

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SPB 7010

INTRODUCER: For consideration by the Health Regulation Committee

SUBJECT: OGSR/Physician Workforce Surveys/Department of Health

DATE: October 31, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanes	Stovall		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill saves from repeal the exemptions from the requirements of the Public Records Law for all personal identifying information contained in records provided by allopathic and osteopathic physicians in response to the Department of Health (DOH) physician workforce survey. The bill is the result of a review of the exemptions under the Open Government Sunset Review Act. The exemptions will expire on October 2, 2012, unless re-enacted by the Legislature before that date.

This bill amends the following sections of the Florida Statutes: 458.193 and 459.0083.

II. Present Situation:

Public Records

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, commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,¹ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency² records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.³

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁴ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁵

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁶ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁷

The Open Government Sunset Review Act (the Act)⁸ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act. The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

¹ Chapter 119, F.S.

² 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.”

³ s. 119.011(12), F.S.

⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁶ Attorney General Opinion 85-62.

⁷ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁸ s. 119.15, F.S.

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁹

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Physician Licensure

Prior to engaging in the practice of medicine in this state, an allopathic physician must be licensed under ch. 458, F.S., The Medical Practice Act.¹⁰ Prior to engaging in the practice of osteopathic medicine in this state, an osteopathic physician must be licensed under ch. 459, F.S., The Osteopathic Medical Practice Act.¹¹ A license issued under either act must be renewed biennially.¹²

The requirement for the physician workforce survey was enacted in ch. 2007-172, L.O.F., and codified in s. 458.3191, F.S., relating to allopathic physicians and s. 459.0081, F.S., relating to osteopathic physicians. Sections 458.3191 and 459.0081, F.S., require each Florida-licensed allopathic or osteopathic physician, in conjunction with the renewal of his or her license, to furnish specified information to the DOH in a physician survey. The information required to be submitted under this statute includes:

- Licensee information
 - Frequency and geographic location of practice within the state,
 - Practice setting,
 - Percentage of time spent in direct patient care,
 - Anticipated changes to license or practice status, and
 - Areas of specialty or certification; and

⁹ s. 119.15(6)(b), F.S.

¹⁰ s. 458.327(1)(a), F.S., and s. 456.065(1), F.S.

¹¹ s. 459.013(1)(a), F.S., and s. 456.065(1), F.S.

¹² s. 458.319, F.S., and s. 459.008, F.S.

- Availability and trends relating to critically needed services
 - Obstetric care and services, including incidents of deliveries,
 - Radiological services, particularly performance of mammograms and breast-imaging services,
 - Physician services for hospital emergency departments and trauma centers, including on-call hours, and
 - Other critically needed specialty areas, as determined by the DOH.

Each physician survey must include a statement that the information provided is true and accurate to the best of the licensee's knowledge and that the submission does not contain any knowingly false information.¹³ The DOH issues a non-disciplinary citation to a licensee who fails to complete the survey within 90 days after the renewal of his or her license to practice as a physician. The citation notifies the physician that his or her medical license will not be renewed for any subsequent licensing period unless he or she completes the survey.¹⁴

Annually, the DOH is required to analyze the results of the physician workforce survey¹⁵ to determine by geographic area and specialty the number of physicians who:

- Perform deliveries of children in Florida.
- Read mammograms and perform breast-imaging-guided procedures in Florida.
- Perform emergency care on an on-call basis for a hospital emergency department.
- Plan to reduce or increase emergency on-call hours in a hospital emergency department.
- Plan to relocate outside the state.
- Practice medicine in Florida.
- Plan to reduce or modify the scope of their practices.

The DOH is required to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. Additionally, the annual report must include findings, recommendations, and strategic planning activities as provided in s. 381.4018, F.S., relating to physician workforce assessment and development. The DOH may also include other information requested by the Physician Workforce Advisory Council.¹⁶

Physician Workforce Planning

The Legislature recognizes that physician workforce planning is essential to ensuring an adequate and appropriate supply of well-trained physicians to meet Florida's future health care service needs as the general population and elderly population of the state increase.¹⁷ Physician workforce planning encompasses, among other things, analyzing current workforce data collected through the physician workforce surveys, planning for the availability and capacity of quality medical schools and graduate medical education programs in this state, and incentivizing physicians to practice in needed specialties and underserved areas in a manner that addresses projected needs for physician manpower.

¹³ ss. 458.3191(2) and 459.0081(2), F.S.

¹⁴ ss. 458.3191 and 459.0081(3), F.S.

¹⁵ ss. 458.3192 and 459.0082, F.S.

¹⁶ *Id.* The Physician Workforce Advisory Council is created in s. 29, ch. 2010-161, L.O.F., to advise and assist the State Surgeon General and the DOH on matters concerning current and future physician workforce needs in this state.

¹⁷ s. 381.4018(2), F.S.

Exemption from the Public Records Law

Sections 458.3193 and 459.0083, F.S., also enacted in 2007,¹⁸ exempt all personal identifying information contained in records provided by physicians in response to the physician workforce survey required as a condition of license renewal and held by the DOH confidential and exempt from s. 119.07(1), F.S., and Article I, s. 24 of the State Constitution, with certain exceptions.

Information made confidential and exempt shall 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 DOH may deny a request for records or data 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 agreement between the DOH and the research entity must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

When enacting the exemptions from the public records law, the Legislature found that it is a public necessity that personal identifying information concerning Florida-licensed physicians who respond to the mandatory physician workforce survey be made confidential and exempt from disclosure. Further, 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. Specific reasons stated in the law include:

- Candid and honest responses to the survey will ensure that timely and accurate information is available for 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 the state.
- Long-term planning, based on the information provided by physicians in the surveys, is essential for improving health care access for Florida residents and enabling the use of strategies for a well-trained supply of physicians.
- Accurate and honest information obtained through the surveys will assist state policy-makers in their decisions 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.

¹⁸ ch. 2007-96, L.O.F.

Senate Open Government Sunset Review Interim Project Reports

Senate professional staff of the Health Regulation Committee completed two reviews of the exemptions pertaining to responses to the physician workforce surveys. The findings are reported¹⁹ in Interim Project Report 2012-309, which reviewed s. 458.3193, F.S., and Interim Project Report 2012-310, which reviewed s. 459.0083, F.S. Both reports recommend that the Legislature re-enact the exemptions from the Public Records Law for personal identifying information contained in the physician workforce surveys.

III. Effect of Proposed Changes:

Personal identifying information from physician workforce survey data collected by the DOH in conjunction with medical license renewal will continue to be confidential and exempt from the requirements of the Public Records Law under s. 119.07(1), F.S., and Article I, s.24 of the State Constitution.

This bill amends s. 458.193 and 459.0083, F.S., to remove the scheduled repeal of these exemptions from public record.

- **Section 1** repeals the provision relating to allopathic provisions.
- **Section 2** repeals the provision relating to osteopathic physicians.
- **Section 3** provides an effective date of July 1, 2012.

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 will preserve the exemption for personal identifying information contained in physician workforce survey data collected by the DOH in conjunction with medical license renewal from the requirements of s. 119.07(1), F.S., and Article I, s.24 of the State Constitution.

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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁹ The reports are available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-309hr.pdf> and <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-310hr.pdf> (Last visited on October 31, 2011).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.