



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records of the Board of Funeral, Cemetery, and Consumer Services.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Chapter 2004-301, Laws of Florida (CS for CS for SB 528) created the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services. It established the composition, powers, and duties for the Board of Funeral, Cemetery and Consumer Services. The board is composed of 10 members, who are appointed by the governor from nominations made by the Chief Financial Officer (CFO). The board enforces the provisions of chapters 470<sup>1</sup> and 497, F.S.<sup>2</sup>, and the provisions of chapter 455, F.S.<sup>3</sup>, that are necessary to enforce the provisions of chapter 470, F.S.

The new law created the Division of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS). The director of the new division would be appointed by, and serve at the pleasure of, the CFO.

##### **Proposed Changes**

The bill creates a public records exemption for the Board of Funeral, Cemetery, and Consumer Services when:

- Holding meetings conducted for the exclusive purpose of developing or reviewing licensure examination questions and answers;
- Holding probable cause panel meetings; and
- Scheduling inspections and special examinations.

The following examinations and investigations are exempt under the bill:

- Information held by the Department pursuant to a financial inspection or examination ;
- Information, including any consumer complaint, held by the Department pursuant to an investigation of alleged unlicensed practice; and
- Complaints against licensees, investigative records relating to the investigation of the complaint, and portions of the record of probable cause panel proceedings relating to action concerning the complaint.

The bill provides a public records exemption for records of the Department that reveal any trade secret of a licensee or applicant for license or approval.

The public records exemption for information held by the Department pursuant to an investigation or examination will remain confidential until the investigation or examination is completed or ceases to be active.

The exemption for complaints against licensees are exempt until 10 days after a finding of probable cause has been made.

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<sup>1</sup> Funeral Directing, Embalming, and Direct Disposition

<sup>2</sup> Funeral and Cemetery Services

<sup>3</sup> Business and Professional Regulation General Provisions

The bill provides that certain information may be disclosed as follows:

- In furtherance of the investigation or examination, the Department may disclose information to experts to assist in the investigation and to witnesses, potential witnesses, or other persons believed to have knowledge pertinent to the examination or investigation.
- To the probable cause panel of the board for the purpose of probable cause proceedings.
- To any law enforcement agency for use in the performance of its official duties and responsibilities.
- In response to a media inquiry concerning a specific identified matter, the Department may confirm that it has the specific matter inquired about under investigation;
- When the Department in the course of an investigation uncovers information of immediate and serious concern to the public health, safety, or welfare, it may disseminate such information as it deems necessary for the public health, safety, or welfare.

Once an investigation or examination is completed or ceases to be active, information will remain confidential and exempt from public disclosure if disclosure would:

- Jeopardize another active investigation or examination;
- Reveal the identity of a confidential source; or
- Reveal investigative techniques or procedures.

An investigation, inspection, or examination is considered active if:

- The investigation, inspection, or examination is proceeding with reasonable dispatch; and
- The agency believes that the investigation, inspection, or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, or other approval required.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

#### C. SECTION DIRECTORY:

Section 1: Creates s. 497.172, F.S., to create a public records exemption for the Board of Funeral, Cemetery, and Consumer Services meetings conducted for developing or reviewing licensure examination questions and answers..

Section 2: Provides a statement of public necessity.

Section 3: Provides a October 1, 2005, effective date that is contingent upon the passage of HB 529 or substantially similar legislation.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could create a fiscal impact on the Department, because Department staff would have to be trained with regards to the categories of information that is made confidential and exempt from public disclosure versus records that are available for public inspection and copying. The

Department could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

**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:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The First Amendment Foundation (FAF) expressed concerns regarding the two meeting exemptions in the bill:

- The bill includes a public records exemption for meetings of members of the Board of Funeral, Cemetery, and Consumer Services when creating or reviewing licensure examination questions or answers. The FAF suggest that when a meeting closure is necessary, there be some record made of the meeting that becomes public at a certain point in the future for assurance that the board restricted itself to the discussions permitted.
- The bill includes a public records exemption for investigations into complaints, which become public ten days after a finding of probable cause. The FAF recommends that an amendment be filed providing that the investigative records become public regardless of whether or not probable cause is found.

## **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 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 & COMBINED BILL CHANGES**

N/A