

STORAGE NAME: h1139a.go
DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1139
RELATING TO: Public Records/Rabies Vaccination
SPONSOR(S): Representative Sindler
STATUTE(S) AFFECTED: s. 828.30
COMPANION BILL(S): SB 1540 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (2)
- (3)
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I. SUMMARY:

HB 1139 provides that information contained in a rabies vaccination certificate provided to an animal control authority is confidential and exempt. No state or local governmental agency is allowed to provide or disclose the rabies vaccination certificate information in aggregate, compiled, or list form to any person except to a public agency engaged in official business related to public health, safety, and welfare. Information contained in rabies vaccination certificates may be exchanged by public agencies, but are not to be provided to, or made available for inspection, by the public.

However, HB 1139 does allow a state or local governmental agency, at its option, to provide the rabies vaccination certificate information to any person for inspection (but not copying) at the animal control authority, but only in nonelectronic form and only one rabies vaccination certificate at a time. Furthermore, no person who inspects such certificates is allowed to use any information gained for any commercial solicitation of any person identified therein. No state or local governmental agency may provide or disclose rabies vaccination certificate information in any form if such information is to be used for commercial purposes.

HB 1139 provides a public necessity statement for the exemption as is required by Article I, Section 24, of the Florida Constitution. The public records exemption created by HB 1139 is made subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

The Committee on Governmental Operations adopted two amendments to the bill. One changed the effective date, the other was more substantive in nature. See the "Amendments or Committee Substitute Changes" section of this analysis.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, 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, the disclosure of which information would injure the affected entity in the marketplace.

Rabies Vaccination of Dogs and Cats

The 1994 Legislature enacted the provisions of s. 828.30, F.S., requiring that all dogs and cats 4 months of age or older must be vaccinated by a licensed veterinarian against rabies. The veterinarian is required to provide the animal's owner and the animal control authority with a rabies vaccination certificate. Section 828.30(3), F.S., specifies the information that the rabies vaccination certificate must contain and includes the name, address, and phone number of the veterinarian and owner of the animal as well as the species, age, sex, color, breed, and name of the animal.

Section 767.11, F.S., defines "animal control authority" to mean an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In areas not served by an animal control authority, the sheriff is responsible for carrying out the duties of the animal control authority.

Current law provides no exemption from public disclosure for the information provided an animal control authority pursuant to the provisions of s. 828.30, F.S., consequently making such information available upon request to the public.

B. EFFECT OF PROPOSED CHANGES:

HB 1139 provides that information contained in a rabies vaccination certificate provided to an animal control authority is confidential and exempt. No state or local governmental agency is allowed to provide or disclose the rabies vaccination certificate information in aggregate, compiled, or list form to any person except to a public agency engaged in official business related to public health, safety, and welfare. Information contained in rabies vaccination certificates may be exchanged by public agencies, but are not to be provided to, or made available for inspection, by the public.

However, HB 1139 does allow a state or local governmental agency, at its option, to provide the rabies vaccination certificate information to any person for inspection (but not copying) at the animal control authority, but only in nonelectronic form and only one rabies vaccination certificate at a time. Furthermore, no person who inspects such information is allowed to use any information gained for any commercial solicitation of any person identified by such information. No state or local governmental agency may provide or disclose rabies vaccination certificate information in any form if such information is to be used for commercial purposes.

Proponents of this bill suggest that access to information which identifies the owner of the animal could be problematic for several reasons. Such access could provide competing veterinarians or companies a ready-made prospective client list. This could cause financial harm to a veterinarian not only through loss of clientele and product sales but also by diminishing the value of the veterinarian's client list which, according to proponents of the bill, may be worth thousands of dollars should a veterinarian decide to

sell his business. Proponents suggest that release of the information could unfairly penalize a veterinarian for complying with a statutorily-mandated reporting requirement. In addition, it is argued, release of the information could subject pet owners to unwanted solicitations from vendors who use public records requests to develop marketing lists. Access to such information could also subject owners to possible theft or harassment by individuals who target particular breeds. Without this exemption, bill proponents suggest that responsible pet owners could become reluctant to have their animals vaccinated. An increase in the number of unvaccinated animals would hinder the ability of animal control authorities to protect the public against the spread of rabies and endanger the public health, safety, and welfare.

Opponents of this bill assert that if the concern is regarding targeting breeds or identifying specific veterinarians, then let that information be held exempt, and not the lists of client names and addresses. Furthermore, opponents suggest that competition for services and products is of benefit to the consumer. Accordingly, client lists should be made available to the public, which includes competing business interests.

The public records exemption created by HB 1139 is made subject to the Open Government Sunset Review Act of 1995, and will repeal on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

HB 1139 also provides a public necessity statement for the exemption, as is required by Article I, section 24, of the Florida Constitution. The necessity for the exemption is reflective of the concerns addressed in this analysis in the discussion above regarding "Rabies Vaccination of Dogs and Cats".

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Affected governmental agencies would have to keep certain information confidential and exempt, or otherwise provide access to such information as specified in the bill.

(3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

This bill does not reduce or eliminate an entitlement to government services or subsidies.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Certain information will no longer be available to the public or its access is otherwise restricted.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

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- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 828.30, F.S.; creates a public records exemption for information contained in rabies vaccination certificates; provides for certain restricted access; and disallows commercial use of rabies vaccination certificate information.

Section 2 -- Provides a public necessity statement for the exemption described in Section 1 above.

Section 3 -- Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

This bill should eliminate any competitive advantage a competing business might gain from otherwise having access to the information exempted.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 1997, the House Committee on Governmental Operations adopted two amendments to HB 1139. The first amendment narrowed the exemption from "any information contained in the rabies vaccination certificate" to "names and addresses of animal owners contained on a rabies vaccination certificate". Both the bill and the amendment allowed inspection of rabies vaccination certificates one at a time; the amendment allows copying of a rabies vaccination certificate pursuant to a written request, the bill does not. The bill prohibited electronic dissemination of information and prohibited use of any information contained in the certificates for commercial solicitation; the amendment eliminates that language.

The second amendment adopted changes the effective date from October 1, 1997, to "upon becoming law".

The bill and the two amendments were reported out favorably.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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