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## State Government Committee

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### HB 1160

**Brief Description:** Enacting recommendations of the sunshine committee.

**Sponsors:** Representatives Springer, Kilduff and Pollet.

#### Brief Summary of Bill

- Requires public disclosure for certain otherwise exempted personal information where the subject of the information consents to disclosure.
- Exempts public employee and volunteer passport and visa numbers from public disclosure.
- Provides that the exemption from public disclosure of information regarding the ongoing investigations of employment related discrimination lasts until the agency provides notice of the outcome of the investigation.
- Exempts trade secrets from public disclosure.
- Makes the exemption for financial information applicable only if the information is marked confidential and would cause expected harm, loss or unfair private gain.
- Allows attorney's fees to any defendant who successfully defends against an injunction of the public disclosure of financial related records.

**Hearing Date:** 1/25/17

**Staff:** Sean Flynn (786-7124).

#### Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions in the PRA or otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## PRA Exemptions

*Personal Information.* Personal information is exempt from disclosure in various circumstances within the PRA. A general category of exemptions for personal information includes: childcare enrollment, public employees and officials, tax assessments, personal financial information, driver's license records, vehicle license information associated with certain agency conducting investigations, 911 emergency systems data, selective service declination, and claims to the Board of Industrial Insurance Appeals.

*Public Employee Records.* A separate exemption protects certain personal information of public employee personnel records from disclosure. Such information includes, residential and email addresses, telephone numbers, social security and driver's license numbers, and emergency contact information. The exemption includes the same information of an employee's dependents. Records of an agency's active and ongoing investigation of an employment related discrimination claim is also exempt.

*Financial Information.* A category of exemptions applies to certain kinds of sensitive financial, commercial, and proprietary information obtained by agencies. Some of the main exemptions in this category include: valuable designs, codes, or data that would cause private gain and public loss if disclosed; information obtained for certain bidding processes; investment information related to public trust or retirement funds; proprietary vendor information related to state purchased health care; certain business related information collected by the Department of Commerce; and certain business information related to marijuana licensing and regulation.

*Enjoining Disclosure.* The PRA allows a procedure for an agency, or person whose name is in information subject to disclosure, to seek an injunction in superior court to stop the disclosure of a record. The court may enjoin disclosure if it finds that disclosure is clearly not in the public interest and would substantially and irreparably damage a person or vital governmental function.

### Non-PRA Protected Information

*State procurement records.* State procurement law exempts from disclosure bid submissions and evaluations of bids for goods and services contracts until the agency announces the apparent successful bidder.

*Trade Secrets.* A trade secret is defined in law as information that is under efforts to remain secret and has economic value from not being generally known or ascertainable to other people who could use such information for economic value. The law protects trade secrets from misappropriation and courts may order injunctions and penalties against misappropriations of trade secrets.

### **Summary of Bill:**

*Personal Information.* The types of information located in the general personal information exemption category of the PRA are not exempt if the subject of the information, or the parents or guardian of a child who is the subject of the information, provide consent to the agency for disclosure.

*Public Employee Records.* The exemption for the residential addresses of public employees and volunteers does not exempt the part of the address containing the city, state, and zip code. Employee and volunteer passport and visa numbers are also added to the exemption. The exemption for information regarding the ongoing and active agency investigation of employment related discrimination expressly includes the entire records of the ongoing investigation, and lasts until the agency informs the complaining employee of the outcome of the investigation.

*Financial Information.* The general category of exemptions for financial, commercial and proprietary information only applies if the information is submitted to the agency with a mark that designates the information as confidential and includes an explanation for the expected harm disclosure would cause, or the agency determines that disclosure is substantially likely to cause public or private loss or unfair private gain. Trade secret information is included as an exemption within this financial information category.

*State procurement records.* The protection against disclosure of bid submissions and evaluations of bids for goods and services contracts is transferred to be included as an exemption under the PRA.

*Enjoining Disclosure.* A court may award attorney's fees to any defendant, including an agency, who successfully defends against an action to enjoin disclosure of financial, commercial and proprietary related records.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.