

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDCA 09-04 Public Records/Broadband and Information Technology
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: PCB EDCA 09-03 **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council		Croom	Tinker
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The public's right of access to government records is established by the Constitution of the State of Florida. The Legislature, however, is authorized to create exemptions to preclude the disclosure of specified records when the exemption is found to be a public necessity and is not broader than necessary to meet that public necessity.

This bill creates an exemption from public records requirements for proprietary business information obtained from a telecommunications company or broadband company by the Department of Management Services. The exemption applies to documentation, including plans, billing and payment records, trade secrets, or other information that is intended to be confidential and not otherwise publicly available. The exemption does not apply to aggregate information related to maps and location of facilities and broadband services, or the speed of services that are available in the state.

This bill provides for future review and repeal of the exemption and a statement of public necessity.

The exemption is effective on the same date that PCB EDCA 09-03 or similar legislation becomes law.

The bill requires a two-thirds vote of the members present and voting for passage.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Law

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

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

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

Current Situation

The American Recovery and Reinvestment Act of 2009 signed by President Obama on February 17, 2009, allocated \$7.2 billion for grant and loan programs to stimulate the development of broadband

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

infrastructure and services. These federal funds will be administered by two federal agencies: the National Telecommunications and Information Administration in the Department of Commerce and the U.S. Department of Agriculture's Rural Utility Service. The majority of these funds will be made available through a competitive process to qualifying government, nonprofit, and private-sector entities throughout the nation.

More than 25 states have developed advisory councils or similar authorities to develop a statewide coordinated effort for the deployment of broadband. At this time, Florida does not have a specific group or agency responsible for the facilitation of broadband deployment.

PCB EDCA 09-03 provides the Department of Management Services the authority to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations for mapping and deployment of broadband Internet services in the state. In effort to conduct a needs-assessment and develop a geographic information system map on high-speed Internet infrastructure in the state, the department may collect proprietary confidential business information that would normally not be available to the public.

Effect of the Bill

This bill creates an exemption from public records requirements for proprietary confidential business information obtained from a telecommunications company or broadband company by the Department of Management Services. The exemption applies to documentation, including plans, billing and payment records, trade secrets, or other information that is intended to be confidential and not otherwise publicly available. The exemption does not apply to aggregate information related to maps and location of facilities and broadband services, or the speed of services that are available in the state.

The bill sets forth the Legislature's finding that the exemption is a public necessity, as disclosure of proprietary confidential business information would adversely affect the business interests of telecommunications and broadband companies providing such information by harming them in the marketplace and compromising the security of the communications network. In addition, disclosure of this information would impair competition in the marketplace.

In accordance with the Open Government Sunset Review Act, the exemption will sunset on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1: Exempts from disclosure proprietary confidential business information obtained from a telecommunications company or broadband company by the Department of Management Services.

Section 2: Provides a statement of public necessity for the exemption.

Section 3: Provides an effective date.

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES