

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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**BILL:** CS/SB 390

**INTRODUCER:** Health Policy Committee and Senator Hays

**SUBJECT:** Public Records/Identifying Information of Personnel of Department of Health

**DATE:** March 11, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 390 creates a public records exemption for certain personal identification and location information of the Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> The Act provides that a 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.<sup>12</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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 legislative or judicial records (*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, subject to specified exemptions.)

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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 School Board of Seminole*, 874 So.2d 48 (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 2004); and *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, 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* Attorney General Opinion 85-62, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> 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 (s. 119.15(4)(b), F.S.). 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 (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

## 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.<sup>13</sup> Categories of personnel covered by these exemptions include:

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

Although the types of exempt information vary, the following information is exempt<sup>26</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>27</sup> of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

<sup>13</sup> See s. 119.071(4)(d), F.S.

<sup>14</sup> See s. 119.071(4)(d)2.a., F.S.

<sup>15</sup> See s. 119.071(4)(d)2.b., F.S.

<sup>16</sup> See s. 119.071(4)(d)2.c., F.S.

<sup>17</sup> See s. 119.071(4)(d)2.d., F.S.

<sup>18</sup> 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.

<sup>19</sup> See s. 119.071(4)(d)2.f., F.S.

<sup>20</sup> See s. 119.071(4)(d)2.g., F.S.

<sup>21</sup> 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.

<sup>22</sup> See s. 119.071(4)(d)2.i., F.S.

<sup>23</sup> See s. 119.071(4)(d)2.j., F.S.

<sup>24</sup> See s. 119.071(4)(d)2.k., F.S.

<sup>25</sup> See s. 119.071(4)(d)2.l., F.S.

<sup>26</sup> See *supra* note 6.

<sup>27</sup> The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

If exempt information is held by an agency<sup>28</sup> 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.<sup>29</sup>

## **Department of Health**

### ***Regulation of Professions***

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>30</sup> Practitioner regulation is conducted by the Division of Medical Quality (MQA) Assurance and includes the following professions:

- 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.)
- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.)

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<sup>28</sup> 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.

<sup>29</sup> Section 119.071(4)(d)3., F.S.

<sup>30</sup> Section 20.43(1)(g), F.S.

The following facilities are also regulated or inspected by MQA:<sup>31</sup>

- Body Piercing Establishments (s. 381.0075, F.S.)
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.)
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.)
- Dental Laboratories (ch. 466, F.S.)
- Electrology Facilities (ch. 478, F.S.)
- Electrolysis Training Programs (ch. 478, F.S.)
- EMS Education Programs (ch. 401, F.S.)
- EMS Vehicle Permittees (ch. 401, F.S.)
- Environmental Testing Laboratories (s. 403.0625, F.S.)
- Massage Establishments (ch. 480, F.S.)
- Massage Schools (ch. 480, F.S.)
- Nursing Education Programs (ch. 464, F.S.)
- Office Surgery Sites (ch. 458 and ch. 459, F.S.)
- Optical Establishments (part I of ch. 484, F.S.)
- Pain Management Clinics (ch. 458 and ch. 459, F.S.)
- Pharmacies (ch. 465, F.S.)
- Trauma Centers (part II of ch. 395, 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,<sup>32</sup> and legally sufficient,<sup>33</sup> 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.<sup>34</sup> The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.<sup>35</sup>

The Consumer Services Unit (CSU) is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for

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<sup>31</sup> Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

<sup>32</sup> The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

<sup>33</sup> A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

<sup>34</sup> Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

<sup>35</sup> Section 456.066, F.S.

possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.<sup>36</sup>

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, steps in an investigation include:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;
- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts health care facility inspections required before beginning practice and on a periodic basis.<sup>37</sup>

### ***Disability Determinations***

The Division of Disability Determinations (DDD) is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.<sup>38</sup>

### ***Personal Identification and Location Information of DOH Personnel***

Currently, the personal identification and location information of current or former employees or contractors<sup>39</sup> of the DOH whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and that of their spouses and children, is not exempt from public

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<sup>36</sup> Fla. Dept. of Health, *Consumer Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 17, 2013).

<sup>37</sup> Fla. Dept. of Health, *Investigative Services Unit Brochure*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/isu-brochure.pdf> (last visited Dec. 13, 2013).

<sup>38</sup> E-mail from Rhonda J. Wilson, Director, Division of Disability Determinations, Fla. Dept. of Health, to Bryan Wendel, Fla. Dept. of Health (Feb. 3, 2014) (on file with the Senate Health Policy Committee).

<sup>39</sup> Section 456.009(2), F.S., authorizes the DOH to contract with outside counsel and outside personnel for the investigation and prosecution of complaints.

records requirements, unless the information is subject to another exemption, e.g. former law enforcement officers.

### **III. Effect of Proposed Changes:**

The bill expands the current public records exemptions for identification and location information of certain agency personnel to include current and former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and their spouses and children.<sup>40</sup> The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of the DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The bill provides that the exemption may be maintained only if the DOH personnel have 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, 2019, 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 covered personnel from potential risk of harm resulting when individuals who are subject to investigation or inspection react negatively to an adverse outcome or decision.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>40</sup> The personal identifying information of approximately 1,296 current or former DOH personnel and that of their families would be exempt. E-mail from Bryan Wendel, Fla. Dept. of Health, (Feb. 4, 2014) (on file with the Senate Health Policy Committee).

**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 this 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. This bill creates a new public records exemption; therefore, it 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 390 may create a minimal fiscal impact on agencies, due to training staff on the new public records exemption and additional 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 February 4, 2014:**

The CS expands the exemption to include personnel of the Department of Health whose duties include, or result in, the adjudication of eligibility for social security disability benefits.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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