

The Florida Senate
PROFESSIONAL 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: Governmental Operations Committee

BILL: CS/SB 1034

INTRODUCER: Governmental Operations Committee, Health Regulation Committee and Senator Atwater

SUBJECT: Public Records and Meetings Exemptions

DATE: April 2, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.	Rhea	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill creates an exemption from the requirements of the Public Records Law to make all personal identifying information contained in records provided by Florida-licensed allopathic and osteopathic physicians in response to the physician workforce survey required by the Department of Health (DOH) as a condition of license renewal and held by the DOH confidential and exempt. The confidential and exempt information may be disclosed upon the consent of the individual to whom the information pertains, by order of a court, and to research entities under specified conditions. The bill provides a statement of public necessity for the public records exemption created in the bill.

The bill provides an effective date on the same date that Senate Bill 770, or similar legislation requiring a physician survey as a condition of licensure, takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

This bill creates two sections of undesignated law.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later,

¹ Section 1390, 1391 F.S. (Rev. 1892).

Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ The Public Records Law specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

² Article I, s. 24 of the State Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to 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, except those records exempted by law or the state constitution.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Inspection of Information Required from Health Care Practitioner Licensure Applicants

Section 456.014(1), F.S., establishes public access to information obtained by the DOH regarding licensure applicants, with specified exceptions.

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency, which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department or the agency.

Under the Federal Privacy Act, disclosure of social security numbers is voluntary unless specifically required by federal statute. Social security numbers are mandatory pursuant to Title 42 United States Code, sections 653 and 654; and ss. 456.004(9), 409.2577, and 409.2598, F.S. Social security numbers are used to allow efficient screening of health care practitioner applicants and licensees by the Title IV-D child support agency to assure compliance with child support obligations. Social security numbers are recorded on all professional and occupational license applications and are used for licensee identification pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), 104 Pub. L. 193, Section 317.

Physician Workforce Data

Recently, the Council on Graduate Medical Education, a national advisory organization that makes recommendations on the adequacy of the supply and distribution of physicians, predicted

that the demand for physicians, nationally, would significantly outpace the supply.⁵ In Florida, the costs of medical malpractice insurance, the recent adoption of a constitutional amendment that prohibits licensure or continued licensure of physicians who have committed three or more incidents of medical malpractice, displacement of medical students and licensed physicians by natural disasters, and other variables, may affect the number of students applying to medical schools in Florida and the number of allopathic and osteopathic physicians applying for licensure and practicing in Florida. Floridians' access to necessary health care services could be adversely affected by a shortage of licensed physicians practicing in Florida.

The statewide collection of physician data and its analysis is fragmented in Florida. Under s. 408.05, F.S., the Florida Center for Health Information and Policy Analysis within the Agency for Health Care Administration (AHCA) must collect data on health resources, including physicians, dentists, nurses, and other health care professionals. The Division of Health Access and Tobacco within the DOH administers several programs that relate to physician access. The Florida Medicaid program in AHCA has claims data for physicians participating in the Medicaid program. Although several entities collect information on Florida physicians, there is no centralized responsibility for statewide collection and analysis of health workforce data, including physician data.

In Florida, a number of efforts have been made to create a health care or physician work force database available for use by state policymakers. *Senate Interim Project 2004-164* concluded that in Florida, although there are several health care workforce data initiatives, there is no centralized repository for statewide health workforce data. The report focused on data relating to physicians.

Senate Interim Project Report 2006-136, also found that, although a variety of information is collected about physicians, there is no centralized repository for physician workforce data in Florida and much of the data that is collected is not systematically updated, verified, or analyzed for purposes of ensuring that Floridians have access to needed physician services. Information submitted as part of the licensure process by medical physicians and osteopathic physicians, and related procedures such as profiling, may serve as a primary vehicle for the collection of physician workforce data. The report recommends that the Division of Health Access and Tobacco within the DOH should be funded and charged to monitor, evaluate, and report on the supply and distribution of physicians using data from other public and private sources. The report also recommends that at a minimum, the division should develop a strategy to track and analyze, on an ongoing basis, the distribution of Florida-licensed physicians by specialty and geographic location.

As a part of the license renewal of allopathic physicians in October 2006, the DOH sent a survey⁶ to the physicians, which included some questions developed by stakeholders interested in physician workforce data. The department reports that responses to the survey were voluntary and that a response rate of 84 percent was achieved.

⁵ See Report by the Council on Graduate Medical Education, "Physician Workforce Policy Guidelines for the United States, 2000-2020 Sixteenth Report January 2005."

⁶ Section 120.52, F.S., defines "rule" in part, to mean each agency statement of general applicability that... solicits any information not specifically required by statute or by an existing rule. The Department of Health did not adopt the survey as a rule.

III. Effect of Proposed Changes:

The bill makes all personal identifying information contained in records provided by Florida-licensed allopathic and osteopathic physicians in response to the physician workforce survey required by the DOH as a condition of license renewal and held by the DOH confidential and exempt from the Public Records Law. The confidential and exempt information may be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative;
- By court order upon a showing of good cause;
- To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by the DOH, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4), F.S.

The DOH may deny a request for records or data if the protocol provides for intrusive follow-back contacts, or does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement between the DOH and the research entity must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the DOH.

The bill makes the exemption subject to the Open Government Sunset Review Act and the exemption shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption. Candid and honest responses from physicians will ensure that timely and accurate information is available to the DOH to review and use in making important policy decisions regarding the use of resources to facilitate the needs of current or projected medically underserved areas in Florida. Accurate and honest information from the physician surveys will assist state policymakers in their decision to ensure the availability of quality medical schools and graduate medical education and the development of strategies that might provide for physicians to practice in needed specialties and in underserved areas in a manner that addresses projected needs for physician manpower. The Legislature finds that the failure to maintain the confidentiality of such personal identifying information would frustrate and prevent the resolution of important state interests to implement and maintain effective strategies to ensure the availability of physicians in the State of Florida

The bill provides an effective date on the same date that Senate Bill 770, or similar legislation requiring a physician survey as a condition of licensure, takes effect if such 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:

This bill creates an exemption from the requirements for public records and meetings, and therefore is subject to the two-thirds vote requirement of Article I, Section 24 of the State Constitution and must contain a statement of public necessity to justify the exemption.

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:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
