

ENROLLED  
 HB 1469, Engrossed 1

2005 Legislature

1                                   A bill to be entitled  
 2           An act relating to public records and meetings exemptions;  
 3           creating s. 497.172, F.S.; creating a public meetings  
 4           exemption for the Board of Funeral, Cemetery, and Consumer  
 5           Services for those portions of meetings conducted for the  
 6           exclusive purpose of developing or reviewing licensure  
 7           examination questions and answers; creating a public  
 8           meetings exemption for probable cause panel meetings of  
 9           the board; creating a public records exemption for records  
 10          of exempt probable cause panel meetings for a time  
 11          certain; creating a public records exemption for records  
 12          relating to investigations, inspections, or examinations  
 13          in process for a time certain; maintaining the public  
 14          records exemptions under certain circumstances; creating a  
 15          public records exemption for trade secrets; providing for  
 16          future review and repeal; providing findings of public  
 17          necessity; providing a contingent effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1.   Section 497.172, Florida Statutes, is created  
 22 to read:

23           497.172 Public records exemptions; public meetings  
 24 exemptions.--

25           (1) EXAMINATION DEVELOPMENT MEETINGS.--Those portions of  
 26 meetings of the board at which licensure examination questions  
 27 or answers under this chapter are discussed are exempt from s.  
 28 286.011 and s. 24(b), Art. I of the State Constitution.

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29           (2) PROBABLE CAUSE PANEL.--  
 30           (a) Meetings of the probable cause panel of the board,  
 31 pursuant to s. 497.153, are exempt from s. 286.011 and s. 24(b),  
 32 Art. I of the State Constitution.  
 33           (b) Records of exempt meetings of the probable cause panel  
 34 of the board are exempt from s. 119.07(1) and s. 24(a), Art. I  
 35 of the State Constitution, until 10 days after a determination  
 36 regarding probable cause is made pursuant to s. 497.153.  
 37           (3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.--  
 38           (a) Except as otherwise provided in this subsection,  
 39 information held by the department pursuant to a financial  
 40 examination conducted under this chapter is confidential and  
 41 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 42 Constitution, until the examination is completed or ceases to be  
 43 active.  
 44           (b) Except as otherwise provided in this subsection,  
 45 information held by the department pursuant to an inspection  
 46 conducted under this chapter is confidential and exempt from s.  
 47 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
 48 the inspection is completed or ceases to be active.  
 49           (c) Except as otherwise provided in this subsection,  
 50 information held by the department pursuant to an investigation  
 51 of a violation of this chapter is confidential and exempt from  
 52 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 53 until the investigation is completed or ceases to be active or  
 54 until 10 days after a determination regarding probable cause is  
 55 made pursuant to s. 497.153.

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56 (d) Information made confidential and exempt pursuant to  
 57 this subsection may be disclosed by the department as follows:

58 1. To the probable cause panel of the board, for the  
 59 purpose of probable cause proceedings pursuant to s. 497.153.

60 2. To any law enforcement agency or other government  
 61 agency in the performance of its official duties and  
 62 responsibilities.

63 3. If the department uncovers information of immediate and  
 64 serious concern to the public health, safety, or welfare, it may  
 65 disseminate such information as it deems necessary for the  
 66 public health, safety, or welfare.

67 (e) Information made confidential and exempt pursuant to  
 68 this subsection shall remain confidential and exempt from s.  
 69 119.07(1) and s. 24(a), Art. I of the State Constitution after  
 70 the examination, inspection, or investigation is completed or  
 71 ceases to be active if:

72 1. The department submits the information to any law  
 73 enforcement agency or other administrative agency for further  
 74 examination or investigation. The information shall remain  
 75 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 76 of the State Constitution until that agency's examination or  
 77 investigation is completed or ceases to be active.

78 2. Disclosure of the information would:

79 a. Jeopardize the integrity of another active  
 80 investigation or examination;

81 b. Reveal the identity of a confidential source; or

82 c. Reveal investigative or examination techniques or  
 83 procedures.

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84 (f) For purposes of this subsection, an examination,  
 85 inspection, or investigation shall be considered active so long  
 86 as the examination, inspection, or investigation is proceeding  
 87 with reasonable dispatch and the department has a reasonable  
 88 good faith belief that the examination, inspection, or  
 89 investigation may lead to the filing of an administrative,  
 90 civil, or criminal proceeding or to the denial or conditional  
 91 grant of an application for license or other approval required  
 92 under this chapter.

93 (4) TRADE SECRETS.--Trade secrets, as defined in s.  
 94 688.002, held by the department or board, are confidential and  
 95 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 96 Constitution.

97 (5) REVIEW AND REPEAL.--This section is subject to the  
 98 Open Government Sunset Review Act of 1995 in accordance with s.  
 99 119.15, and shall stand repealed on October 2, 2010, unless  
 100 reviewed and saved from repeal through reenactment by the  
 101 Legislature.

