

**STORAGE NAME:** h0403.cfe

**DATE:** April 4, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CHILDREN AND FAMILY EMPOWERMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 403

**RELATING TO:** Public Records

**SPONSOR(S):** Representative Lynn

**STATUTE(S) AFFECTED:** Section 414.0951, F.S.

**COMPANION BILL(S):**

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

- (1) CHILDREN AND FAMILY EMPOWERMENT
- (2) GOVERNMENTAL OPERATIONS
- (3)
- (4)
- (5)

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I. SUMMARY:

House Bill 403 provides an exemption from public records requirements for certain information relating to drug testing of applicants for or participants in Work and Gain Economic Self-sufficiency [WAGES], Medicaid, and other public assistance programs.

This bill is the "public record exemption" companion to HB 401.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records. It provides 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 the 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 the 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, whose 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.

Drug test results and other information received or produced as a result of a drug-testing program in accordance with the Drug-Free Workplace Act are confidential and exempt from 2.119.07(1), F.S., and may not be disclosed except as authorized in the statute. Section 440.102(8), F.S. Confidentiality provisions similar to those in s. 440.102(8), F.S., are contained in s. 112.0455, F.S., which applies to agencies of state government. See also, s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under unemployment compensation law. Section 443.1715(3)(b) also states "Unless otherwise provided by law, any such information received by a public employer through a drug-testing program, or obtained by a public employee under this chapter is confidential and exempt [from disclosure] until introduced into the public record pursuant to a hearing conducted under s. 443.151(4)."

**B. EFFECT OF PROPOSED CHANGES:**

House Bill 403 provides an exemption from public records requirements for certain information relating to drug testing of applicants for or participants in Work and Gain Economic Self-sufficiency [WAGES], Medicaid, and other public assistance programs.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

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

i. *Any authority to make rules or adjudicate disputes?*

No.

ii. *Any new responsibilities, obligations or work for other governmental or private organizations or individuals?*

No.

iii. *Any entitlement to a government service or benefit?*

No.

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

i. *What responsibilities, costs and powers are passed on to another program, agency, level or government, or private entity?*

N/A

ii. *What is the cost of such responsibility at the new level/agency?*

N/A

iii. *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?*

No.

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

No.

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:

i. *Who evaluates the family's needs?*

N/A

ii. *Who makes the decisions?*

N/A

iii. *Are private alternatives permitted?*

N/A

iv. *Are families required to participate in a program?*

N/A

v. *Are families penalized for not participating in a program?*

N/A

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:*

i. *Parents and guardians?*

N/A

ii. *Services providers?*

N/A

iii. *Government employees/agencies?*

N/A

**D. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends s. 414.0951, F.S.

Provides that all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug testing program are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Directs the department, laboratories, drug treatment program, and their agents that they may not release any information concerning drug test results obtained pursuant to this section without a written consent form signed voluntarily by the person tested, except where such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, or where deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding.

Information on drug test results cannot be released or used in any criminal proceeding against the applicant or participant.

Repeals the exemption on October 2, 2002, unless reviewed by reenactment of the Legislature.

Section 2.

States that the Legislature finds that the exemption provided in s. 414.0951(17), F.S., is a public necessity.

Section 3.

Provides that this act take effect on the same date as the House Bill [HB 401] or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

**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 require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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

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

V. COMMENTS:

This bill is the "public record exemption" companion to HB 401.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

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Bob Barrios

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Bob Barrios