

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 141 Pub. Rec./Impaired Practitioner Consultants

SPONSOR(S): Health Quality Subcommittee; Renuart and Adkins

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Castagna	O'Callaghan
2) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Department of Health (DOH) administers a treatment program for impaired health care practitioners, and the Department of Business and Professional Regulation (DBPR) administers a treatment program for pilots. These treatment programs assist DOH and DBPR in determining whether health care practitioners or other professionals, who have experienced a substance abuse or mental or physical health impairment, are safe to practice their profession. Currently, two different impaired practitioner consultant companies provide such services in Florida.

CS/HB 141 creates a public records exemption for certain identification and location information of a current or former impaired practitioner consultant who is retained by an agency, a current or former employee of such consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill provides that the act will take effect upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The Florida Constitution provides that the public has the right to access government records. It guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act² guarantees every person's right to inspect and copy any state or local government public record.³

Only the Legislature may create an exemption from public records requirements.⁴ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁵ A bill enacting an exemption may not contain other substantive provisions⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (act) prescribes a legislative review process for newly created or substantially amended public records exemptions.⁸ The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹

The act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁰ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, only personal identifying information may be made exempt;¹² or
- It protects trade or business secrets.¹³

¹ FLA. CONST., art. I, s. 24(a).

² Chapter 119, F.S.

³ Section 119.011(12), F.S., defines "public record" 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." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁴ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in statute. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁵ FLA. CONST., art. I, s. 24(c).

⁶ The bill, however, may contain multiple exemptions that relate to one subject.

⁷ FLA. CONST., art. I, s. 24(c).

⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The act does not apply to an exemption that is required by federal law or that applies solely to the legislature or the state court system pursuant to section 119.15(2), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ Section 119.15(6)(b)1., F.S.

¹² Section 119.15(6)(b)2., F.S.

¹³ Section 119.15(6)(b)3., F.S.

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁴

Public Records Exemptions

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.¹⁵ Examples of public employees covered by these exemptions include: law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt from public records requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such employees; and
- Names and locations of schools and day care facilities attended by the children of such employees.

If exempt information is held by an agency that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public records exemption.¹⁶

Department of Health- Division of Medical Quality Assurance

The Department of Health's (DOH) Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety, and welfare of the public. There are 22 boards and eight councils under the MQA, and the MQA licenses seven types of facilities and 200-plus occupations in more than 40 health care professions.¹⁷ MQA is responsible for the licensure of health care practitioners and facilities, the enforcement of laws and rules governing practitioners and facilities, and providing information and data to the public.¹⁸

As part of its enforcement responsibilities, DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant, and legally sufficient, and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.¹⁹

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) licenses and regulates businesses and professionals.²⁰ The Division of Professions within DBPR administers 12 professional boards, five Department-regulated professions, and one council.²¹ The Division of Regulation is the enforcement authority for the professional boards, professions, and council. It monitors professions and related businesses to ensure that the laws, rules, and standards set by the Legislature and professional boards are followed.²²

Treatment Programs for Practitioners and Professionals

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ Section 119.071(4)(d), F.S.

¹⁶ Section 119.071(4)(d)3., F.S.

¹⁷ Florida Department of Health, *Florida Health Source*, accessible at <http://www.flhealthsource.gov/> (last visited February 20, 2015).

¹⁸ *Id.*

¹⁹ Section 456.073, F.S.

²⁰ Florida Dep't of Business and Professional Regulation, *Department of Business and Professional Regulation*, available at <http://www.myfloridalicense.com/dbpr/os/os-info.html>

²¹ Florida Dep't of Business and Professional Regulation, Division of Professions, available at <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited March 9, 2015).

²² Florida Dep't of Business and Professional Regulation, Division of Regulation, available at <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited March 9, 2015).

Impairment can result from the use or misuse of drugs or alcohol, or both, or due to a mental or physical condition that could affect a person's ability to practice with skill and safety.²³ DOH administers a treatment program for impaired health care practitioners²⁴ pursuant to s. 456.076, F.S., and DBPR administers a treatment program for pilots pursuant to s. 310.102, F.S. These treatment programs ensure that licensed health care practitioners and professionals, applicants for licensure, and students enrolled in pre-licensure education programs, who are impaired and may pose a threat to the public if allowed to obtain or retain a license, are evaluated and referred for treatment.

DOH and DBPR contract with impaired practitioner consultants (IPC) to monitor the treatment of an impaired practitioner and coordinate services. DOH and DBPR contract with the Professionals Resource Network (PRN) and DOH also contracts with the Intervention Project for Nurses (IPN). An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.²⁵ An IPC initiates intervention, recommends evaluation, and refers impaired practitioners to approved treatment providers or treatment programs and monitors the progress of impaired practitioners under the direction of consultants. An IPC does not provide medical services.²⁶

A practitioner's participation in a treatment program is voluntary, but it requires him or her to voluntarily withdraw from practice or limit the scope of his or her practice until the practitioner successfully completes the treatment program. By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action if the impairment is the only violation of the licensing statute under which the practitioner is regulated.²⁷

An IPC does not render decisions relating to licensure of a particular practitioner. However, an IPC is required to make recommendations to the relevant practitioner board's probable cause panel, or DOH when there is no board, regarding a practitioner's ability to practice safely.²⁸

According to DOH, there are approximately 2,449 participants enrolled in the programs: 1,461 are served by IPN and 988 are served by PRN.²⁹ According to DBPR, there are 21 veterinarians served by PRN.³⁰

Effect of Proposed Changes

The bill creates a public records exemption for identification and location information of a current or former IPC who is retained by an agency,³¹ a current or former employee of an IPC whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both.

The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former IPCs and their employees;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such IPCs or their employees; and
- The names and locations of schools and day care facilities attended by the children of such IPCs or their employees.

²³ Section 456.076(4)(a), F.S.

²⁴ The Board of Veterinarians, under the Department of Business and Professional Regulation, administers a treatment program for impaired veterinarians pursuant to s. 456.076, F.S. See s. 474.221, F.S.

²⁵ Section 456.076(2)(a), F.S.

²⁶ Section 456.076(2)(c)1., F.S.

²⁷ *Id.*

²⁸ Section 456.076(2)(c)1., F.S.

²⁹ Email correspondence with DOH staff. (on file with committee).

³⁰ There are currently no pilots in the impaired practitioner program. Email correspondence with DBPR staff. (on file with committee).

³¹ Section 119.011(2), F.S., defines the term "agency" 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 chapter 119, F.S., 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 bill provides that the exemption may be maintained only if the IPC or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. Additionally, the exemption is subject to an existing requirement under s. 119.071(4)(d)3., F.S., which provides that if exempt information is held by an agency that is not the employer of the protected public employee, then the protected public employee must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the bill states that the exemption is needed to protect an IPC, the IPC's employees, and the spouses and children of both, from the risk of physical or emotional harm or of being stalked by a practitioner who has a hostile reaction to a recommendation, report, or conclusion of an IPC or the IPC's employee.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt identification and location

information prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for identification and location information of a current or former IPC who is retained by an agency, a current or former employee of an IPC whose duties result in a determination of a person's skill and safety to practice a licensed profession, and the spouses and children of both. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Health Quality Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Expands the public records exemption to include current or former impaired practitioner consultants or employees and to exempt photographs and dates of birth of the consultants and employees;
- Limits the employees who are covered by the exemption to those employees whose duties result in a determination of a person's skill and safety to practice a licensed profession; and
- Provides additional statements of necessity.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.