

STORAGE NAME: h3209s2.go

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 3209

RELATING TO: Public Records and Meetings

SPONSOR(S): Committees on Governmental Operations, Health Care Standards and Regulatory Reform and Representative Wise

COMPANION BILL(S): SB 870(s), CS/HB 3207(c), SB 402(c)

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

- (1) HEALTH CARE STANDARDS AND REGULATORY REFORM YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
-

I. SUMMARY:

This bill creates a public records exemption for records held by the Department of Health and the Agency for Health Care Administration with respect to certain information regarding licensed graduate social workers and licensed bachelor social workers. This bill cross-references existing exemptions regarding other regulated professions and occupations, and extends them to licensed graduate social workers and licensed bachelor social workers. The public records exemptions cross-referenced provide as follows:

s. 455.621(10), F.S. -- The complaint and all information obtained pursuant to an investigation are confidential and exempt until 10 days after probable cause has been found to exist by a probable cause panel or by the department, or until the regulated professional or subject of the investigation waives that confidentiality.

s. 455.621(2), F.S. -- The department's final report must contain the investigative findings and department recommendations, and for cases dismissed prior to a finding of probable cause, such report is confidential and exempt.

s. 455.707(3), F.S. -- The probable cause panel, or the department, when there is no board, must work directly with a consultant, and all information concerning a practitioner obtained from the consultant by the panel, or department, must remain confidential and exempt, except as otherwise provided.

s. 455.707(5)(a), F.S. -- All information obtained by the consultant and the department pursuant to s. 455.707, F.S., (information from the approved treatment provider) is confidential and exempt.

This bill creates a public meetings exemption for probable cause panels with regard to licensed graduate social workers and licensed bachelor social workers by extending the application of the public meetings exemption found in s. 455.621(4), F.S.

This bill provides a public necessity statement for the exemptions. Also, the exemptions are made subject to the Open Government Sunset Review Act of 1995. The exemptions will repeal on October 2, 2003, unless reviewed and reenacted by the Legislature.

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This bill appears to have no fiscal impact on state and local government, or the private sector.

II. SUBSTANTIVE RESEARCH:

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.

Department of Health Records and Meetings

The Division of Medical Quality Assurance, within the Department of Health, is responsible for numerous boards and professions. Some of the boards include the Board of Acupuncture, Board of Medicine, Board of Osteopathic Medicine, Board of Chiropractic, Board of Podiatric Medicine, Board of Nursing, Board of Pharmacy. The responsibilities of these boards include the discipline of the professionals within their jurisdiction. Additionally, the Department of Health "may contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate." s. 20.43(3), F.S.

Chapter 455, F.S., provides general provisions regarding the regulation of professions and occupations. More particularly, s. 455.621, F.S., provides for board disciplinary proceedings. The Department of Health, for the boards under its jurisdiction, must investigate any complaint that is filed, if the complaint is in writing, signed by the complainant, and legally sufficient. Subsection (10) provides that the complaint and all information obtained pursuant to the investigation by the department are confidential and exempt until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives that confidentiality.

Furthermore, subsection (2) provides that when an investigation is complete and legally sufficient, the Department of Health must prepare and submit to the probable cause panel of the appropriate regulatory board an investigative report. The report must contain the investigative findings and the recommendations of the department concerning the existence of probable cause. The department must provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt.

Subsection (4), of s. 455.621, F.S., provides that the determination as to whether probable cause exists must be made by a majority vote of a probable cause panel of the board, or by the department, as otherwise specified. All proceedings of the probable cause panel are made exempt from the Open Meetings Law (s. 286.011, also known as the "Sunshine Law") until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives that confidentiality. This is consistent with subsection (10).

Section 455.707, F.S., deals with treatment programs for impaired practitioners. Section 455.707(1), F.S., provides that for professions that do not have impaired practitioner programs provided for in their practice acts, the Department of Health will, by rule, designate approved treatment programs. The department may adopt rules setting forth appropriate criteria for approval of treatment providers based on the policies and

guidelines established by the Impaired Practitioners Committee. The department must retain one or more impaired practitioner consultants as recommended by the committee.

Subsection (5)(a) of s. 455.707, F.S., provides that an approved treatment provider must, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to s. 455.707, F.S., is confidential and exempt, with certain exceptions as otherwise provided.

Subsection (3)(e) of s. 455.707, F.S., provides that the probable cause panel, or the Department of Health when there is no board, must work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, must remain confidential and exempt, except as otherwise provided.

B. EFFECT OF PROPOSED CHANGES:

This bill incorporates by reference

- 1) the public records exemptions found in ss. 455.621(2) and (10), F.S., discussed above, regarding disciplinary proceedings; and
- 2) the public records exemptions found in ss. 455.707(3)(e) and (5)(a), F.S., regarding impaired practitioners.

The exemptions are made applicable to the Department of Health and the Agency for Health Care Administration (AHCA) regarding information concerning a licensed graduate social worker or a licensed bachelor social worker. AHCA needs the exemptions in that they may provide investigative and prosecutorial services to the department. See s. 20.43(3), F.S.

The public meetings exemption found in s. 455.621(4), F.S., regarding proceedings of a probable cause panel, is also made applicable to a probable cause panel with respect to an investigation concerning a licensed graduate social worker or a licensed bachelor social worker regulated by the department. A licensed graduate social worker and a licensed bachelor social worker are established pursuant to CS/HB 3207 which sets forth various licensure and regulatory requirements. The effective date of this exemption bill, CS/HB 3209, is tied to the passage of CS/HB 3207. If these two new licensed positions are not created, then there is no need for the exemptions.

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?

No.

(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?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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?

Not Applicable.

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

Not Applicable.

4. Individual Freedom:

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

No.

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

No.

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?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. STATUTE(S) AFFECTED:

creates s. 468.854

E. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & 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:

None.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The difference between the original bill and the Committee Substitute is that wording was changed to reflect that the provisions apply to chapter 468, part XV, F.S., instead of chapter 491, F.S.

On March 30, 1998, the Committee on Governmental Operations adopted two amendments to CS/HB 3208. The first amendment changed a verb from "regulated" to "held"; thus, records "held" by the department and AHCA were made exempt.

The second amendment added language to the public necessity statement explaining the need for the exemption, i.e., that without the exemption participation in the program would be reduced.

CS/HB 3209, as amended, was made a committee substitute.

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VII. SIGNATURES:

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