SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 14, 1998 Revised: _____ _____ _____ _____

Subject: Public Records Law and Public Meetings Law; Exemption of Private Corporate Entities that Lease Public Hospitals and Other Public Health Care Facilities

	Analyst	Staff Director	Reference	Action
1.	Carter	Wilson	HC	Favorable/CS
2.	Rhea	Wilson	GO	Favorable/CS
3.				
4.				
5.				

I. Summary:

Under Art. I, s.24 of the State Constitution, and ch. 119, F.S., the Public Records Law, and s. 286.011-286.012, F.S., the Government in the Sunshine Law, records and meetings of governmental and other public entities are open to the public unless made exempt. The Committee Substitute for Committee Substitute for Senate Bill 1044 exempts a private corporation that leases a public hospital or health care facility from public records and meetings requirements if the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., and if the public lessee meets at least three of five enumerated criteria. The exemptions apply retroactively to all existing leases and prospectively to all new leases.

This bill creates section 395.3036, Florida Statutes.

II. Present Situation:

A. Sale or Lease of Public Health Care Facilities

Section 155.40, F.S., which was enacted in 1982,[1] authorizes the sale or lease of a county, district, or municipal hospital "[i]n order that citizens and residents of the state may receive quality health care. . . ." The governing board is required to make a finding that the sale or lease is in the best interest of the public and to state the basis for this finding. The governing board

[1] Ch. 82-147, L.O.F.

must provide notice of its intentions and to negotiate terms at a public meeting.[2] A sale or lease of a county, district, or municipal hospital must be for fair market value and must be in compliance with state and federal antitrust laws.[3]

Section 155.40, F.S., also specifies contractual requirements. A contract for the sale or lease of a public hospital must:

(1) provide for the approval of the articles of incorporation of the corporation by the hospital board;
(2) require a not-for-profit Florida corporation to become qualified under §501 (c)(3) of the Internal Revenue Code;
(3) arrange for the orderly transition of the operation and management of the facility;
(4) provide for the return of the facility to the county, district, or municipality upon termination; and,
(5) provide for the continued treatment of indigent patients, in accordance with requirements of the Florida Health Care Responsibility Act and as otherwise provided.

Section 155.40(5), F.S., provides that if a hospital operated by a corporation receives $100,000 or more in revenues annually from a governmental entity that owns the hospital, that corporation is accountable to the governmental entity with respect to the manner in which the funds are expended either: (a) by having revenues subject to annual appropriations by the governmental entity; or (b) by permitting contract modification upon twelve months notice where the contract to provide revenues to the hospital has a term greater than twelve months. A not-for-profit corporation that is a party to a contract with a governmental entity entered into prior to the 1996 revisions of the section that is not in conformity with the subsection is given 12 months from the effective date of the act[4]to modify the contract to comply with the act.

B. Public Records and Meetings Requirements

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.[5] Section 286.011, F.S., which grants the public access to governmental meetings, was adopted in 1967.[6] Floridians voted to adopt an amendment to the State Constitution in 1992 that raised the statutory right of public access to meetings and records

[2]Sections 155.40(1) and (4), F.S.

[3]Section 155.40(4), F.S.

[4]Ch. 96-304, L.O.F.

[5]Section 1, ch. 5942 (1909).

[6]Chapter 67-356, L.O.F.

of governmental entities to a constitutional level.[7] Article I, s. 24 of the State Constitution, expresses Florida's public policy regarding access to public records and meetings.

Paragraph (a) of Art. I, s.24 of the State Constitution, sets forth the rights of the public to access public records. The paragraph provides that:

> (a) Every person has the right to inspect or copy any public records 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, and commission, or entity created pursuant to law or this Constitution (*emphasis added*).

The Public Records Law,[8] which pre-dates Art. I, s. 24 of the State Constitution, also specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . .

The Public Records Law states that, unless specifically exempted, all agency[9] records are to be 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.[10]

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[7]Article I, s. 24 of the State Constitution.

[8]Chapter 119, F.S.

[9]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." The Florida Constitution also establishes a right of access to 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 those records exempted by law or the state constitution.

[10]Section 119.011(1), F.S.

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.[11] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[12]

The Constitution permits the Legislature to create exemptions by general law. The general law exempting a public record must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Once again, the Public Records Law[14] also contains requirements for the creation of exemptions. It provides that an exemption may be created or maintained only if it serves an identifiable public purpose and if it is no broader than necessary to meet the public purpose it serves. A public purpose is served 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 and if it:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Like public records requirements, public policy regarding public meetings is addressed in both the Florida Constitution and in statute. Article I, s. 24 of the State Constitution, provides that:

> (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section

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

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

[13] Article I, s. 24(c) of the State Constitution.

