

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – this bill ensures that patient records are confidential and exempt from public disclosure.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government to be open and noticed to the public. The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995¹ 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.

House Bill 1121

House Bill 1121 creates s. 408.064, F.S., forming the Florida Health Information Network Corporation as a public/private partnership that will establish a secure, privacy-protected, and integrated statewide network for the communication of electronic health information. The not-for-profit corporation will be managed by an uncompensated board of directors that will consist of 15 members.

The primary duty of the Florida Health Information Network Corporation is implementing and overseeing a statewide health information network. Among the other duties given to the corporation, the Florida Health Information Network Corporation is charged with developing and enforcing interoperability, privacy, and security standards, fostering the creation and expansion of regional health information organizations, and recruiting participants into the network.

Effect of Proposed Changes

¹ s. 119.15, F.S.

HB 1123 creates s. 408.0641, F.S., to provide a public records exemption for certain information held by the Florida Health Information Network, Inc. The confidential and exempt² information includes:

- A patient's medical or health record;
- Trade secrets as defined in the Uniform Trade Secrets Act;³ and
- Any information received from a person 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.

The bill provides that the patient medical records may be disclosed with a patient's written consent and in a medical emergency.

The bill provides for future review and repeal of the exemption on October 2, 2012, pursuant to the Open Government Sunset Review Act.⁴ It also provides a statement of public necessity and provides a contingent effective date.

C. SECTION DIRECTORY:

Section 1. Creates s. 408.0641, F.S., to create a public records exemption for a patient's medical records, trade secrets, and any other information that is confidential under state or federal law held by the Florida Health Information Network Corporation.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

² 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).

³ Section 688.002, F.S.

⁴ Section 119.15, F.S.

None.

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 appear to affect municipal or county government.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida 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 creates a public records exemption and thus requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity for a newly created public records or public meetings exemption. The bill creates a public records exemption and thus includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

"The FHIN is the single most transformative initiative possible to improve quality and efficiency in the entire health care sector - both government and private."

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES