

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1037 (PCB SA 03-16) Public Records Exemption/Rabies Vaccination
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts and narrows the public records exemption for certain information contained in rabies vaccination certificates, which will repeal on October 2, 2003, if this bill does not become law. This bill narrows the public records exemption by limiting it to include only the animal owner's name, street address, and phone number, and animal tag number instead of the more expansive, current exemption that includes *all* of an animal owner's identifying information. This bill further narrows the exemption by changing the exemption from confidential and exempt to merely exempt. Additionally, it removes the vague provision requiring viewing rabies vaccination certificates one record at a time.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: March 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

Florida law requires all dogs, cats, and ferrets four months of age or older to be vaccinated against rabies by a licensed veterinarian. Upon vaccination, the veterinarian must provide a rabies vaccination certificate to the animal’s owner and to the animal control authority.

The Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to 86 animal control authorities throughout the state regarding rabies vaccination certificates, and 46 of those authorities responded. Twenty-nine of the 46 respondents stated that they do not receive rabies vaccination certificates from licensed veterinarians.¹

Current law provides a public records exemption for information contained in a rabies vaccination certificate which identifies the owner of the animal vaccinated and is contained in a rabies vaccination certificate provided to the animal control authority. The confidential and exempt information contained in the rabies vaccination certificate may be released to:

- The physician of, or, any person who has been bitten, scratched, or exposed to a zoonotic disease;
- A veterinarian who is treating an animal that has been bitten, scratched, or exposed to a zoonotic disease;
- The owner of an animal that has been bitten, scratched, or exposed to a zoonotic disease;
- Any person who provides the animal tag number;
- Federal, state, and local law enforcement and prosecutorial agencies;
- Other animal control authorities; and
- Emergency and medical response, disease control, or other governmental agencies.

Current law also provides that, if a copy of a database containing rabies vaccination certificate information is requested, each animal owner’s name, street address, and phone number, and the animal tag numbers, must be removed prior to providing a copy.

The exemption also allows for a person to view a rabies vaccination certificate, one record at a time, pursuant to a written request. However, because “any information contained in the rabies vaccination certificate . . . which identifies the owner of the animal vaccinated is confidential and exempt”, it

¹ House Committee on State Administration Open Government Sunset Review Questionnaire, July 31, 2002, at question #1.

appears that the ability to view such certificates is illusory. In practice, this provision has proved unclear and difficult.

Current law provides for future review and repeal of the public records exemption for certain information contained in rabies vaccination certificates. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 828.30(5), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to animal control authorities throughout the state regarding the public records exemption for rabies vaccination certificates. As a result of those questionnaire responses, this bill reenacts and narrows the public records exemption.

Effect of Bill

This bill narrows the public records exemption by limiting the exemption to the animal owner's name, street address, and phone number, and the animal tag number. It also narrows the exemption by only making such information exempt from public disclosure rather than confidential and exempt,² as there are a number of exceptions to the current exemption.

This bill removes the vague provision whereby one may view rabies vaccination certificates one record at a time upon written request, because the provision is unclear as to whether the requestor is permitted to view exempt information contained in rabies vaccination certificates while viewing them one record at a time. This change makes it clear that the only persons permitted access to the exempt information are those listed in the current exceptions to the public records exemption. The related requirement to provide a written request to view the records one at a time is also removed because it is not necessary and because many of the animal control authorities are requesting personal information regarding the records requestor, as well as asking for reasons for needing to view the certificate one record at a time. Chapter 119, F.S., requires no showing of purpose or special interest as a condition of access to public records, and a records custodian may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access.³

This bill also removes the redundant provision restating that information contained in an existing database is exempt. Information made exempt remains so whether it is contained in the actual rabies vaccination certificate or is further contained in a database. The location of information does not change its status as exempt.

Finally, this bill adds clarifying language, makes editorial changes, and removes the review and repeal language.

C. SECTION DIRECTORY:

Section 1. Amends s. 828.30(5), F.S., by reenacting and narrowing the public records exemption for rabies vaccination certificates.

Section 2. Provides an effective date of October 1, 2003.

² There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

³ *Government-In-The-Sunshine Manual*, "To what extent may an agency regulate or limit inspection and copying of public records?", 2003 edition, volume 25, at 101.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or

⁴ Section 119.15, F.S.

stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.