

# 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.)

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/SB 514

INTRODUCER: Governmental Oversight and Productivity Committee and Health Care Committee

SUBJECT: Open Government Sunset Review of Elder Affairs' Personal Identifying Information Exemption

DATE: February 8, 2006

REVISED: \_\_\_\_\_

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

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## I. Summary:

This bill reenacts and amends s. 430.105, Florida Statutes, to continue the public records exemption for personal identifying information in records about clients of the Department of Elderly Affairs (DOEA) relating to their receipt of services in programs administered or funded by the department. The bill removes redundant language and authorizes the DOEA to provide this information to other government agencies for the purpose of administering the DOEA's programs for the elderly.

This bill amends s. 430.105, F.S.

## 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.<sup>1</sup> These statutes have been amended numerous times since their enactment.

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

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<sup>1</sup> Chapters 67-125 and 67-356, L.O.F.

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.

### **The Need for Confidentiality of Personal Identifying Information in Records Maintained by the DOEA**

The 2001 Florida Legislature consolidated several of the DOEA's statutory provisions exempting its consumers' health and financial information from public disclosure. These provisions were usually related to specific programs within the department. CS/SB 1726 (ch. 2001-194, Laws of Florida) established a single statutory public records exemption (s. 430.105, F.S.) for personal identifying information relating to receipt of services in programs administered or funded by the DOEA.

The exemption provided under s. 430.105, F.S., affects a broad range of personal identifying information obtained from the department's clients and applicants for its programs including: name, address, telephone number, Social Security number, Medicaid identification number (if applicable), and health information, including actual medical records obtained as a result of a person applying for or receiving services provided through the DOEA.

The public necessity originally identified for the public records exemption was:

For elderly persons needing the services of the department [DOEA] this [exemption] is even more important since elderly persons are often targets for those seeking to capitalize on their weaknesses...[and] the individual's expectation and right to privacy in all matters relating to his or her personal health and eligibility for services provided by the department, or its agents, necessitates this exemption.<sup>2</sup>

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<sup>2</sup> Chapter 2001-194, L.O.F.

There is data, although it is limited, to support the concern that disclosing personal identifying information for the DOEA clients and applicants puts the elderly at risk. The National Center on Elder Abuse states that it is difficult to determine exactly how many older Americans are abused, neglected, or exploited, in large part because surveillance is limited and the problem remains greatly hidden. However, various studies indicate that between 2 percent and 10 percent of persons over the age of 65 is the victim of abuse, neglect, or exploitation at any given time, and that as many as 5 million cases of financial exploitation of the elderly occur annually. The Center stresses that these numbers may actually be low and estimates that for every one case of elder abuse, neglect, or exploitation that is reported to authorities, about five more may go unreported.<sup>3</sup>

### **Senate Interim Project Report 2006-222**

Section 430.105, F.S., specifies that the exemption is subject to the Open Government Sunset Review Act of 1995, in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Senate Health Care Committee staff reviewed the provisions and applicable law pursuant to the criteria specified in the Open Government Sunset Review Act of 1995 (2004), to determine if the provisions of s. 430.105, F.S., making personal identifying information relating to an individual's health or eligibility for the DOEA's programs and services exempt from the Public Records Law, should be continued or modified. Staff consulted with and surveyed the DOEA staff and other interested parties in conducting the Open Government Sunset Review of s. 430.105, F.S. Staff also reviewed the Senate analysis of the bill (CS/SB 1726) which created this public records exemption.

The department's response to the Committee's Open Government Sunset Review questionnaire emphasizes that the same public necessity still exists and that the need for maintaining the exemption is of "paramount importance to elders and their families in Florida." The department's response provides that

Persons seeking services from the Department of Elder Affairs are often aged, frail, lacking full cognitive ability, and [are] generally in poor health...[and] If the confidential information used to determine eligibility for the department's various assistance programs and to track the ongoing health of the department's clients were readily available to anyone who requested it, these most vulnerable citizens could fall prey to those seeking to capitalize on their weaknesses.<sup>4</sup>

The DOEA reports that this exemption affects only their elderly clients, as opposed to the general public, by providing them the security of knowing they can access the department's services without sacrificing their privacy. The department also states that most of the information collected and made exempt by s. 430.105, F.S., can be obtained by alternative means, although other federal or state laws may limit access. For example, medical information may only be obtainable through consent of the client or methods specified in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

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<sup>3</sup> National Center for Elder Abuse. *Fact Sheet: Elder Abuse Prevalence and Incidence*. April 5, 2005.

<sup>4</sup> DOEA response to Open Government Sunset Review Questionnaire, July 2005.

Senate Health Care Committee staff found that the exemption meets the requirements for reenactment with some changes. The exemption, viewed against the open government sunset review criteria, does protect information of a sensitive personal nature concerning individuals, the release of which information would jeopardize the safety of such individuals. The exemption also allows the DOEA to effectively and efficiently manage its various programs by creating an environment in which its elderly clients are willing to share personal information necessary for the department's staff to identify appropriate services to meet the individual's needs.

Both legislative staff and the DOEA identified issues with the current exemption that warrant amending the statute. The Department of Elderly Affairs suggested clarifying that the exemption applies to persons applying for services as well as to those actively receiving services. Legislative staff identified some redundancy in the current statute and, more seriously, a question of whether the confidential and exempt nature of the statute's language may actually prohibit the disclosure of personal identifying information to other state agencies and departments that coordinate with the DOEA to provide services (e.g., the Agency for Health Care Administration, the Department of Children and Families, etc.).

Accordingly, staff recommended that the exemption in s. 430.105, F.S., be reenacted and amended to remove redundant language and to specify that confidential and exempt records maintained by the DOEA may be provided to other government departments and agencies for the purpose of administering the DOEA's programs for the elderly.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 430.105, F.S., relating to the public records exemption for personal identifying information in records held by the DOEA, which relate to an individual's health, receipt of services, or eligibility for services, to authorize this information to be shared with other government entities in the furtherance of their duties and responsibilities and to delete the provision that repeals the exemption.

**Section 2.** Provides that the bill will take effect October 1, 2006.

### **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 Art. VII, s. 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 403.105, F.S., and preserves the public records exemption in that section. The amendments do not expand the exemption. The bill complies with the requirements of Art. I, s. 24(a) 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 Art. 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:**

None.

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

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## VIII. Summary of Amendments:

**Barcode 654898 by Health Care:**

This amendment deletes redundant language – in records.

**Barcode 970568 by Health Care:**

Clarifies the purpose of the department disclosing exempt information to other governmental entities.

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