

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: SB 462

SPONSOR: Agriculture

SUBJECT: Public Records

DATE: February 17, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Poole</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill reenacts section 828.30(5), Florida Statutes, maintaining a limited exemption from the public records act any information contained in a rabies vaccination certificate provided to an animal control authority which identifies the owner of the animal vaccinated.

This bill reenacts section 828.30(5), Florida Statutes.

II. Present Situation:

The Open Government Sunset Review Act provides for the automatic repeal of an exemption to the requirements of open government five years after it is initially enacted unless it is reviewed and reenacted by the Legislature. The act establishes a process for identifying those exemptions that are subject to review in a particular year, as well as provides the standard of review for the exemptions that are subject to review.

Section 828.30, F.S., requires that all dogs, cats, and ferrets four months of age or older must be vaccinated by a licensed veterinarian against rabies. (However, if a veterinarian certifies that the vaccination would endanger the animal's life, the vaccination may be postponed until its health permits.) The statute also requires the veterinarian to provide a copy of the rabies vaccination certificate to the animal's owner and to the animal control authority. The rabies vaccination certificate contains otherwise private information such as the name, address, and phone number of the veterinarian and owner. The statutory requirement that veterinarians must provide a rabies vaccination certificate to the animal control authority places the information into the public domain.

Subsection 828.30(5), F.S., provides for a limited exemption from public records any information contained in a rabies vaccination certificate provided to an animal control authority which identifies the owner of the animal vaccinated. This subsection was certified by the Division of Statutory Revision for repeal on October 2, 2003, unless otherwise reenacted by the Legislature.

III. Effect of Proposed Changes:

Requiring a veterinarian by statute to provide a rabies vaccination certificate to the animal control authority places otherwise private practice (business) information such as name, address, and phone number of the animal owner into the public domain.

Maintaining the limited exemption of public records pertaining to certain information contained in a rabies vaccination certificate, meets the criteria for exemption as set forth under s. 119.15(4)(b)3., F.S., while providing for public access to the information. Protection of information of a confidential nature concerning (business) entities specifically includes a 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 market place.

The proposed committee bill will reenact and maintain a limited exemption from the public records act any information contained in a rabies vaccination certificate provided to an animal control authority which identifies the owner of the animal vaccinated. The proposed committee bill also removes the language that requires the repeal of this public records exemption, effective October 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Florida has a long history of providing public access to the records of governmental and other public entities. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

(a) 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 there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.

The State Constitution, the Public Records Law, and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution. Section 119.07(1)(a), F.S., requires:

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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian’s designee. . . .

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. The term “public record” is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

The Legislature is expressly authorized to create exemptions to public records requirements. Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government.” The Public Records Act is liberally construed in favor of open

government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.

Exemptions to open government requirements are subjected to a review and repeal process five years after their initial enactment.

The Open Government Sunset Review Act of 1995 establishes a process for identifying those exemptions that are subject to review, as well as provides the standard that an exemption must meet to be recommended for reenactment.

As part of the review process, the Legislature is to consider:

- (1) What specific records or meetings are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?
- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Under s. 119.15(4)(b), F.S., an exemption may be created or expanded *only if* it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three specified criteria, one of which must be met by the exemption, are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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