

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1726

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Saunders

SUBJECT: Public Records

DATE: April 6, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem	Wilson	HC	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 1726 creates a public records exemption for personal identifying information relating to receipt of services in programs administered or funded by the Department of Elderly Affairs. The bill provides for future review and repeal and provides a statement of public necessity for the exemption.

The bill creates s. 430.105, F.S.

**II. Present Situation:**

Currently, there are several provisions which exempt Department of Elderly Affairs consumer's health or financial information from public disclosure. Each of these provisions is specific to one of the department's programs. Although s. 430.015, F.S., provides legislative findings of public necessity for the confidentiality and exemption of identifying information held by the department, the section does not actually make the information exempt from public access.

***Public Records in Florida***

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, chapter 119, F.S., specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. While the state constitution provides that records of public bodies are to be open to the

public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const. governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle begins in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates s. 430.105, F.S., to exempt personal identifying information relating to receipt of services in programs administered or funded by the Department of Elderly Affairs from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to records created or received by the Department of Elderly Affairs, the department’s service providers, or volunteers providing services to the department or its providers or contract providers. Information made confidential may be disclosed with written consent of the individual or the individual’s legal representative. The exemption is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2006, unless reviewed and saved from repeal by the Legislature.

**Section 2.** Contains legislative findings of public necessity due to the sensitive nature of personal information contained in the records, and the fact that elderly persons are often targets for individuals seeking to capitalize on their weaknesses.

**Section 3.** Provides an effective date of July 1, 2001.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

This bill creates a public records exemption related to personal identifying information contained in records made or received by the Department of Elderly Affairs, the department’s service providers or volunteers. A statement of public necessity is provided.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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