

**STORAGE NAME:** h2003.hcc.doc  
**DATE:** March 8, 2002

**HOUSE OF REPRESENTATIVES**  
**COUNCIL FOR HEALTHY COMMUNITIES**  
**ANALYSIS**

**BILL #:** HB 2003 (PCB HCC 02-07)  
**RELATING TO:** Public Records / Florida Alzheimer's Center and Research Institute  
**SPONSOR(S):** Council for Healthy Communities and Representative Fasano

**TIED BILL(S):**

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

- (1) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

HB 2003 creates exemptions from public records and meetings provisions of the Florida Constitution and Florida statutes, for certain records and meetings of the not-for-profit corporation governing and operating the Florida Alzheimer's Center and Research Institute.

The bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the record exemptions "...are necessary because these records contain information that, if disclosed, would adversely impact the not-for-profit corporation or its subsidiaries in the competitive health care environment." A similar statement and exemption is provided with regard to meetings of the governing board of the not-for-profit corporation and the governing board of its subsidiaries. However, meetings at which the expenditure of public dollars appropriated by the legislature is discussed must be open to the public.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Public Records Law**

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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(c), 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 must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, 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:

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.

In addition to meeting one of these purposes, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

**C. EFFECT OF PROPOSED CHANGES:**

This bill creates exemptions from public records and meetings provisions of the Florida Constitution and Florida statutes, for certain records and meetings of the not-for-profit corporation governing and operating the Florida Alzheimer's Center and Research Institute.

The bill provides that records of the not-for-profit corporation governing the Florida Alzheimer's Center and Research Institute and its subsidiaries are public records unless made confidential or exempt by law. The bill specifies that "proprietary confidential business information" as defined, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution. However, three governmental agencies – the Auditor General, the Office of Program Policy Analysis and Governmental Accountability, and the State Board of Education – pursuant to their oversight responsibilities, must be given access to all proprietary confidential business information upon request. These governmental entities must maintain the confidentiality of this information.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the record exemptions "...are necessary because these records contain information that, if disclosed, would adversely impact the not-for-profit corporation or its subsidiaries in the competitive health care environment." A similar statement and exemption is provided with regard to meetings of the governing board of the not-for-profit corporation and the governing board of its subsidiaries. However, meetings at which the expenditure of public dollars appropriated by the legislature is discussed must be open to the public.

The effective date of this bill is linked to the passage of another House Bill.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

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Kurt E. Ahrendt

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David De La Paz