

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 2564

INTRODUCER: Senator Atwater

SUBJECT: Public Records Exemption for the Florida Center for Brain Tumor Research

DATE: April 22, 2006

REVISED: 04/25/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/2 amendments</u>
2.	<u></u>	<u></u>	<u>CM</u>	<u></u>
3.	<u></u>	<u></u>	<u>GO</u>	<u></u>
4.	<u></u>	<u></u>	<u>RC</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

The bill creates a public records exemption for certain information contained in records of 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 creates s. 381.8531, Florida Statutes, and an undesignated section of law.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The state's Public Records Act, in ch. 119, F.S., and the public meetings law, in ch. 286, F.S., were first enacted in 1967.¹ These statutes have been amended numerous times since their enactment.

¹ Chs. 67-125 and 67-356, L.O.F.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment, which guaranteed and expanded the practice. Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches of government and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution. All meetings of any collegial public body must be open and noticed to the public.

The State Constitution authorizes exemptions to the open government requirements and establishes the means by which these exemptions are to be established. Under Art. I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records and meetings. A law enacting an exemption:

- Must state with specificity the public necessity justifying the exemption;
- Must be no broader than necessary to accomplish the stated purpose of the law;
- Must relate to one subject;
- Must contain only exemptions to public records or meetings requirements; and
- May contain provisions governing enforcement.

Exemptions to public records and meetings requirements are strictly construed because the general purpose of open records and meetings requirements is to allow Florida's citizens to discover the actions of their government.

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.

The Florida Brain Tumor Registry and the Florida Center for Brain Tumor Research

Senate Bill 2566 (2006) requires the Department of Health (DOH or department) to develop and maintain a brain tumor registry that is an automated, electronic, and centralized database of individuals with brain tumors. Individuals, or their guardians or representatives, may refuse to have the individual's information released to the registry by signing a form obtained from DOH.

The bill also establishes the Florida Center for Brain Tumor Research within the Scripps Research Institute. The purpose of the center is to provide a central repository for brain tumor biopsies from individuals throughout the state, improve and monitor biomedical research within the state, facilitate funding opportunities, and foster improved technology transfer of brain tumor research findings into clinical trials and widespread public use. The goal of the center is to find cures for brain tumors.

Current Public Records Exemption for the Florida Cancer Registry Program

Section 385.202, F.S., provides for the establishment of a statewide cancer registry program to ensure that cancer reports are maintained and available for use in the course of any study for the purpose of reducing morbidity and mortality.

Under Florida's cancer registry requirements, specified facilities and practitioners that diagnose or suspect the existence of cancer are required to report through the Florida Cancer Data System (FCDS), such cancer incidence information as specified by Rule 64D-3.006, F.A.C., including: routine personal and demographic data, diagnosis, stage of disease at diagnosis, medical history, laboratory data, tissue diagnosis, and initial course of treatment. Facilities and practitioners required to report this information include: each facility licensed under ch. 395, F.S.; any licensed practitioner in the state that practices medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; each freestanding radiation therapy center as defined in ch. 408, F.S.; and any laboratory licensed under ch. 483, F.S. Failure to report this information may be cause for registration or licensure suspension or revocation.

Section 385.202(3), F.S., provides a public records exemption to DOH to protect the personal health information included in the cancer registry. Specifically, the public records exemptions states:

“. . . Information which discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied shall be confidential and exempt from the provisions of s. 119.07(1), F.S., except that:

- (a) Release may be made with the written consent of all persons to whom the information applies;
- (b) The department or a contractual designee may contact individuals for the purpose of epidemiologic investigation and monitoring, provided information that is confidential under this section is not further disclosed; or

(c) The department may exchange personal data with any other governmental agency or a contractual designee for the purpose of medical or scientific research, provided such governmental agency or contractual designee shall not further disclose information that is confidential under this section.”

III. Effect of Proposed Changes:

Section 1. Creates s. 381.8531, F.S., to exempt certain data held by the Florida Center for Brain Tumor Research from the public records requirements of s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution. The following information held by the Florida Center for Brain Tumor Research, which is located within the Scripps Research Institute, is confidential and exempt:

- An individual’s medical record.
- Any information received from an individual from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. States the reasons the Legislature finds that it is a public necessity that an individual’s medical record held by the brain tumor registry developed pursuant to s. 381.853(3), F.S., be made confidential and exempt from public records requirements.

Section 3. This bill takes effect July 1, 2006, if Senate Bill ___ or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill creates a new exemption and is, therefore, subject to a two-thirds vote of each house of the Legislature as required by Article I, Section 24 of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides a public records exemption for an individual's medical record held by the Florida Center for Brain Tumor Research. The term "medical record" is imprecise in the context of the center, which is charged with providing a central repository for brain tumor biopsies. The exemption also does not authorize release of information for research purposes.

The bill does not create a public records exemption for the brain tumor registry created in the Department of Health under s. 381.853, F.S., (created in SB 2566). Information contained in the registry would therefore be available to the public.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 791584 by Health Care:

This amendment references the substantive bill that is linked to this public records exemption.

Barcode 913910 by Health Care:

This amendment corrects a title defect.

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