

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449

Public Records Exemption

SPONSOR(S): Ambler

TIED BILLS: None

IDEN./SIM. BILLS: SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>		<u>Williamson</u>	<u>Everhart</u>
2) <u>Economic Development, Trade & Banking Committee</u>			
3) <u>Education Appropriations Committee</u>			
4) <u>State Administration Council</u>			
5) _____			

SUMMARY ANALYSIS

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida. The law also requires a Florida not-for-profit corporation (corporation) to govern and operate the Cancer Center. Records of the corporation and its subsidiaries are public records, though previous legislatures made some of the records confidential and exempt from public disclosure.

This bill clarifies the corporation's public records exemption for proprietary confidential information relating to trade secrets. It also expands the exemption by making confidential and exempt information received by the corporation or its subsidiaries from a person within or outside of Florida that is otherwise exempt or confidential. It provides for future review and repeal of the exemption, and a statement of public necessity. The statement of public necessity, however, addresses the need to "clarify" the public records exemption relating to trade secrets.

The bill appears to have a minimal fiscal impact on state government. It does not appear to have a fiscal impact on local governments. See “FISCAL COMMENTS” section.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records of the H. Lee Moffitt Cancer Center and Research Institute.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer 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 Cancer Center. Records of the corporation and its subsidiaries are public records.¹

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."²

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.³ 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

The bill provides that 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, also is considered a trade secret⁴ for purposes of the public records exemption. Such information could fall under the current definition of trade secret, and therefore, could be considered a clarifying change; however, if such information does fall under the definition of trade secret, then the inclusion of the new language appears redundant.

The bill further provides that proprietary and confidential information relating to business transactions resulting from research also should be considered a trade secret for purposes of the exemption, and that the inclusion is merely a clarifying change. It is unclear what such information would include.

¹ Section 1004.43, F.S.

² Section 1004.43(8)(b), F.S.

³ Letter to former Representative Haridopolos from the Cancer Center's Director of Governmental Relations, January 22, 2003.

⁴ Section 688.002, F.S., defines "trade secret" as

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Last year's HB 147 (filed during the 2004 legislative session) included all of the above referenced information as part of the Cancer Center's public records exemption bill, and provided that inclusion of such information was an *expansion* of the current public records exemption. Thus, it is unclear whether this exemption only clarifies the exemption or, in actuality, expands the current public records exemption. A public necessity statement is only required when creating a public records exemption or "expanding" a current exemption.

The bill expands the current public records exemption by making confidential and exempt information received by the corporation or its subsidiaries from a person within this state or outside of Florida that is otherwise exempt or confidential. The word "person" includes a corporation or person.⁵ The public records exemption should be amended to reflect that the exemption applies to information received from another government agency.

The bill provides for future review and repeal of the exemption on October 2, 2010. It also provides a statement of public necessity. The statement of public necessity, however, addresses the need to "clarify" the public records exemption relating to trade secrets. A public necessity statement is only required when creating a public records exemption or *expanding* a current exemption. Since the bill only clarifies the exemption with regards to trade secrets, it is recommended that the portion of the public necessity statement referring to such clarification be removed from the bill.

C. SECTION DIRECTORY:

Section 1 amends s. 1004.43, F.S., relating to the public records exemption for the H. Lee Moffitt Cancer Center and Research Institute.

Section 2 provides for future review and repeal of the exemption.

Section 3 provides a statement of public necessity.

Section 4 provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

Unknown and likely minimal. See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. The bill does not regulate the conduct of persons in the private sector.

⁵ Section 1.01(3), F.S.

D. FISCAL COMMENTS:

The bill could likely create a fiscal impact on the corporation, because staff would have to be trained with regards to the additional categories of information that are being made confidential and exempt from public disclosure. In addition, the corporation could incur costs associated with redacting the additional categories of confidential and exempt information prior to releasing a record.

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:

Other Comments

Section 24(c), Article I of the State Constitution, requires that newly created public records exemptions, or exemptions that have been expanded, be in a separate bill that contains a public necessity statement. The bill contains a public necessity statement that argues that a majority of the changes to the corporation's current public records exemption are only clarifying changes. If the changes are truly clarifying changes then the portion of the public necessity statement pertaining to such issue should be removed. If, however, the bill is expanding the exemption, then the public necessity statement should be changed to address such expansion.

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 1995⁶ 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

⁶ Section 119.15, F.S.

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

Not applicable.