

By the Committee on Health, Aging and Long-Term Care; and  
Senators Garcia and Silver

317-1764-01

1                                   A bill to be entitled  
2           An act relating to public records and meetings;  
3           providing an exemption from the public records  
4           law for certain records relating to  
5           supplemental drug rebates; providing an  
6           exemption from the public meetings law for  
7           certain portions of meetings of the Medicaid  
8           Pharmaceutical and Therapeutics Committee;  
9           providing for future legislative review and  
10          repeal; providing a statement of public  
11          necessity; providing a contingent effective  
12          date.

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14 Be It Enacted by the Legislature of the State of Florida:  
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16           Section 1. (1) Trade secrets, rebate amount, percent  
17 of rebate, manufacturer's pricing, and supplemental rebates  
18 which are contained in records of the Agency for Health Care  
19 Administration and its agents with respect to supplemental  
20 rebate negotiations and which are prepared pursuant to a  
21 supplemental rebate agreement under section 409.91195, Florida  
22 Statutes, are confidential and exempt from section 119.07,  
23 Florida Statutes, and Section 24(a) of Article I of the State  
24 Constitution.

25           (2) Those portions of meetings of the Medicaid  
26 Pharmaceutical and Therapeutics Committee at which trade  
27 secrets, rebate amount, percent of rebate, manufacturer's  
28 pricing, and supplemental rebates are disclosed for discussion  
29 or negotiation of a supplemental rebate agreement under  
30 section 409.91195, Florida Statutes, are exempt from section  
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1 286.011, Florida Statutes, and Section 24(b) of Article I of  
2 the State Constitution.

3       Section 2. The Legislature finds that it is a public  
4 necessity that trade secrets, rebate amount, percent of  
5 rebate, manufacturer's pricing, supplemental rebates that are  
6 contained in records, as well as meetings of the Medicaid  
7 Pharmaceutical and Therapeutics Committee at which this  
8 information is negotiated or discussed, pursuant to a  
9 supplemental rebate agreement under section 409.91195, Florida  
10 Statutes, are confidential and exempt from sections 119.07 and  
11 286.011, Florida Statutes, and Section 24(a) and (b) of  
12 Article I of the State Constitution. Information pertaining to  
13 similar agreements negotiated by pharmaceutical manufacturers  
14 and the Federal Government is confidential under 42 U.S.C. s.  
15 1396r-8. A supplemental rebate as a percentage of average  
16 manufacture price is confidential under federal law and the  
17 federal rebate could be made known if not protected in  
18 Florida. Because of the protection afforded by federal law, if  
19 this information is not protected in Florida, manufacturers  
20 would not be willing to offer a rebate in Florida. Further,  
21 the Legislature finds that the number and value of  
22 supplemental rebates obtained by the agency will increase, to  
23 the benefit of Medicaid recipients, if information related to  
24 state supplemental rebates is protected in the records  
25 received by the agency and if the meetings at which this  
26 information is discussed or negotiated are closed because  
27 manufacturers will be assured that they will not be placed at  
28 a competitive disadvantage by the exposure of this  
29 information. As a result, the agency and pharmaceutical  
30 manufacturers will have frank and open communication regarding

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1 rebates, causing the number of rebates to increase, thereby  
2 benefiting Medicaid recipients and the public.

3 Section 3. Section (1) of this act is subject to the  
4 Open Government Sunset Review Act of 1995 in accordance with  
5 section 119.15, Florida Statutes, and shall stand repealed on  
6 October 2, 2006, unless reviewed and saved from repeal through  
7 reenactment by the Legislature.

8 Section 4. This act shall take effect on the same date  
9 that Committee Substitute for Senate Bill 792, or similar  
10 legislation authorizing the Agency for Health Care  
11 Administration to negotiate supplemental drug rebates for the  
12 Medicaid program, takes effect, if such legislation is adopted  
13 in the same legislative session or an extension thereof.

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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
16 COMMITTEE SUBSTITUTE FOR  
17 Senate Bill 904

18 The Committee Substitute for SB 904 makes information  
19 regarding supplemental rebates from pharmaceutical  
20 manufacturers under the Florida Medicaid Program confidential  
21 and exempt from public disclosure. Portions of meetings of the  
22 Medicaid Pharmaceutical and Therapeutics Committee at which  
23 this information is disclosed for discussion or negotiation  
24 are made exempt from Florida's open meetings requirements. The  
25 bill provides legislative findings that these exemptions are a  
26 public necessity in that disclosure of similar information is  
27 prohibited under federal law, and that the exemptions will  
28 enable the state to negotiate supplemental pharmaceutical  
29 manufacturer rebates for the ultimate benefit of Medicaid  
30 recipients. The exemptions are subject to the Open Government  
31 Sunset Review Act of 1995 and will be repealed on October 2,  
2006, unless reenacted by the Legislature.