

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 Committee on Fiscal Policy

BILL: CS/SB 144

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Public Records/Impaired Practitioner Consultants

DATE: February 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 144 proposes to enhance the safety of impaired practitioner consultants, specified employees of theirs, and the spouses and children of both, by creating a public records exemption for their personal identification and location information. The impaired practitioner program assists the Department of Health and the Department of Business and Professional Regulation in determining whether practitioners who have experienced a substance abuse or mental or physical health impairment are safe to practice. Currently, there are two impaired practitioner consultant entities retained by the Department of Health and the Department of Business and Professional Regulation to provide services.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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 legislature or its members. (*See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives received in connection with the official business of the Legislature, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ 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 (*See WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, the 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* Op. Att'y Gen. Fla. 85-62 (1985).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System.

¹¹ Section 119.15(3), F.S.

public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former agency personnel and their spouses and children.¹³ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;¹⁴
- Firefighters;¹⁵
- Justices and judges;¹⁶
- Local and statewide prosecuting attorneys;¹⁷
- Magistrates, administrative law judges, and child support hearing officers;¹⁸
- Local government agency and water management district human resources administrators;¹⁹
- Code enforcement officers;²⁰
- Guardians ad litem;²¹
- Specified Department of Juvenile Justice personnel;²²
- Public defenders and criminal conflict and civil regional counsel;²³
- Investigators or inspectors of the Department of Business and Professional Regulation;²⁴
- County tax collectors;²⁵ and
- Specified personnel of the Department of Health.²⁶

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

- Home addresses and telephone numbers²⁷ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and

¹² Section 119.15(6)(b), F.S.

¹³ See s. 119.071(4)(d), F.S.

¹⁴ See s. 119.071(4)(d)2.a., F.S.

¹⁵ See s. 119.071(4)(d)2.b., F.S.

¹⁶ See s. 119.071(4)(d)2.c., F.S.

¹⁷ See s. 119.071(4)(d)2.d., F.S.

¹⁸ See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

¹⁹ See s. 119.071(4)(d)2.f., F.S.

²⁰ See s. 119.071(4)(d)2.g., F.S.

²¹ See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

²² See s. 119.071(4)(d)2.i., F.S.

²³ See s. 119.071(4)(d)2.j., F.S.

²⁴ See s. 119.071(4)(d)2.k., F.S.

²⁵ See s. 119.071(4)(d)2.l., F.S.

²⁶ See s. 119.071(4)(d)2.m., F.S. This exemption applies only if the person claiming the exemption has made reasonable efforts to protect such information from being accessible through other means available to the public.

²⁷ The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. Section 119.071(4)(d)1., F.S.

- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency²⁸ that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.²⁹

Regulation of Health Professions

The Department of Health (DOH) is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.³⁰ The following professions are subject to practitioner regulation under the DOH:

- Emergency medical technicians and paramedics (part III of ch. 401, F.S.)
- Acupuncture (ch. 457, F.S.)
- Allopathic medicine, (ch. 458, F.S.)
- Osteopathic medicine, (ch. 459, F.S.)
- Chiropractic medicine, (ch. 460, F.S.)
- Podiatric medicine (ch. 461, F.S.)
- Naturopathy (ch. 462, F.S.)
- Optometry (ch. 463, F.S.)
- Nursing, including certified nursing assistants (ch. 464, F.S.)
- Pharmacy (ch. 465, F.S.)
- Dentistry (ch. 466, F.S.)
- Midwifery (ch. 467, F.S.)
- Speech-language pathology and audiology (part I of ch. 468, F.S.)
- Nursing home administration (part II of ch. 468, F.S.)
- Occupational therapy (part III of ch. 468, F.S.)
- Radiology (part IV of ch. 468, F.S.)
- Respiratory therapy (part V of ch. 468, F.S.)
- Dietetics and nutrition (part X of ch. 468, F.S.)
- Athletic training (part XIII of ch. 468, F.S.)
- Orthotics, prosthetics, and pedorthics (part XIV of ch. 468, F.S.)
- Electrolysis (ch. 478, F.S.)
- Massage therapy, (ch. 480, F.S.)
- Clinical laboratory personnel (part III of ch. 483, F.S.)
- Medical physicists (part IV of ch. 483, F.S.)
- Opticianry (part I of ch. 484, F.S.)
- Hearing aid specialists (part II of ch. 484, F.S.)
- Physical therapy practice (ch. 486, F.S.)
- Psychology (ch. 490, F.S.)