[14] Section 119.15, F.S.

> 4(e), except with respect to a meeting exempted pursuant to this section or specifically closed by this Constitution.[15]

The Sunshine Law,[16] which was enacted prior to the constitutional provision affecting public meetings, provides:

> All meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Florida Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.[17]

Determining whether public meetings and records requirements apply to a purely governmental entity, such as an executive department is not usually difficult. More complex issues arise, however, when public entities contract with private entities and persons. Generally, a private corporation which performs services for a public agency for compensation is not subject to public records and meetings requirements.[18] The courts, however, have determined that there are instances when private entities must comply with public records and meetings requirements. This situation arises when a private entity, not otherwise connected with government, is "acting on

[15]Article III, s. 24(e) of the State Constitution provides: "[t]hat the rules of procedure of each house shall provide that all legislative committee and subcommittee meetings of each house, and joint conference committee meetings, shall be open and noticed to the public. The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section."

[16]Section 286.011, F.S.

[17]Section 286.011(1), F.S.

[18]The Florida Supreme Court has found that s. 119.011(2), F.S., which defines the term "agency" to include any ". . . public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency*. . . "ensures that a public agency cannot avoid disclosure under the Public Records Law by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

behalf of" a public agency[19] or when the public agency's governmental or legislative functions have been delegated to it.[20]

The Florida Supreme Court has stated that the broad definition of "agency"[21] found in the Public Records Law ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility.[22] The court, however, has noted that ". . . the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," and adopted a "totality of factors" approach to use as a guide for evaluating whether a private entity is subject to ch. 119, F.S.[23] The factors listed by the Florida Supreme Court include, but are not limited to, the following:

1) The level of public funding;
2) Commingling of funds;
3) Whether the activity was conducted on publicly-owned property;
4) Whether services contracted for are an integral part of the public agency's chosen decision-making process;
5) Whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
6) The extent of the public agency's involvement with, regulation of, or control over the private entity;
7) Whether the private entity was created by the public agency;
8) Whether the public agency has a substantial financial interest in the private entity; and
9) For whose benefit the private entity is functioning.

Thus, the application of the totality of factors test often requires an analysis of the statute, ordinance or charter provisions which establish the function to be performed by the private entity

[19]Art. I, s. 24(a) of the State Constitution, states that "[e]very 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. . . .*(*emphasis added*)."

[20]See *McCoy Restaurants, Inc. V. City of Orlando*, 392 So.2d 252 (Fla.1980), in which the Florida Supreme Court held that airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law.

[21]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." The Florida Constitution also establishes a right of access to 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 those records exempted by law or the state constitution.

[22]*News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

[23]See, *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra* at 1031. See also, *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So.2d 27 (Fla. 1993).

as well as the contract, lease or other document between the governmental entity and the private organization.

The following are examples of entities performing functions for public agencies whose records were found to be subject to disclosure under the Public Records Law: (a) a private corporation that operates and maintains a county jail pursuant to a contract with the county commission is "acting on behalf of" the county and must make available its records;[24] (b) material made or received by a recruitment company in the course of its contract with a public agency to seek applicants and to make recommendations on an executive director are public records;[25] and (c) a marketing firm that was designing and conducting a telephone survey for the county school board was acting on its behalf.[26]

The following are examples of private entities whose records were considered to be outside the scope of public records requirements: (a) an architectural firm under contract with a school board to provide architectural services associated with the construction of school facilities was not "acting on behalf of" the school board;[27] (b) reports prepared by Walt Disney World's private security force regarding incidents on public roads within the Disney property were not public records even though Disney contracted to provide some security services for a public entity, the Reedy Creek Improvement District;[28] and (c) a soft drink company is not required to allow a death-sentenced defendant convicted of poisoning victims with thallium-laced bottles of the drink to obtain access to records allegedly held by the company concerning lab testing requested by law enforcement agencies.[29]

In a case that is currently on appeal to the Florida Supreme Court,[30] the Fifth District Court of Appeal determined that Memorial Hospital-West Volusia, Inc., a private not-for-profit corporation ("private corporation"), was "acting on behalf of" a governmental entity, when it entered into a lease with the West Volusia Hospital Authority to operate the West Volusia Memorial Hospital. The court noted that in contracting with a public body, the contracting party may commit to provide material or services *to* the public body or *in the place of* the public body. In the opinion of the court, "[t]here is, of course, a major distinction between the two." The court states at page 420 of the case:

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[24]*Times Publishing Company v. Corrections Corporation of America*, (Fla. 5th DCA 1993).

[25]*Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So.2d 633 (Fla. 1980).

[26]*WFTV v. School Board of Palm Beach County*, No. CL 94-8549-AD (Fla. Cir.Ct. March 29, 1995).

[27]*News and Sun-Sentinel Company v. Schwab, Twitty & Hanser*, 596 So.2d 1029 (Fla. 1992).

[28]*Sipkema v. Reedy Creek Improvement District*, No. CI96-114 (Fla. 9th Cir.Ct. May 29, 1996).

[29]Trepal v. State, 22 F.L.W. S170a (Fla. March 27, 1997).

[30]*News-Journal Corporation v. Memorial Hospital-West Volusia*, 695 So.2d 418 (Fla. 5th DCA 1997)

> If one merely undertakes to provide material -- such as police cars, fire trucks, or computers -- or agrees to provide services -- such as legal services, accounting services, or other professional services -- for the public body to use in performing its obligations, then there is little likelihood that such contractor's business operation or business records will come under the open meetings or public records requirements. On the other hand, if one contracts to relieve a public body from the operation of a public obligation -- such as operating a jail or providing fire protection -- and uses the same facilities or equipment acquired by public funds previously used by the public body then the privatization of such venture to the extent that it can avoid public scrutiny would appear to be extremely difficult, regardless of the legal skills lawyers applied to the task.[31]

Using the "totality of factors" approach set forth by the Florida Supreme Court in *Schwab,* the court determined that the private corporation was acting on behalf of a governmental entity and, therefore, was subject to public records requirements.

The court also reviewed whether public meetings requirements applied to the corporation. Noting that Art.I, s. 24(b) of the State Constitution, does not explicitly contain the "acting on behalf of" language of Art.I, s. 24(a) of the State Constitution, the court determined that this language was not necessary to conclude that public meeting requirements apply. The court noted that the public meetings provision of the State Constitution provides

> ". . . that all meetings of public bodies in which 'public business of such body is to be transacted or discussed' shall be open to the public. Since someone "acting on behalf of" a public body is authorized to transact or discuss public business, we believe that such language is implicit in this provision and that the meetings of such surrogate public bodies come under the constitutional meetings requirement." *See generally Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla.1974). The Sunshine Law should be construed most liberally in favor of its applicability. See Wood v. Marston, 442 So.2d 934 (Fla.1983).*[32]

Therefore, the court decided that both public records and public meetings requirements applied to the corporation. As stated above, this case is pending on appeal to the Florida Supreme Court.

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[31]The court referred to two cases as illustrative of the distinction: "First, the supreme court's *Schwab* decision. In *Schwab,* the architect was clearly providing services to the School Board and was not providing a service in place of the School Board. The architectural design of a school facility is not something that the School Board would normally do or, so far as the record reflects, had ever done. The School Board used the result of the architect's services in order to fulfill its obligation to build and operate school facilities. Thus, the meetings of the architectural firm remained private and its records were not subject to public inspection. The contrasting case is Schwartzman v. Merritt Island Volunteer Fire Department, 352 So.2d 1230 (Fla. 4th DCA 1977). There, the volunteers were providing fire protection in place of the county. The county provided the facility and equipment and contributed a portion of the funds for the operation. And had the volunteers not stepped forward, the county would have been required to provide some, even if not as good, fire protection for the inhabitants of the area. Therefore, the volunteers were deemed to be "acting on behalf" of the county and their meetings and records were open to public scrutiny.

[32]News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So.2d 418 at 422 (Fla.5th DCA).

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

D. Confidentiality of Public Hospital Records and Meetings

Section 395.3035(1), F.S., declares that all meetings of a governing board of a *public* hospital and all *public* hospital records are open and available to the public, unless made confidential or exempt. Exemptions are listed in s. 395.3035(2), F.S. Specifically, the following public hospital records and information are confidential and exempt: (a) certain managed care contracts relating to the public hospital's provision of health care services and supporting documentation for such contracts; (b) certain specified strategic plans of public hospitals; (c) trade secrets, including reimbursement methodologies and rates; and (d) documents, offers, and contracts, not including managed care contracts, resulting from negotiations with nongovernmental entities for payment for services that are or may reasonably be expected by a public hospital's governing board to be provided by the hospital's competitors.

Section 395.3035, F.S., provides two Public Meetings Law exemptions relating to public hospitals. The first exemption pertains to that portion of a meeting of a public hospital governing board during which negotiations for contracts with nongovernmental entities occur or that are reported on that relate to competitive market services. All portions of a governing board meeting that is closed to the public must be recorded by a certified court reporter, and no portion of such meeting may be off the record.[33]

The other Public Meetings Law exemption relating to public hospitals pertains to the portion of a public hospital governing board's meeting at which written strategic plans, including written plans for marketing its services, are discussed or reported on. As is required for closed portions of meetings at which a public hospital governing board discusses contracts, other than managed-care contracts, a certified court reporter must record activities and no portion of the meeting may be off the record. The transcript and tape recordings, minutes, and notes relating to the discussion of written strategic plans become public documents 3 years after the date of the board meeting.

