

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1451 Public Records
SPONSOR(S): Gannon
TIED BILLS: HB 1449 **IDEN./SIM. BILLS:** SB 2564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	9 Y, 0 N	Ciccione	Brown-Barrios
2) Governmental Operations Committee		Williamson	Williamson
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1451 creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt from public records requirements: an individual's medical record and any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt. The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

This bill does not grant rule-making authority to any administrative agency.

This 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 access to public records.

B. EFFECT OF PROPOSED CHANGES:

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, however, may 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 also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It 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:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- Protecting trade or business secrets.

Effect of Bill

This bill creates a public records exemption for the Florida Center for Brain Tumor Research. The following information is confidential and exempt¹ from public records requirements:

- An individual's medical record.
- Information received from an individual from another state or nation or the Federal Government, which is confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

¹ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates 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 the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.8531, F.S., to create a public records exemption for the Florida Center for Brain Tumor Research.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date that is contingent upon the passage of HB 1449 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill could create a fiscal impact on the Florida Center for Brain Tumor Research, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the center could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24 (c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Title of the Bill

Lines 3 through 6 of the title provide that the bill creates a public records exemption for personal identifying information contained in records of the Florida Center for Brain Tumor Research. The bill, however, creates a public records exemption for medical records and information received from another state or nation or the Federal Government, which is confidential or exempt. The sponsor may want to consider an amendment to conform the title to the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.