

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7043      PCB GO 06-18      OGSR Long-term Care Services  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:** None                                      **IDEN./SIM. BILLS:** CS/SB 514

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Elder & Long-Term Care Committee	7 Y, 0 N	Walsh	Walsh
2) State Administration Council	8 Y, 0 N	Williamson	Bussey
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

The bill reenacts the public records exemption for personal identifying information that relates to an individual's health or eligibility or receipt of health-related, elder care, or long-term care services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Department of Elderly Affairs (DOEA) is tasked with a variety of responsibilities, including serving as the primary state agency responsible for administering human services programs for the elderly<sup>1</sup> and promoting the maintenance and improvement of the physical well-being and mental health of elderly persons.<sup>2</sup> To accomplish these purposes, the DOEA offers a variety of services. Some services first require an individual to submit personal information regarding his or her identity, physical health, and financial resources in order to determine eligibility and to arrange for receipt of services.<sup>3</sup>

In 2001, the Legislature enacted s. 430.105, F.S., which consolidated a number of the DOEA's public records exemptions. Personal identifying information relating to an individual's health or eligibility for or receipt of health-related, elder care or long-term care services is confidential and exempt<sup>4</sup> from public records requirements. Such information may not be disclosed publicly unless the affected client or elder person or his or her legal representative provides written consent. Pursuant to the Open Government Sunset Review Act,<sup>5</sup> the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

##### Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes and removes superfluous language.

#### C. SECTION DIRECTORY:

Section 1 amends s. 430.105, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

### 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.

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<sup>1</sup> Section 430.03(1), F.S.

<sup>2</sup> Section 430.03(11), F.S.

<sup>3</sup> For example, the DOEA states its nursing home pre-admission screening program involves medical and functional assessments of potential clients.

<sup>4</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>5</sup> Section 119.15, F.S.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

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 local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### 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. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.