

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 579 Pub. Rec./Regional Autism Centers

SPONSOR(S): Coley and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1192

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|------------------|------------|--|
| 1) Government Operations Subcommittee | 10 Y, 0 N, As CS | Williamson | Williamson |
| 2) K-20 Innovation Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

Current law designates seven regional autism centers (center) throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have autism, a pervasive developmental disorder that is not otherwise specified, an autistic-like disability, a dual sensory impairment, or a sensory impairment with other handicapping conditions. Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts.

The bill creates a public record exemption for all records relating to a client of a regional autism center who receives the services of a center or participates in center activities, and all records relating to the client's family. The bill authorizes the release of the confidential and exempt records under certain circumstances.

The bill also creates a public record exemption for personal identifying information of a donor or prospective donor to the center who desires to remain anonymous.

The bill provides for repeal of the exemptions 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.

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 new public record exemptions; 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.¹

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 Act² 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.

Regional Autism Centers

Current law designates seven regional autism centers (center) throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have autism, a pervasive developmental disorder that is not otherwise specified, an autistic-like disability, a dual sensory impairment, or a sensory impairment with other handicapping conditions. Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts.³ The seven centers are located at the:

- College of Medicine at Florida State University;⁴
- College of Medicine at the University of Florida;⁵
- University of Florida Health Science Center;⁶
- Louis de la Parte Florida Mental Health Institute at the University of South Florida;⁷
- Mailman Center for Child Development and the Department of Psychology at the University of Miami;⁸

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ Section 1004.55(1), F.S.

⁴ The College of Medicine at Florida State University serves Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties. Section 1004.55(1)(a), F.S.

⁵ The College of Medicine at the University of Florida serves Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union Counties. Section 1004.55(1)(b), F.S.

⁶ The University of Florida Health Science Center at Jacksonville serves Baker, Clay, Duval, Flagler, Nassau, and St. Johns Counties. Section 1004.55(1)(c), F.S.

⁷ The Louis de la Parte Florida Mental Health Institute at the University of South Florida serves Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. Section 1004.55(1)(d), F.S.

- College of Health and Public Affairs at the University of Central Florida;⁹ and
- Department of Exceptional Student Education at Florida Atlantic University.¹⁰

Each center must provide expertise in autism, autistic-like behaviors, and sensory impairments; individual and direct family assistance; technical assistance and consultation services; professional training programs; public education programs; coordination and dissemination of local and regional information regarding available resources; and support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.¹¹

Effect of Bill

The bill creates a public record exemption for all records relating to a client of a regional autism center who receives the services of a center or participates in center activities, and all records relating to the client's family. Such records are made confidential and exempt¹² from public records requirements.

Upon request, a client who receives services from the center, if competent, or the client's parent or legal guardian, if the client is incompetent, must be provided with a copy of the client's individual record.

Confidential and exempt records may be released to physicians, attorneys, and governmental entities having need of the record in order to aid a client, as authorized by the client if competent, or as authorized by the client's parent or legal guardian if the client is incompetent. The center must produce the confidential and exempt records in response to a subpoena or as authorized by court order. In addition, the State Board of Education or the Board of Governors of the State University System may have access to such records when the director of the center deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation or programs.

Provided that personal identifying information of a client or the client's family has been removed, the bill authorizes a center to release information as follows:

- To a person engaged in bona fide research if that person agrees to sign a confidentiality agreement with the center, agrees to maintain the confidentiality of the information received, and, to the extent permitted by law and after the research has concluded, destroy any confidential information obtained.
- For statistical and research purposes by the director of the center or designee, provided that any confidential and exempt information is removed in the reporting of such statistical or research data.

The bill also provides a public record exemption for personal identifying information of a donor or prospective donor to the center who desires to remain anonymous.

The bill provides for repeal of the exemptions 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.¹³

⁸ The Mailman Center for Child Development and the Department of Psychology at the University of Miami serves Broward, Miami-Dade, and Monroe Counties. Section 1004.55(1)(e), F.S.

⁹ The College of Health and Public Affairs at the University of Central Florida serves Brevard, Lake, Orange, Osceola, Seminole, Sumter, and Volusia Counties. Section 1004.55(1)(f), F.S.

¹⁰ The Department of Exceptional Student Education at Florida Atlantic University serves Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties. Section 1004.55(1)(g), F.S.

¹¹ Section 1004.55(4), F.S.

¹² 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 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).

B. SECTION DIRECTORY:

Section 1 amends s. 1004.55, F.S., to create a public record exemption for regional autism centers.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2011.

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.

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 new public record exemptions; thus, it requires a two-thirds vote for final passage.

¹³ Section 24(c), Art. I of the State Constitution.

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 new public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 579 favorably with committee substitute.

The committee substitute maintains the protection for records of clients of a regional autism center and for records of the client's family. It removes the public record exemption for records of teachers and other professionals who might receive training at the center. The committee substitute also creates a public record exemption for the identity of a donor or prospective donor to the center who wishes to remain anonymous.