102 Section 2. (1) The Legislature finds that it is a public  
 103 necessity that those portions of meetings of the Board of  
 104 Funeral, Cemetery, and Consumer Services at which licensure  
 105 examination questions or answers under chapter 497, Florida  
 106 Statutes, are discussed be made exempt from public meetings  
 107 requirements. Without the exemption, board members might not  
 108 propose new questions and answers and engage in full and free  
 109 discussion concerning existing and proposed questions and  
 110 answers. If questions and answers for licensure examinations are  
 111 disclosed to the public, the usefulness of those licensure

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112 examinations in ensuring that applicants have studied and  
113 learned the entire body of knowledge necessary for the safe and  
114 competent practice of their intended profession or occupation  
115 under chapter 497, Florida Statutes, would be severely  
116 undermined or eliminated. Therefore, without this exemption, the  
117 effective and efficient administration of the licensure process  
118 would be jeopardized.

119 (2) The Legislature finds that it is a public necessity  
120 that meetings of the probable cause panel of the board under  
121 chapter 497, Florida Statutes, be made exempt from the public  
122 meetings requirements. The Legislature also finds that it is a  
123 public necessity that records of exempt meetings of the probable  
124 cause panel be made exempt from public records requirements  
125 until 10 days after a determination regarding probable cause is  
126 made. If probable cause panel meetings and records of those  
127 meetings are open to the public, the purpose of those meetings  
128 would be thwarted and frustrated to the substantial detriment of  
129 the public health, safety, and welfare. Public oversight is  
130 still maintained because the records of those meetings are  
131 preserved and are available to the public after a determination  
132 of probable cause is made.

133 (3) (a) The Legislature finds that it is a public necessity  
134 that information held by the Department of Financial Services  
135 pursuant to a financial examination conducted under chapter 497,  
136 Florida Statutes, be made confidential and exempt from public  
137 records requirements until the examination is completed or  
138 ceases to be active. If a subject of a financial examination  
139 were able to discover that an examination was underway, that

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140 subject could frustrate and thwart the examination, thereby  
141 hindering the effective and efficient administration of the  
142 examination.

143 (b) The Legislature finds that it is a public necessity  
144 that information held by the department pursuant to an  
145 inspection conducted under chapter 497, Florida Statutes, be  
146 made confidential and exempt from public records requirements  
147 until the inspection is completed or ceases to be active. The  
148 premature release of such information could frustrate and thwart  
149 the inspection if the subject of an inspection were made aware  
150 that an inspection was to occur, thereby hindering the effective  
151 and efficient administration of the inspection.

152 (c) The Legislature finds that it is a public necessity  
153 that information held by the department pursuant to an  
154 investigation of a violation of chapter 497, Florida Statutes,  
155 be made confidential and exempt from public records requirements  
156 until the investigation is completed or ceases to be active or  
157 until 10 days after a determination regarding probable cause is  
158 made. If a subject of an investigation were able to discover  
159 that an investigation was underway, that subject could frustrate  
160 and thwart the investigation, thereby hindering the effective  
161 and efficient administration of the investigation.

162 (d) The Legislature finds that it is a public necessity to  
163 maintain the confidential and exempt status of the examination  
164 or investigation information if it has been provided to a law  
165 enforcement agency or other administrative agency for further  
166 examination or investigation. Release of such information prior

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167 to the completion of that examination or investigation would  
168 jeopardize the integrity of the examination or investigation.

169 (e) The Legislature finds that it is a public necessity to  
170 maintain the confidential and exempt status of the examination,  
171 inspection, or investigation information if release of such  
172 information would jeopardize the integrity of another active  
173 investigation or examination, reveal the identity of a  
174 confidential source, or reveal investigative or examination  
175 techniques or procedures. If such information were disclosed to  
176 the public, subjects of such other investigations could  
177 frustrate or thwart those investigations, jeopardize the safety  
178 of the confidential source, or affect the ability of the  
179 department to conduct investigations or examinations.

180 (4) The Legislature finds that it is a public necessity  
181 that a trade secret, as defined in s. 688.002, Florida Statutes,  
182 held by the Department of Financial Services or the Board of  
183 Funeral, Cemetery, and Consumer Services be made confidential  
184 and exempt from public records requirements. A trade secret  
185 derives independent economic value, actual or potential, from  
186 not being generally known to, and not being readily  
187 ascertainable by proper means by, other persons who can obtain  
188 economic value from its disclosure or use. Without an exemption  
189 from public records requirements for a trade secret held by the  
190 department or board, that trade secret becomes a public record  
191 when received and must be divulged upon request. Divulgence of  
192 any trade secret under the public records law would destroy the  
193 value of that property, causing a financial loss to the person  
194 or entity submitting the trade secret. Release of that

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195 information would give business competitors an unfair advantage  
196 and weaken the position of the person or entity supplying the  
197 trade secret in the marketplace.

198 Section 3. This act shall take effect October 1, 2005, if  
199 HB 529 or substantially similar legislation is adopted in the  
200 same legislative session or an extension thereof and becomes a  
201 law.