

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 115A                      Public Records Exemption/Moffitt Cancer Center/Alzheimer's Center  
**SPONSOR(S):** Ambler  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration (Workshop)</u>	_____	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) and the Florida Alzheimer's Center and Research Institute (Alzheimer's Center) at the University of South Florida. The law also requires the organization of a Florida not-for-profit corporation to govern and operate the Cancer Center and Alzheimer's Center. Records of the corporation and its subsidiaries and the Alzheimer's Center are public records.

This bill expands the public records exemption for the Cancer Center to include: information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation; business transactions resulting from such research; and information received by the corporation from a person in this or another state or nation or the Federal Government which is otherwise exempt or confidential.

This bill expands the public records exemption for the Alzheimer's Center to include proprietary confidential business information. It also provides exceptions to the exemption.

This bill provides for future review and repeal of the exemptions and provides statements of public necessity.

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.**

**STORAGE NAME:** h0115A.sa.doc  
**DATE:** May 13, 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: Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### H. Lee Moffitt Cancer Center and Research Institute

###### Background

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida (USF). The law also requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Cancer Center. Records of the corporation and its subsidiaries are public records.<sup>1</sup>

Current law provides a public records exemption for proprietary confidential business information owned or controlled by the corporation or its subsidiaries. “Proprietary confidential business information” (CBI) means information that is “intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of the not-for-profit corporation or its subsidiaries”.<sup>2</sup>

The public records exemptions for the corporation and USF’s division of sponsored research differ. Because the corporation’s affiliation with USF includes “significant coordination and joint development research discoveries”, the differing public records exemptions have created confusion regarding the “scope of the protections of intellectual property enjoyed by” the corporation and USF.<sup>3</sup> According to the Cancer Center, conforming the corporation’s exemption to USF’s division of sponsored research exemption would allow the Cancer Center to more effectively fulfill its legislative mandate in the area of cancer research.

###### Effect of Bill

This bill expands the corporation’s exemption to include:

- Information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation or its subsidiaries.
- Business transactions resulting from such research.
- Information received by the corporation or its subsidiaries from a person in this or another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of this or another state or nation or pursuant to federal law.

<sup>1</sup> Section 1004.43, F.S.

<sup>2</sup> Section 1004.43(8)(b), F.S.

<sup>3</sup> Letter to Representative Haridopolos from the Cancer Center’s Director of Governmental Relations, January 22, 2003.

This bill provides for future review and repeal of the exemption, and provides a statement of public necessity.

## **Florida Alzheimer's Center and Research Institute**

### Background

Florida law also establishes the Florida Alzheimer's Center and Research Institute (Alzheimer's Center) at USF. The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Alzheimer's Center. Records of the corporation and its subsidiaries are public records.<sup>4</sup>

Current law provides a public records exemption for the personal identifying information of program clients, patient medical or health records, certain trade secret information, the identity of donors to the Alzheimer's Center, information received which is otherwise confidential and exempt, and exempt or confidential information received from a person from another state or nation or the Federal Government. Like the Cancer Center, the public records exemptions for the Alzheimer's Center and USF's division of sponsored research differ.

### Effect of Bill

This bill expands the Alzheimer's Center public records exemption in order to conform to those exemptions provided to the Cancer Center and USF's division of sponsored research. The exemption is expanded to include CBI. CBI includes information concerning:

- Internal auditing controls and reports of internal auditors;
- Contracts for managed-care arrangements and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;
- Bids or other contractual data, banking records, and credit agreements;
- Information relating to private contractual data;
- Corporate officer and employee personnel information;
- Information relating to the proceedings and records of credentialing panels and committees and of the governing board of the corporation or its subsidiaries relating to credentialing;
- Minutes of meetings of the governing board of the corporation and its subsidiaries;<sup>5</sup> and
- Information that reveals plans for marketing services that the corporation or its subsidiaries do not want revealed to its competitors.

The law also provides for an exception to the public records exemption. Upon request, the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the State Board of Education must be given access to all CBI pursuant to their oversight and auditing functions. The confidential and exempt<sup>6</sup> status of the information received must be maintained.

Finally, this bill provides for future review and repeal, and provides a statement of public necessity.

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<sup>4</sup> Section 1004.445, F.S.

<sup>5</sup> This does not include minutes of meetings that are open to the public.

<sup>6</sup> 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.

C. SECTION DIRECTORY:

Section 1. Amends s. 1004.43(8), F.S., expanding the current public records exemption for the Cancer Center.

Section 2. Provides for future review and repeal of the expanded Cancer Center exemption.

Section 3. Provides a statement of public necessity for such expansion.

Section 4. Amends s. 1004.445, F.S., expanding the public records exemption for the Alzheimer's Center by conforming it to the Cancer Center's exemption.

Section 5. Providing for future review and repeal of the expanded public records exemption for the Alzheimer's Center.

Section 6. Providing a statement of public necessity for such exemption.

Section 7. Provides that the act will take effect upon becoming a law.

**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:

### **Drafting Issues**

This bill expands the current public records exemption for the Cancer Center and the current exemption for the Alzheimer's Center. The title of the bill, however, also references public meetings exemptions.

### **Legislative History**

The public records exemptions contained in this bill are identical to those exemptions found in HB 387, 1<sup>st</sup> Eng., which was heard during the 2003 Regular Legislative Session. On May 1, 2003, HB 387 passed the House by a vote of 110-1. On May 2, 2003, the bill died in the Senate Committee on Education.

### **Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>7</sup> 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.

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>7</sup> Section 119.15, F.S.