

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 306

SPONSOR: Governmental Oversight & Productivity Committee and Health, Aging, and Long-Term Care Committee

SUBJECT: Public Records/Meetings Exemption - Statewide Provider and Subscriber Assistance Program

DATE: April 1, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	Rhea	Wilson	GO	Fav/CS
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute is the result of an Open Government Sunset Review performed by the Committee on Health, Aging, and Long-Term Care during the interim. The exemption will repeal on October 2, 2003, unless the Legislature abrogates the repeal.

The bill reenacts and amends the public records and meetings exemptions relating to the Statewide Provider and Subscriber Assistance Program contained in s. 408.7056, F.S. The bill consolidates and clarifies the exemptions for information held by the Agency for Health Care Administration and the Department of Insurance that identifies a subscriber, provides for the release of the records in a subscriber’s grievance to the subscriber or the managed care entity involved in that grievance without redaction of identifying information about the subscriber, and deletes the public meetings exemption when trade secrets are discussed in Statewide Provider and Subscriber Assistance Panel hearings.

This bill substantially amends section 408.7056, Florida Statutes.

**II. Present Situation:**

**Public Records Law**

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const., governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const., provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

### **Statewide Provider and Subscriber Assistance Program**

Section 408.7056, F.S., requires the Agency for Health Care Administration (AHCA) to implement the Statewide Provider and Subscriber Assistance Program (SPSAP) to assist subscribers of managed care entities with grievances that have not been satisfactorily resolved through the managed care entity’s internal grievance process. The program can hear grievances of subscribers of health maintenance organizations, prepaid health clinics and exclusive provider organizations.

Section 408.7056(15), F.S., makes information that identifies a managed care entity’s subscriber or the spouse, relative or guardian of a subscriber in a document, report, or record prepared or reviewed by the SPSAP or obtained by AHCA confidential and exempt from the Public Records Law. Similarly, s. 408.7056(13), F.S., makes any information that would identify a subscriber or the spouse, relative or guardian of a subscriber which is contained in a report obtained by the Department of Insurance (DOI) as part of its duties with the SPSAP under that section confidential and exempt from the Public Records Law.

Section 408.7056, F.S., also provides that the meetings of the panel must be open to the public unless the provider or subscriber whose grievance will be heard requests a closed meeting, or AHCA or DOI determines that information of a sensitive personal nature that discloses a subscriber’s medical treatment or history, information that constitutes a trade secret, or information relating to an internal risk management program will be discussed and therefore the meeting must be closed to the public and is exempt from the Public Meetings Law. These

exemptions are subject to the Open Government Sunset Review Act of 1995, and will expire on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

All panel hearings are conducted by videoconference in Tallahassee to major metropolitan areas of the state. The panel meets as often as necessary to timely review, consider, and hear grievances about disputes between a subscriber, or a provider on behalf of a subscriber, and a managed care entity. Following its review, the panel must make a recommendation to AHCA or DOI. The recommendation may include specific actions the managed care entity must take to comply with state laws or rules regarding such entities.

If the panel rules in favor of the subscriber, the panel attorney drafts a recommendation. The affected managed care entity, subscriber, or provider may within 10 days after receipt of the recommendation file written evidence in opposition to the panel's recommendation or findings. The agency or department has the discretion to adopt all, part, or none of the panel's recommendation within 30 days after the panel issues the recommendation or findings of fact by issuing a proposed order or an emergency order.

### **Senate Interim Project Report 2003-220**

Staff reviewed the public records and meetings exemptions in s. 408.7056, F.S., pursuant to the Open Government Sunset Review Act of 1995 and recommended that the exemptions to the public records and open meetings requirements in s. 408.7056, F.S., be reenacted and amended. Staff recommended that the exemptions be amended to consolidate the exemptions contained in subsections (13) and (15) of that section, to provide for the release of the records in a subscriber's grievance to the subscriber or the managed care entity involved in that grievance without redaction of identifying information about the subscriber, and to delete the Public Meetings Law exemption when trade secrets are discussed in SPSAP hearings, because there is no rationale for maintaining the exemption without a Public Records Law exemption for records generated for trade secrets. Staff's findings and recommendations are detailed in *Interim Project Report 2003-220*.

### **III. Effect of Proposed Changes:**

**Section 1.** Reenacts and amends s. 408.7056, Florida Statutes, to consolidate the exemption for the identity of the subscriber contained in subsections (13) and (15) of that section, to provide, at the request of a subscriber or managed care entity, for the release of the records in a subscriber's grievance to the requesting subscriber or the managed care entity involved in that grievance without redaction of identifying information about the subscriber, and to delete the Public Meetings Law exemption when trade secrets are discussed in Statewide Provider and Subscriber Assistance Panel hearings. The committee substitute also modifies the meeting exemption to tie it more closely to the public records exemption, which refers to a subscriber's medical treatment or history, and not to all sensitive personal information.

**Section 2.** Provides that the bill will take effect October 1, 2003.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The Division of Statutory Revision identified s. 408.7056, F.S., as an exemption that was subject to review under the Open Government Sunset Review Act during the 2002-2003 legislative interim. The exemption found in the section will repeal October 2, 2003, unless the Legislature abrogates the repeal.

Under s. 119.15(3)(b), F.S., an exemption is “substantially amended” if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Where an exemption is substantially amended, the Open Government Sunset Review Act requires another review and repeal date because, in effect, an existing exemption that has been “substantially amended” is a new exemption. Existing exemptions that are not substantially amended are not subject to this requirement. This bill does not substantially amend the current exemption and, therefore, it is unnecessary to insert another review and repeal date.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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