

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29A Public Records and Meetings Exemptions/Florida Alzheimer's Center
SPONSOR(S): Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** None

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

SUMMARY ANALYSIS

Florida law establishes 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 Alzheimer's Center. Records of the Alzheimer's Center are public records.

This bill expands the public records exemption for the Alzheimer's Center to include proprietary confidential business information. It provides exceptions to the exemption. This bill also creates a public meetings exemption for the Alzheimer's Center for meetings or portions of meetings wherein confidential and exempt information is discussed.

This bill provides for future review and repeal of the exemptions and provides a statement 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: h0029A.sa.doc
DATE: May 12, 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:

Background

Florida law establishes the Florida Alzheimer’s Center and Research Institute (Alzheimer’s Center) at the University of South Florida (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.¹

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.

The public records exemptions for the Alzheimer’s Center and USF’s division of sponsored research differ. Because the center’s affiliation with USF includes 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 center and USF. Conforming the exemption for the Alzheimer’s Center to that of USF’s division of sponsored research would allow the center to more effectively fulfill its legislative mandate in the area of alzheimer’s research.

Effect of Bill

This bill expands the public records exemption for the Alzheimer’s Center in order to conform to the exemption provided to USF’s division of sponsored research. The exemption is expanded to include proprietary confidential business information (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;

¹ Section 1004.445, F.S.

- Minutes of meetings of the governing board of the corporation and its subsidiaries;² 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 exempt³ status of the information received must be maintained.

This bill also creates a public meetings exemption for the governing board of the Alzheimer's Center. Meetings or portions of meetings at which information made confidential and exempt, pursuant to the Center's public records exemption, is discussed are closed to the public.

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

C. SECTION DIRECTORY:

Section 1. Amends s. 1004.445, F.S., expanding the public records exemption for the Alzheimer's Center by conforming it to the exemption afforded USF's division of sponsored research, and creating a public meetings exemption for such center.

Section 2. Provides for future review and repeal of the expanded public records exemption and newly created public meetings exemption for the Alzheimer's Center.

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

Section 4. Provides that any law amended by this act, which was also amended by a law enacted at the 2003 Regular Session of the Legislature, will be construed as if the laws had been enacted at the same session of the Legislature.

Section 5. 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.

² This does not include minutes of meetings that are open to the public.

³ 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.

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:

Public Records and Public Meetings Laws

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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings 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, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, 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

⁴ Section 119.15, F.S.

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.