

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Public Records/Insured Dependents/Agency Group Plan

SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, McKeel

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 270

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	17 Y, 1 N, As CS	Reilly	Cooper
2)	Governmental Affairs Policy Committee	12 Y, 0 N	Williamson	Williamson
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The public's right of access to government records is established by the Constitution of the State of Florida. The Legislature, however, is authorized to create exemptions to preclude the disclosure of specified records when the exemption is found to be a public necessity and is not broader than necessary to meet that public necessity.

House Bill 135 creates a public record exemption for personal identifying information of dependent children of agency officers and employees when such dependent children (children under the age of 21 and still in school, and certain incapacitated children 18 years of age and older) are insured under an agency group insurance plan. The bill specifies that personal identifying information of agency employees remains subject to public disclosure.

This bill provides for future review and repeal of the exemption and a statement of public necessity.

The exemption is effective July 1, 2009, and applies retroactively to such personal identifying information held by an agency before this date.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida 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 Florida 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., also 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.

Enrollees in an Agency Group Insurance Plan

In a case decided in October 2008,³ the School Board of Polk County was ordered to disclose, in response to a public records request, public records regarding the school district's health insurance policy and the name, addresses, gender, age, title, and telephone number of both agency employees and dependents covered by the policy. The circuit court found that the Health Insurance Portability and

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

³ *Chandler v. School Board of Polk County*, Case No. 2008CA-004389.

Accountability Act of 1996 (HIPAA) was not applicable to the case at hand and that the request sought only non-exempt information under Florida law.

Subsequently, in response to a letter from State Senator Dockery, the Florida Attorney General's Office issued an informal advisory legal opinion⁴ as to whether ss. 112.08(7)⁵ and 119.071(4)(b), F.S.,⁶ preclude the release of information that identifies school district employees, their dependents, and their health insurance plans. The attorney general concluded that while information relating to an insurance program participant's medical condition is clearly protected from disclosure, it is unclear whether the protection from disclosure extends to an enrollee's personal identifying information.

Effect of the Bill

House Bill 135 creates an exemption from public records requirements to preclude the disclosure of personal identifying information of dependent children of current or former agency⁷ officers or employees when such dependent children are insured under an agency group insurance plan. "Dependent child", for purposes of the exemption, means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began prior to such person reaching the age of 18.⁸

Existing statutory exemptions concerning agency personnel information do not preclude the disclosure of personal identifying information. While these exemptions, in part, prohibit disclosure of medical information pertaining to agency officers and employees when disclosure would identify the officer or employee,⁹ such exemption does not extend to the personal identifying information of the officer or employee.

The bill sets forth the Legislature's finding that the exemption is a public necessity, as personal identifying information could be used to identify dependent children for sexual or other criminal offenses. Personal identifying information of agency employees and information that does not specifically identify dependent children expressly remains available to the public.

In accordance with the Open Government Sunset Review Act, the exemption will sunset on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature. Finally, the bill provides for retroactive application of the public record exemption.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., to exempt from disclosure under the Public Records Act personal identifying information of dependent children of agency employees who are insured by an agency group insurance plan.

Section 2. Provides a statement of public necessity for the exemption.

Section 3. Provides an effective date of July 1, 2009.

⁴ Informal opinion of November 10, 2008.

⁵ Section 112.08(7), F.S., provides a public record exemption for all medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan.

⁶ Section 119.071(4)(b), F.S., provides a public record exemption for medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee.

⁷ 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."

⁸ Section 409.2554, F.S.

⁹ Section 119.071(b), F.S.

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 likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The 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 passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for 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 expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 6, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted one amendment (a strike-all amendment), which expands the public records exemption created by the bill to protect personal identifying information of certain “dependent children” (children under the age of 21 who are still in school and certain incapacitated children 18 years of age and older), rather than limiting the protection only to “minor dependents” (children under age 18).