

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-11 OGSR Audits or Investigations

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SPB 7074

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------------------------|-----------|------------|------------------------------------------|
| Orig. Comm.: Government Operations Subcommittee | 12 Y, 0 N | Williamson | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record and public meeting exemption for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from public records requirements. In addition, meetings of the Commission on Ethics (commission) that are held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2011, if this bill does not become law. It also reorganizes the exemptions and makes editorial changes.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Commission on Ethics

Article II, s. (8)(f) of the State Constitution provides for "an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." As such, the Commission on Ethics (commission) was created to serve as guardian of the standards of conduct for officers and employees of the state, county, city, or other political subdivision of the state.⁴

The commission is composed of nine members; no more than five members may be from the same political party at any one time, and no member may hold any public employment or qualify as a lobbyist. A member of the commission may not lobby any state or local governmental entity.⁵

Lobbying before the Executive Branch or the Constitution Revision Commission

A person may not lobby an agency until he or she has registered as a lobbyist with the commission. Registration is due upon initially being retained to lobby and is renewable on a calendar year basis thereafter.⁶ A lobbyist must promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation.⁷

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 112.320, F.S.

⁵ Section 112.321(1), F.S.

⁶ Section 112.3215(3), F.S.

⁷ Section 112.3215(7), F.S.

Each lobbying firm must file a compensation report with the commission for each calendar quarter during which one or more of the firm's lobbyists were registered to represent a principal.⁸ The reporting statements must be electronically filed no later than 45 days after the end of each reporting period.⁹

The commission must investigate:

- Every sworn complaint filed with it that alleges a person has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any required report or registration.¹⁰
- Any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.¹¹

Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public record exemption for records relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.¹²

Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt¹³ from public records requirements. In addition, commission meetings held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.¹⁴

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for records and meetings associated with such audits and investigations conducted by the commission. It also reorganizes the exemptions and makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 112.3215, F.S., to reenact the public record and public meeting exemptions for certain audits and investigations conducted by the Commission on Ethics.

Section 2 provides an effective date of October 1, 2011.

⁸ Section 112.3215(5)(a)1., F.S.

⁹ The reporting periods are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Section 112.3215(5)(c), F.S.

¹⁰ Section 112.3215(8)(a), F.S.

¹¹ Section 112.3215(8)(c), F.S.

¹² Chapter 2005-361, L.O.F.; codified as s. 112.3215(8)(d), F.S.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹⁴ Section 112.3215(8)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.