

2018 Regular Session

HOUSE BILL NO. 665

BY REPRESENTATIVE GREGORY MILLER

PUBLIC RECORDS: Provides relative to records of port economic development negotiations

1 AN ACT

2 To enact R.S. 44:22.1, relative to public records; to provide an exception for certain  
3 documents related to port economic development negotiations; to require certain  
4 procedures and notices; to provide a limitation on the amount of time certain  
5 information regarding the negotiations may remain confidential; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 44:22.1 is hereby enacted to read as follows:

9 §22.1. Port economic development negotiations

10 A. Notwithstanding any other provision of this Chapter to the contrary,  
11 records that are in the custody of a port commission or a port, harbor, and terminal  
12 district that pertain to an active negotiation with a person for the purpose of a  
13 proposed project involving the retention, expansion, or attraction of further economic  
14 development of the port under its supervision and that relate to or facilitate the  
15 transportation of goods in domestic or international commerce shall be confidential  
16 and shall not be subject to the provisions of R.S. 44:31, 32, or 33 if the person  
17 requests such confidentiality in writing detailing the reasons such person requests  
18 confidentiality and asserting that the negotiation is conditioned in whole or in part  
19 on the maintenance of such confidentiality, and the chief executive officer of the  
20 commission or district determines that the disclosure of such records would have a

1        detrimental effect on the negotiation. Each determination by the chief executive  
2        officer shall include reasons for the determination. The commission or district shall  
3        publish in its official journal a notice containing general information regarding each  
4        negotiation to which records are confidential pursuant to this Section no later than  
5        ten days after the determination of confidentiality. Such notice shall include the date  
6        of the chief executive officer's determination. Records of expenses of the  
7        commission or district pertaining to the negotiation shall be public and subject to  
8        review, except that the chief executive officer may redact information that he  
9        determines would identify or lead to the identification of the person with whom the  
10       commission or district is negotiating and such information shall be confidential until  
11       the negotiations are concluded. However, immediately on the conclusion of the  
12       negotiation, all such records shall be subject to the provisions of this Chapter.

13            B. No information made confidential pursuant to Subsection A of this  
14        Section shall remain confidential for more than twelve months from the date of the  
15        chief executive officer's determination of confidentiality; however, if the negotiation  
16        remains active and the chief executive officer makes a new determination that the  
17        disclosure of the information would be detrimental to the negotiations and gives  
18        notice as provided in Subsection A of this Section, such information shall remain  
19        confidential while the negotiation remains active, not to exceed an additional twelve  
20        months. Under no circumstances shall information made confidential pursuant to  
21        this Section remain confidential for more than twenty-four months from the date of  
22        the initial determination of the chief executive officer.

23            C. For the purposes of this Section, "active negotiation" or "negotiation  
24        remains active" shall mean a negotiation which has commenced concerning a project  
25        for the retention, expansion, or location of public port facilities and operations which  
26        relate to or facilitate the transportation of goods in domestic or international  
27        commerce and which is not concluded when the commission or district receives a  
28        request for information or other similar document concerning the project. For the  
29        purposes of this Section, a negotiation is no longer active or is concluded when the

1 commission or district decides no longer to actively pursue the proposed project with  
2 the person; when the person with whom the commission or district was negotiating  
3 decides not to pursue the proposed project; or when a proposal affecting the  
4 negotiation is submitted to a public body for consideration by the public body in a  
5 public meeting, whichever occurs earlier.

6 D. The provisions of Subsection A of this Section shall not apply to any  
7 application for a license or permit or to any record of negotiations concerning any  
8 hazardous waste or waste site as "hazardous waste" and "waste" are defined in R.S.  
9 30:2173.

10 E. The provisions of this Section shall have no effect unless the party whose  
11 information is being maintained as confidential also maintains as confidential any  
12 information provided to the party by the commission or district concerning the  
13 project which remains in active negotiation.

14 Section 2. This Act shall become effective upon signature by the governor or, if not  
15 signed by the governor, upon expiration of the time for bills to become law without signature  
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
18 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 665 Engrossed

2018 Regular Session

Gregory Miller

**Abstract:** Provides for confidentiality of certain information regarding active negotiations involving a port commission or a port, harbor, and terminal district for no more than 24 months under certain circumstances.

Present law (R.S. 44:1 et seq. – Public Records Law) provides that all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of the state, or by or under the authority of any ordinance, regulation,

mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of the state are "public records". Present law establishes a framework for the ready availability of public records to requesting persons and specifically provides that it is the duty of the custodian of the public records of a public entity or agency to provide copies to persons so requesting. Provides for certain exceptions, exemptions, and limitations.

Proposed law provides that records in the custody of a port commission or port, harbor, and terminal district pertaining to an active negotiation with a person for the purpose of a proposed project involving the retention, expansion, or attraction of further economic development of the port which relate to or facilitate the transportation of goods in domestic or international commerce shall be confidential if such confidentiality is requested in writing detailing the reasons therefor and asserting that the negotiation is conditioned on such confidentiality and the chief executive officer (CEO) of the commission or district determines that disclosure of such records would have a detrimental effect on the negotiation and the reasons therefor. Requires publication in the commission's or district's official journal of a notice of such confidentiality no later than ten days after the determination of confidentiality.

Proposed law provides that the commission's or district's expense records pertaining to the negotiation shall be public except the CEO may redact information he determines would identify the person with whom the commission or district is negotiating and such information shall be confidential until negotiations are concluded. Provides that at the conclusion of the negotiation, all such records shall be subject to the Public Records Law.

Proposed law limits the confidentiality of the negotiations to 12 months from the date of the CEO's determination of confidentiality. Provides that the confidentiality may be extended another 12 months if the negotiation remains active and the CEO again determines the disclosure would be detrimental to the negotiation and he provides notice in the official journal. Further limits confidentiality of the negotiations to no more than 24 months after the CEO's initial determination.

Proposed law defines active negotiation as a negotiation that has commenced and has not concluded when the commission or district receives a request for information from a person concerning the project. Provides that a negotiation is no longer active or is concluded when the commission or district or the person decides to no longer actively pursue the request for assistance or when a proposal affecting the negotiation is submitted to a public body for consideration in a public meeting, whichever occurs earlier.

Proposed law specifies that it does not apply to an application for license or permit or any record of negotiations concerning any hazardous waste or waste site.

Proposed law provides that the confidentiality provisions in proposed law shall not be effective unless the party whose information is being held as confidential also maintains as confidential information provided to the party by the commission or district concerning the project.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 44:22.1)