



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill expands the public records exemption thereby decreasing public access to government information.

### B. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Financial Account Numbers

Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).<sup>1</sup> The exemption applies to all agencies.<sup>2</sup>

##### Medical and Health Information

Current law provides several agency-specific public records exemptions for medical and health information. For example, the Florida Automobile Joint Underwriting Association has a public records exemption for information relating to the medical condition or medical status of an employee.<sup>3</sup> Medical information pertaining to an agency employee is exempt from public records requirements.<sup>4</sup> The health records of a veteran admitted to residency at the Veterans' Domiciliary Home of Florida are confidential and exempt.<sup>5</sup> An exemption applicable to all agencies for medical and health information does not exist.

##### Department of Health

Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.<sup>6</sup> The information is confidential and exempt<sup>7</sup> and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

Pursuant to the Open Government Sunset Review Act,<sup>8</sup> the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

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<sup>1</sup> Section 119.071(5)(b), F.S.

<sup>2</sup> "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.

<sup>3</sup> Section 627.311(4), F.S.

<sup>4</sup> Section 119.071(4)(b), F.S.

<sup>5</sup> Section 296.09, F.S.

<sup>6</sup> Section 119.0712(1), F.S.

<sup>7</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>8</sup> Section 119.15, F.S.

## Effect of Bill

The bill reenacts and expands the public records exemption for the Department of Health. The bill expands the exemption to include medical and health information held by *any* agency, thus, creating a general exemption from public records requirements. It provides for retroactive application of the exemption.<sup>9</sup>

The bill removes the exemption for financial account numbers because it is duplicative of the general exemption<sup>10</sup> found in current law.

Current law authorizes the release of medical or health information to a health research entity that has entered into a data-use agreement with the department. The bill continues this exception; however, it reorganizes the requirements that must be included in the data-use agreement.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution.

### C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public records exemption for medical and health records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

See FISCAL COMMENTS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

See FISCAL COMMENTS.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>9</sup> In 2001, the Florida Supreme Court ruled that a public records exemption does not apply retroactively unless the legislation clearly provides for retroactive application of the exemption. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>10</sup> Section 119.071(5)(b), F.S.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are 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 employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

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:

Vote Requirement

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. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer 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.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

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, 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.