

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 485 Pub. Rec./Dental Workforce Surveys

**SPONSOR(S):** Patronis and others

**TIED BILLS:** HB 483 **IDEN./SIM. BILLS:** CS/SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
2) Health & Human Services Quality Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

House Bill 483 requires all Florida licensed dentists and dental hygienists to complete a workforce survey as a part of their licensure renewal, beginning in 2012. In 2012, licensure renewal is not contingent upon the completion and submission of the dental workforce survey; however, the Board of Dentistry may not renew the license of any dentist or dental hygienist for subsequent renewals until the survey is completed and submitted by the licensee.

House Bill 485 creates a public record exemption for personal identifying information contained in records provided by dentists or dental hygienists, in response to a dental workforce survey that is required as a condition of license renewal. Such information must be disclosed:

- With the express written consent of the individual to whom the information pertains or to the individual's legally authorized representative.
- By court order upon a showing of good cause.
- To a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution, and provides an effective date that is contingent upon the passage of House Bill 483 or similar legislation.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 24(a) of the State 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

##### Workforce Surveys

House Bill 483 requires all Florida licensed dentists and dental hygienists to complete a workforce survey as a part of their licensure renewal, beginning in 2012. In 2012, licensure renewal is not contingent upon the completion and submission of the dental workforce survey; however, the Board of Dentistry may not renew the license of any dentist or dental hygienist for subsequent renewals until the survey is completed and submitted by the licensee.

Medical physicians and osteopathic physicians are required to respond to physician workforce surveys required as a condition of license renewal.<sup>3</sup> All personal identifying information contained in records provided by physicians in response to these physician workforce surveys are confidential and exempt from public records requirements.<sup>4</sup>

#### **Effect of Bill**

The bill creates a public record exemption for certain information held by the Department of Health (department) in response to dental workforce surveys. Personal identifying information contained in records provided by dentists or dental hygienists, in response to a dental workforce survey that is required as a condition of license renewal, is confidential and exempt<sup>5</sup> from public records requirements.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 381.4018, F.S.

<sup>4</sup> Section 458.3193, F.S.

<sup>5</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA

Such information must be disclosed:

- With the express written consent of the individual to whom the information pertains or to the individual's legally authorized representative.
- By court order upon a showing of good cause.

In addition, such information must be disclosed to a research entity, if the entity seeks the record or data pursuant to a research protocol approved by the department. The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with the department. The agreement must restrict the release of information that would identify individuals, limits 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 remain the property of the department.

In addition, the department may deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution,<sup>6</sup> and provides an effective date that is contingent upon the passage of House Bill 483 or similar legislation.

#### B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law that creates a public record exemption for personal identifying information of dentists or dental hygienists contained in a response to a dental workforce survey.

Section 2 provides a public necessity statement.

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:

None.

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1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>6</sup> Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.