

1989

## Session Law 89-265

Florida Senate & House of Representatives

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**H 817 GENERAL BILL/1ST ENG by Governmental Operations;  
Martin (Similar S 1260)**

**Public Deposits Act/Exemptions: (OPEN GOVERNMENT SUNSET REVIEW) amends provision which provides an exemption from public records requirements for certain reports required of public depositories & financial institutions under said act; saves such exemption from repeal; provides for future review & repeal. Amends 280.16. Effective Date: 10/01/89.**

03/15/89 HOUSE Prefiled  
03/22/89 HOUSE Placed on Calendar  
04/04/89 HOUSE Introduced, placed on Calendar -HJ 79  
04/06/89 HOUSE Placed on Special Order Calendar; Read second time; Amendment adopted -HJ 163  
04/11/89 HOUSE Read third time -HJ 191; Passed as amended; YEAS 110 NAYS 0 -HJ 192  
04/12/89 SENATE In Messages  
04/19/89 SENATE Received, referred to Finance, Taxation and Claims -SJ 194  
04/28/89 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/12/89 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/26/89 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/30/89 SENATE Withdrawn from Finance, Taxation and Claims; Substituted for SB 1260; Passed as amended; YEAS 35 NAYS 0 -SJ 597  
05/30/89 HOUSE In Messages  
06/01/89 HOUSE Refused to concur, requested Senate to recede -HJ 1056  
06/01/89 SENATE In Messages  
06/02/89 SENATE Receded; Passed; YEAS 39 NAYS 0 -SJ 874  
06/02/89 Ordered enrolled  
06/20/89 Signed by Officers and presented to Governor  
07/03/89 Approved by Governor; Chapter No. 89-265

**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: h0817-f.go  
DATE: July 6, 1989

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

BILL #: HB 817 (PCB GO 89-14)

RELATING TO: Confidentiality of Reports from Qualified Public Depositories  
and Other Financial Institutions

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: July 3, 1989

CHAPTER #: 89-265, Laws of Florida

COMPANION BILL(S): SB 1260

OTHER COMMITTEES OF REFERENCE: (1)

(2)

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I. SHORT SUMMARY:

Section 280.16(5), Florida Statutes, provides that certain reports submitted to the Treasurer by financial institutions are exempt from the public records law. These reports contain information about the financial status of financial institutions (average daily/monthly balances of deposits, detailed schedule of securities, a statement of selected financial information, etc.) as required by the Treasurer.

Currently, if financial information is confidential pursuant to state or federal banking laws, the reports containing this information are exempt from the public records law when forwarded to the Treasurer. However, it is the responsibility of each financial institution to inform the Treasurer of the confidentiality of these reports.

If the financial information in these reports to the Treasurer were available to the public, the financial condition of a financial institution would be known and could result in injury to the institution in the marketplace.

This bill reenacts the exemption of these financial reports from the public records law.

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):

s. 280.16(5), Florida Statutes

B. PRESENT SITUATION:

Section 280.16, Florida Statutes, requires the submission of certain reports to the Treasurer by qualified public depositories and other financial institutions.

A qualified public depository, as defined in s. 280.02(12), Florida Statutes, is a bank or savings association authorized by the Treasurer to accept public deposits, which are funds deposited by local and state governments.

The Treasurer is charged with monitoring these public deposits and with ensuring that adequate collateral is available to secure public deposits. Section 280.05(6), Florida Statutes, allows the Treasurer to reduce the collateral requirement if an institution's ability to continue as a qualified public depository is jeopardized.

To carry out his duties, the Treasurer may request information from a qualified public depository or other financial institution regarding its deposits that is confidential under state or federal banking laws. This information relates to their financial conditions and may include agreements between state and federal regulators and individual banks or savings associations.

In addition to the information requested above, various reports from the qualified public depositories and financial institutions are required by the Treasurer: (1) on a routine basis from a qualified public depository to monitor its financial stability; (2) when a qualified public depository is experiencing financial difficulties and the Treasurer needs to evaluate its financial condition; and (3) when a financial institution is seeking qualified public depository status.

Section 280.16(5), Florida Statutes, exempts these records from the public records law. The confidential information contained in the records may not be disseminated to anyone other than the Treasurer; however, it is the responsibility of each individual qualified public depository or financial institution to notify the Treasurer of the confidential status of these reports.

In order to determine whether the exemption should be reenacted, surveys were sent to the Division of Treasury in the Department of Insurance and to several qualified public depositories located throughout the state.

The division responded that, without the exemption, the Treasurer would be unable to receive reports of business strategies or reorganization reports required by state or federal regulators because these records are confidential under current banking laws.

The division, as well as the responding qualified public depositories, indicated that the exemption protects confidential information which could injure an entity in the marketplace if released. If released, information indicating financial troubles for a qualified public depository could result in a run on the institution by private depositors.

The exemption serves an identifiable public purpose as required by the Open Government Sunset Review Act, s. 119.14, Florida Statutes, in that the release of the information contained in these reports would impede the effective and efficient administration of the Treasurer's program for monitoring public deposits. In addition, the repeal of this exemption would allow the release of financial information that could cause injury to a financial institution in the marketplace.

Therefore, it is recommended that reports furnished to the Treasurer by qualified public depositories and financial institutions remain exempt from the public records law.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records exemption provided by s. 280.16(5), Florida Statutes, effective October 1, 1989, providing that the reports submitted by qualified public depositories and other financial institutions to the Treasurer be confidential and that the exemption of this subsection from the public records law remain in effect. The bill also makes this section subject to review in ten years under the Open Government Sunset Review Act.

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.

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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:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

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

Not applicable.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

Not applicable.

IV. COMMENTS:

None.

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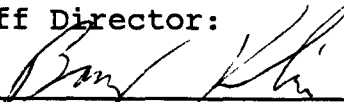
V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

  
\_\_\_\_\_  
Hunter L. Barnett

Staff Director:

  
\_\_\_\_\_  
Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

\_\_\_\_\_

APPROPRIATIONS:

Prepared by:

\_\_\_\_\_

Staff Director:

\_\_\_\_\_

Staff Director:

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REVISED: \_\_\_\_\_

BILL NO. SB 1260

DATE: April 25, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Barrett</u> <i>MB</i>	<u>Beqgs</u> <i>B</i>	1. <u>FTC</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

BILL NO. AND SPONSOR:

Confidentiality of Reports  
from Financial Institutions

SB 1260 by the  
Committee on Finance, Taxation,  
and Claims and Senator Deratany

I. SUMMARY:

A. Present Situation:

The Division of Treasury of the Department of Insurance administers the deposit of state funds on behalf of the Treasurer. Such public funds are deposited with a qualified public depository, which, as defined in subsection 280.02(12), Florida Statutes, is a bank or savings association authorized by the Treasurer to accept public deposits of state or local government funds. Financial institutions seeking certification as qualified public depositories must submit various reports relating to their financial condition. Banks and Savings and Loan Associations participating in the public deposit program are required to provide the division with such information as monthly statements of their net worth, and average monthly and annual statement reports of public deposits. Additionally, the Treasurer may request information from applying or participating institutions relating to agreements between state and federal regulators and individual banks or savings associations.

Currently, if financial information is confidential pursuant to state or federal banking laws, the reports containing this information are exempt from the public records law when forwarded to the Treasurer. Subsection 280.16(5), Florida Statutes, provides this exemption. Such exemptions are repealed by the Open Government Sunset Review Act, s. 119.14, Florida Statutes, over a 10 year schedule from 1986-1995. The goal of the sunset requirement is to trigger a legislative review to determine if the exemptions serve an identifiable public purpose.

An exemption must meet at least one of the following three criteria in order to be continued:

1. The exemption allows the state or a political subdivision to effectively and efficiently administer a government program.
2. The exemption protects information of a sensitive personal nature concerning individuals.
3. The exemption protects information of a confidential nature concerning entities, such as trade secrets, formulas, and patent information.

The exemption from the public records law provided by subsection 280.16(5), Florida Statutes, is scheduled for repeal October 1, 1989.

Pursuant to an interim project the staff of the Senate Finance, Taxation & Claims Committee conducted a study to determine

whether this exemption should be reenacted. Surveys were sent to the Division of Treasury in the Department of Insurance and to an association representing qualified public depositories located in Florida.

The division responded that this exemption is essential to provide the Treasurer with the necessary financial information to administer the Public Deposits Program. Without this exemption, the division maintains, the Treasurer would not be able to receive any business strategies or reorganization reports required by any state or federal regulation from financially troubled institutions, since such reports are confidential under current banking laws.

In its response, the association representing qualified public depositories in Florida indicated that the exemption protects confidential information which could injure an entity in the marketplace if released.

The exemption serves an identifiable public purpose as required by the Open Government Sunset Review Act, section 119.14, Florida Statutes, in that the release of these confidential records would interfere with the ability of the state to effectively and efficiently administer a government program.

The Senate Finance, Taxation & Claims Committee Interim Project Report recommends that reports submitted to the Treasurer from qualified public depositories and other financial institutions remain exempt from the public records law.

**B. Effect of Proposed Changes:**

This bill would revive and readopt the public records exemption provided by subsection 280.16(5), Florida Statutes, effective October 1, 1989. The bill also makes this section subject to review in ten years under the Open Government Sunset Review Act.

**II. ECONOMIC IMPACT AND FISCAL NOTE:**

**A. Public:**

Since the Treasurer requires various reports from qualified public depositories when such institutions are experiencing financial difficulties, the release of such information could result in a run on the institution by private depositors.

**B. Government:**

The Bureau of Collateral Securities in the Division of Treasury indicates that this exemption is one of the tools used by the State Treasurer to assure the safety of public funds.

**III. COMMENTS:**

This bill would take effect October 1, 1989.

**IV. AMENDMENTS:**

None.