

STORAGE NAME: h0729.sec.doc
DATE: January 16, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: HB 729 (PCB SEC 02-10)
RELATING TO: Public Records/Emergency Plans/Hospitals
SPONSOR(S): Select Committee on Security and Representative(s) Gelber & others

TIED BILL(S):

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

- (1) SECURITY, SELECT YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Chapter 395.1055, F.S., provides that, among other things, public and private hospitals shall prepare and annually update a comprehensive emergency management plan. Such plans include plans by the hospital addressing the response of the hospital to natural disasters and man-made calamities.

This bill creates section 395.1056, F.S., to exempt those portions of an emergency management plan that address the response of the hospital to an act of terrorism from public disclosure. It provides that the Governor's certification of sufficiency of a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is a public record.

The bill provides a statement of the public necessity for the exemption.

Finally, as provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect contingent upon the passage of legislation that creates a definition of "terrorism," a term that is used in the bill.

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"/> |

B. PRESENT SITUATION:

Public Records Law

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 and must be no broader than necessary to accomplish its purpose.

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.

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.

Chapter 395, Relating to Hospital Licensing and Regulation.

Section 395.1055(2)(a), F.S., directs the Agency on Health Care Administration to adopt rules to ensure that hospitals establish and annually update a comprehensive emergency management plan. This plan must address a number of components: emergency evacuation transportation; adequate sheltering arrangements; post disaster activities, including emergency power, food, and water; post disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries.

The local emergency management agency must approve the plan within 60 days; however prior to its approval the local agency must provide an opportunity to other agencies, including the Departments of Elderly Affairs, Health, and Community Affairs and the Agency on Health Care Administration to review the plan.

C. EFFECT OF PROPOSED CHANGES:

The bill creates s. 395.1056, F.S., to hold confidential and exempt from the provisions relating to public records those portions of the comprehensive emergency plans of both private and public hospitals that address the response of a hospital to an act of terrorism, which are filed with the Agency on Health Care Administration, a state or local law-enforcement agency, a county emergency management agency, the Office of the Governor, the Department of Health, or the Department of Community Affairs.

The bill also holds confidential and exempt those portions of a hospital comprehensive emergency plan that address the response of a public hospital to an act of terrorism that are in the custody of that public hospital.

The bill also provides that the certification by the Governor, in consultation with the Department of Health, of the sufficiency of a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is a public record.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment.

The bill includes a legislative statement of public necessity for the creation of this public record exemption.

The bill takes effect contingent upon the passage of HB 103-B, which creates section 775.30, F.S., and provides a definition of "terrorism." That bill becomes effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see section II.c., above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

The 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:

Comments on the bill

Section 395.1055, F.S., does not specifically provide for gubernatorial review of a hospital comprehensive emergency management plan. The listing of agencies that are to be afforded an opportunity to review by the approving local emergency management agency is introduced with the phrase “. . . *at a minimum*, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs.” Presumably, the Governor’s Office could be afforded the opportunity to review the plan. It would be advisable to provide in substantive legislation for gubernatorial review of the plan for purposes of ensuring the sufficiency of the plan for response to terrorist acts. This would then tie the public records exemption proposed by this bill into a duty of an agency.

Legislative History

This issue originated as House Bill 121-B. The Select Committee on Security reported that bill favorably with one amendment on October 29, 2001. The amendment was adopted and the bill passed the House on a 118-0 vote on October 30, 2001. It died in Senate Messages on November 1, 2001.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Staff Director:

David M. Greenbaum

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