(4), Florida Statutes, to allow the department to revoke, suspend or, deny renewal of the license of any wholesale or retail saltwater products dealer for committing violations relating to reporting and recordkeeping requirements and for committing certain violations of saltwater products laws or regulations. The bill would allow the department to penalize a violator under the statutory penalties

provided in s. 370.021, Florida Statutes, in addition to, or in place of, revoking a license.

D. SECTION-BY-SECTION ANALYSIS

Section 1 -- Amends ss. 370.07(3), (4), and (5), Florida Statutes; replaces references to "division" with references to the Department of Natural Resources in said section; provides for the denial or suspension of saltwater products licenses; provides for the imposition of penalties pursuant to s. 370.021, Florida Statutes; saves the exemption from the public records requirements for wholesale dealers' reports on the sale of saltwater products from repeal.

Section 2 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

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.

4. Appropriations Consequences:

Not applicable.

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:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

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

Indeterminate.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

On February 20, 1989, the General Counsel's Office of the Department of Natural Resources (DNR) issued a legal opinion (DNR GCO 89-3) regarding the confidentiality provisions of s. 370.07(5)(a), Florida Statutes. The opinion was issued in response to a question raised by DNR's Division of Law Enforcement as to whether fishery records collected pursuant to s. 370.07(5)(a), Florida Statutes, could be released to the Florida Marine Patrol for investigative purposes. The DNR's General Counsel answered in the negative, finding that the records are confidential and exempt from the public records law and therefore are not open to scrutiny by the Florida Marine Patrol.

After the DNR General Counsel's opinion was issued, the Florida Marine Fisheries Commission (MFC) expressed its concern that the opinion would interfere with any audit program performed or enforcement action taken in relation to the reporting requirement. In a February 24, 1989, letter to staff of the House Governmental Operations Committee, the MFC stated that

The Commission is concerned that the interpretation [DNR GCO 89-3] effectively negates any audit program designed to assure that records are made and kept, that reports are filed as required, that inspection of the records is allowed, and that records are not falsified. Such an interpretation may also render the license revocation proceedings contemplated by s. 370.07(5)(b), F.S., impracticable.

The amendments to s. 370.07, Florida Statutes, provided in this bill are designed to address these concerns while still retaining the confidentiality of reports prepared by wholesale saltwater products dealers that are submitted to the DNR. The bill also addresses certain concerns relating to the penalties that may be assessed for violations of saltwater products laws, regulations, and reporting requirements.

STORAGE NAME: h1643-f.go

DATE: June 30, 1989

PAGE 8

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

David Hawley
David Hawley

Staff Director:

Barry Kling
Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

APPROPRIATIONS:

Prepared by:

Staff Director:

Staff Director:

REVISED: _____

BILL NO. HB1643

DATE: May 8, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Ross</u> <i>CR</i>	<u>Voigt</u> <i>W</i>	1. <u>NRC</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Saltwater Products Dealers

BILL NO. AND SPONSOR:

HB 1643 by
GO Committee et al

I. SUMMARY:

A. Present Situation:

Section 370.07, F.S., regulates wholesale and retail saltwater products dealers. Subsections (3) and (4) of s. 370.07, F.S., provides restrictions on selling, delivering, shipping, and transporting of saltwater products and provides for the revocation of saltwater products licenses for violations of such restrictions. Subsection (5) of s. 370.07, F.S., requires wholesale dealers in saltwater products to report to the Department of Natural Resources (department), Division of Marine Resources (division). Information regarding persons landing the saltwater fish or products and persons from whom or to whom the saltwater products were purchased or sold, along with the quantities of products involved and the dates of such transactions, must be provided on a monthly basis to the division. Failure to submit the required documents may result in the revocation of the dealers saltwater products license.

Information obtained by the Division of Marine Resources pursuant to subsection (5) of 370.07, F.S., is used in promulgating fishery management decisions for the state. Such decisions are based on sociological, environmental, and economic impacts of resource policies and are utilized in insuring the maximum practicable sustainable stock abundance on a continuing basis.

Subsection (5) of s. 370.07, F.S., contains a public records law exemption for all reports and information obtained by the division. According to the exemption all records must be maintained as confidential by the division. Trip tickets are held confidential as they reveal sensitive information about individuals such as fishing license numbers, amounts of monthly income, and personal production records of producers and wholesalers. This information could potentially be used by competitors to gain an advantage in the marketplace, if it were not held confidential.

The exemption in subsection (5) of 370.07, F.S., is subject to Sunset Review on October 1, 1989. After a review, staff recommended that the exemption be revived and readopted to insure the confidentiality of trip tickets. The exemption is proposed for readoption in SB 558. House bill 1643 would also readopt the exemption in subsection (5) of s. 370.07 and address additional concerns pertaining to the saltwater products license and reporting requirements in ch. 370, F.S.

In February, 1989, the Department of Natural Resources issued a legal opinion (DNR GCO 89-3) stating that the exemption from ch. 119, F.S., in subsection (5) of s. 370.07, F.S., only authorizes the Division of Marine Resources, and not the agency as a whole, to have access to trip ticket information. Therefore, the use of such information by the Florida Marine

Patrol within the Division of Law Enforcement, in actions, such as license revocation proceedings, is arguably prohibited.

The department also points out that ch. 370, F.S., sets out conflicting optional and mandatory provisions regarding license revocation proceedings to be applied for violations of subsection (4) of s. 370.07, F.S., pertaining to saltwater products laws and regulations, and subsection (5)(b) of s. 370.07, F.S., pertaining to saltwater products reporting requirements. In addition, s. 370.021, F.S., provides penalties, unless otherwise provided by law, for violations of ch. 370, F.S., and rules of the Department and the Marine Fisheries Commission. In view of the above provisions, the department maintains that it is unclear whether the penalties in s. 370.021, F.S., could be imposed for violations of subsections (4) and (5) of s. 370.07, F.S.

B. Effect of Proposed Changes:

Section 1

The bill replaces the word "division" in subsections (3), (4), and (5) of s. 370.07, F.S., with the word "department," to authorize the department to enforce actions against violators of rules and regulations regarding saltwater products dealers, licenses, and reports. Subsection (4) of s. 370.07, F.S., is amended to authorize the department to revoke, suspend, or deny the renewal of saltwater products licenses for violations of saltwater products regulations. The bill provides that penalties in s. 370.021, F.S., can be imposed by the department for violations of subsection (4) of s. 370.07, F.S., in addition to penalties provided in that subsection.

The department, pursuant to subsection (5) of s. 370.07, F.S., is authorized to revoke, suspend, or deny the renewal of a dealers license for violation of reporting provisions in that subsection. In addition, the bill provides that penalties in s. 370.021, F.S., can be imposed for violations of subsection (5) of s. 370.07, F.S.

The bill provides for the readoption of the exemption for trip tickets from ch. 119 in subsection (5) of s. 370.07, F.S.

Section 2

The act takes effect on October 1, 1989.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

There will be no economic impact on the public.

B. Government:

There will be no economic impact on the government.

III. COMMENTS:

None

IV. AMENDMENTS:

None.