

**STORAGE NAME:** h2013.sgc.doc  
**DATE:** March 13, 2002

**HOUSE OF REPRESENTATIVES  
COUNCIL FOR SMARTER GOVERNMENT  
ANALYSIS**

**BILL #:** HB 2013 (PCB SGC 02-01)  
**RELATING TO:** Public Records  
**SPONSOR(S):** Council for Smarter Government and Representative(s) Cantens  
**TIED BILL(S):** HB 1643

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

- (1) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

This bill creates a public records exemption for medical records and medical reports of an injured employee and any information identifying an injured employee contained in medical bills provided to the Agency for Health Care Administration and the Department of Education. The agency and the department may share such confidential and exempt records, reports, and information with each other and with the Department of Insurance in the furtherance of their official duties. The receiving entity must maintain the confidential and exempt status of the information received.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that such records, reports, and information should be made confidential and exempt because public access to such information is an invasion of the injured employee's right to privacy in that personal, sensitive information would be revealed, and public knowledge of such information could lead to discrimination against the employee by coworkers and others.

This bill provides for future review and repeal of the public records exemption.

The effective date of this bill is contingent upon the passage of HB 1643 or similar legislation.

This bill does not appear to have a fiscal impact on state or local governments.

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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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

**Department of Labor and Employment Security**

Section 20.171, F.S., creates the Department of Labor and Employment Security, which contains the Division of Workers' Compensation. HB 1643 by Representative Clarke repeals the department and transfers all of the department's powers, duties, functions, rules, records, property, and unexpended balances and appropriations, allocation, and other funds to certain other departments or agencies. The Division of Workers' Compensation is transferred to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education.

**Section 440.125, F.S.**

At present, s. 440.125, F.S., provides a public records exemption for medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills provided to the Division of Workers' Compensation within the Department of Labor and Employment Security. There is no exemption for such records, reports, and information when provided to the Agency for Health Care Administration and the Department of Education.

**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, 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.

#### C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for medical records and medical reports of an injured employee and any information identifying an injured employee contained in medical bills provided to the Agency for Health Care Administration and the Department of Education pursuant to s. 440.13,

F.S.<sup>1</sup> The agency and the department may share such confidential and exempt records, reports, and information with each other and with the Department of Insurance in the furtherance of their official duties under ss. 440.13 and 440.134, F.S.<sup>2</sup> The receiving entity must maintain the confidential and exempt status of the information received.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that such records, reports, and information should be made confidential and exempt because public access to such information is an invasion of the injured employee's right to privacy in that personal, sensitive information would be revealed, and public knowledge of such information could lead to discrimination against the employee by coworkers and others.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

The effective date of this bill is linked to the passage of HB 1643 or similar legislation.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

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.

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<sup>1</sup> Chapter 440, F.S., relates to workers' compensation and s. 440.13, F.S., relates to the duty of an employer to furnish medical treatment.

<sup>2</sup> Section 440.134, F.S., relates to workers' compensation managed care arrangement.

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 SMARTER GOVERNMENT:

Prepared by:

Council Director:

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