

STORAGE NAME: h1645.hcs

DATE: March 10, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS**

BILL #: HB 1645 (PCB HCS 99-04)

RELATING TO: Public Records

SPONSOR(S): Health Care Services Committee

COMPANION BILL(S): HB 1647

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

(1) HEALTH CARE SERVICES YEAS 16 NAYS 0

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I. SUMMARY:

This bill, which relates to exemptions from the public records laws, is a companion bill to HB 1647 regarding child death reviews. This bill provides that all information that is confidential or exempt from public records requirements and subsequently obtained by the state and local death review teams, or a panel or committee assembled by either team, remains confidential and exempt from public records requirements. Additionally, such information obtained by hospital or health care practitioners from the child death review teams or panels or committee assembled by the teams will also remain confidential and exempt.

Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, will be confidential and exempt from the provisions of s. 119.07, F.S., and s. 24(a), Article I of the State Constitution.

State teams and local teams will also be permitted to share relevant information.

Pursuant to section 24 of Article I of the State Constitution, this bill also provides a statement of public necessity for the exemption which focuses on finding that disclosure of sensitive and personal information concerning children would hamper communication and coordination among the parties involved and result in harm to the public.

The exemptions in this bill will be subject to the Open Government Sunset Review Act of 1995.

This bill should not have any fiscal impact on the public or private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.

Access to government meetings is addressed in the Florida Statutes as well. Section 286.011, F.S., states:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 119.15, F.S., provides that an exemption to the public records and meeting requirements 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.

B. EFFECT OF PROPOSED CHANGES:

Information that is confidential or exempt from public records requirements and subsequently obtained by the state and local death review teams, or a panel or committee assembled by either team, will remain confidential and exempt from public records requirements. Such information obtained by hospital or health care practitioners from the child death review teams or panels or a committee assembled by the teams will also remain confidential and exempt.

Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, will be confidential and exempt from the provisions of s. 119.07, F.S., and s. 24(a), Article I of the State Constitution.

State teams and local teams will also be permitted to share relevant information.

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?

N/A

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

N/A

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

N/A

- b. If an agency or program is 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?
N/A
- b. Does the bill require or authorize an increase in any fees?
N/A
- c. Does the bill reduce total taxes, both rates and revenues?
N/A
- d. Does the bill reduce total fees, both rates and revenues?
N/A
- e. Does the bill authorize any fee or tax increase by any local government?
N/A

3. Personal Responsibility:

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

5. Family Empowerment:

- a. If the bill purports 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

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

N/A

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 383.410, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 383.410 relating to confidentiality, to provide that all information obtained by the State Child Death Review Team or local team, or a panel or committee assembled by either team that is confidential and exempt from public records requirements shall retain its confidential and exempt status. Such information obtained by hospital or health care practitioners from the child death review teams or panels or a committee assembled by the teams shall also retain its confidential and exempt status. Records and reports of the child death review teams and their panels or committees, as well as portions of meetings and proceedings, are confidential and exempt from the provisions of s. 119.07, F.S., and s. 24(a), Article I of the State Constitution. Additionally, state teams and local teams may share relevant information, and persons violating the provisions of this section commit a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is subject to the Open Government Sunset Review Act of 1995.

Section 2. Provides legislative findings as to the public necessity for exempting records from the public records law. The Legislature finds that access by the state and local child death review teams and their panels and committees to records that are otherwise confidential increases the potential for reduced morbidity or mortality for children and improves the overall quality of life for

children. The Legislature also finds that it is a public necessity that confidential information obtained by the child death review teams, their panels or committees, and hospital or health care practitioners, as well as reports and records of the review teams, remain confidential. Due to the sensitive and personal nature of the information concerning children, the Legislature finds that disclosure of such records would hamper communication and coordination among the parties involved and harm to the public would result.

Section 3. Provides a contingent effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

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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 place any mandates on local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the ability of local governments to raise revenue.

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

This bill does not reduce state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:
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