²⁸ Section 119.011(2), F.S., defines “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 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.”

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ Section 20.43(1)(g), F.S.

- Clinical social work, marriage and family therapy, and mental health counseling (ch. 491, F.S.)

As part of its enforcement responsibilities, the 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.³¹

Treatment Programs for Impaired Practitioners

Department of Health

The DOH administers the impaired practitioner treatment program to ensure that licensed health care practitioners, applicants for licensure, and students enrolled in prelicensure 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. Impaired practitioner consultants (IPC) are retained by the DOH to monitor the treatment of an impaired practitioner and coordinate services.³² An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.³³ The IPC assist the DOH in determining if the practitioner is actually impaired, connecting the practitioner to appropriate resources for treatment of the impairment, and monitoring the practitioner's progress.³⁴

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 the person's ability to practice with skill and safety.³⁵ A practitioner's participation in a treatment program is voluntary, but requires him or her have voluntarily withdrawn from practice or limited the scope of his or her practice until the practitioner has successfully completed 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.³⁶

An IPC does not provide medical treatment or render decisions relating to licensure of a particular practitioner. However, an IPC is required to make recommendations to the probable cause panel, or the DOH when there is no board, regarding a practitioner's ability to practice safely.³⁷

There are two IPC entities currently retained by the DOH: the Intervention Project for Nurses (IPN) and the Professionals Resource Network (PRN) for other health care professions.

³¹ See s. 456.073, F.S.

³² Section 456.076(2)(a), F.S.

³³ *Id.*

³⁴ Section 456.076(2)(c)1., F.S.

³⁵ Section 456.076(4)(a), F.S.

³⁶ *Id.*

³⁷ Section 456.076(2)(c)1., F.S.

According to the DOH, there are approximately 2,449 participants enrolled in the programs: 1,461 in the IPN and 988 in the PRN.³⁸

Department of Business and Professional Regulation

The Board of Veterinary Medicine and the Board of Pilot Commissioners, within the Department of Business and Professional Regulation (DBPR), provide impaired practitioner treatment programs for their licensees.³⁹ The DBPR has implemented these programs by contract with the PRN. According to the DBPR, all 21 licensees currently in the programs are veterinarians.⁴⁰

III. Effect of Proposed Changes:

The bill creates a new public records exemption for the identification and location information of current or former IPC who are retained by an agency, current or former employees of an IPC whose duties result in a determination of a person's skill and safety to practice, and the spouses and children of both. Currently, the contracted IPC are corporate entities.

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

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

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.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2020, unless reviewed and reenacted by the Legislature.

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

The bill takes effect upon becoming a law.

³⁸ E-mail from Paul Runk, DOH, (Dec. 23, 2014) (on file with the Senate Committee on Health Policy).

³⁹ See ss. 474.221 and 310.102, F.S.

⁴⁰ Conversation with David Mica, DBPR, (Dec. 23, 2014).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 144 may create a minimal fiscal impact on agencies for costs associated with training staff on the new public records exemption, and administrative costs to comply with the new public records exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on January 6, 2015:

The CS:

- 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;
- Expands the exemption to include current and former consultants or covered employees and to exempt photographs and dates of birth of consultants, consistent with similar exemptions; and
- Enhances the statement of necessity.

- B. **Amendments:**

None.