Subsection 395.3035(6), F.S., imposes two tracking requirements relating to the closed portions of governing board public meetings and the documents generated during such periods. The first requirement, which is found in paragraph (a) of the subsection, requires the hospital to report in writing to the governing board every three months the number of records for which a public

[33]The court reporter's notes must be fully transcribed within a reasonable time after the meeting and maintained by the hospital records custodian. The transcript and related tape recordings, minutes, and notes become public documents one year after termination or completion of the contract to which the negotiations relate or, if no contract was executed, one year after termination of negotiations. All governing board meetings at which the board is scheduled to vote to accept, reject, or amend contracts, other than managed care contracts, must be open to the public.

records request has been made where the records were declared to be confidential under s. 395.3035, F.S., along with certain specified descriptive details about the records.

Additionally, the hospital is required to report in writing to the governing board each confidential record to which the public has been granted access since the hospital's last report to the board, including certain specified descriptive details. The governing board is required to retain copies of these reports for 5 years from the date on which the report was submitted. If the governing board of the hospital is comprised of members who are appointed, the board must forward, within 10 working days after the date on which the board received the report from the hospital, the report to the official or authority that appoints board members.

Paragraph 395.3035(b), F.S., provides the second tracking requirement. That paragraph requires the governing board to maintain a written list of the meetings or portions of meetings, which list must include certain specified details about meetings that were closed to the public. The governing board is authorized to purge information about a meeting from the list 5 years after the date on which the meeting was closed. If the governing board of the hospital is comprised of members who are appointed, the board must forward the list to the official or authority that appoints board members every three months.

III. Effect of Proposed Changes:

Section 1. Creates s. 395.3036, F.S., to exempt the records and meetings of the governing board of a private corporation that leases a public hospital or health care facility from public records requirements if the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., and if the public lessee meets at least three of five criteria:

(1) the lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
(2) the public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
(3) Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision-making process of the public lessor;
(4) the lease agreement does not expressly require the lessee to comply with the requirements of s. 119.07(1), F.S.; and
(5) the public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Section 2. Provides a statement of public necessity for the exemption. The statement explains that the private corporations that lease public hospitals and health care facilities entered into these leases based upon the belief that they were exempt from public records and meetings requirements under the "totality of factors" test that is set forth in case law. The statement of public necessity

notes that a recent court case established a narrower scope for exemptions, thereby causing more lessees to be subject to public records and meetings requirements. The effect of this decision has been to create uncertainty with respect to the status of records and meetings under existing lease arrangements and to create a disincentive for private corporations to enter into such lease agreements in the future.

The statement of public necessity notes that public entities have chosen to privatize the operations of their public hospitals in order to alleviate three problems which pose a significant threat to the continued viability of Florida's public hospitals: (1) a financial drain on the facilities from their forced participation in the Florida Retirement System; (2) the competitive disadvantage placed on these facilities vis a vis their private competitors resulting from their required compliance with the state's public records and public meeting laws; and (3) state constitutional restrictions on public facility participation in partnerships with private corporations as a result of the limitations contained in the State Constitution. The statement of public necessity notes that the Legislature has approved and encouraged these leases for a number of years.

Section 3. Provides for the bill to take effect upon becoming law and provides that it applies to existing leases and future leases.

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 Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, authorizes the Legislature to create exemptions to public records and meetings requirements. The bill exempts *all* records and *all* meetings of a private corporation that leases a public hospital or other health facility from constitutional public records and meetings requirements. It could be argued that the exemptions are overly broad and that more narrowly-tailored exemptions would be appropriate. For example, the Legislature often exempts trade secrets or corporate financial records from public records and meetings requirements while still requiring that other public records and meetings requirements remain intact.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the State Constitution.

D. Other Constitutional Issues:

Retroactive legislation refers to a law that changes the legal consequences of acts completed before its effective date. Neither the state constitution nor the federal constitution prohibits the enactment of legislation with retroactive effect.[34] A retrospective law may work to a person's disadvantage, provided it does not deprive the person of any substantial right or protection.[35] Retroactive legislation, however, is invalid if it impairs a substantive, vested right.[36] After substantive rights vest, they cannot be adversely affected by subsequently enacted legislation.[37]

The Supreme Court has held that an exemption to ch. 119, F.S., applies to records created prior to the enactment of the exemption, on the theory that "if a statute is found to be remedial in nature, it can and should be retroactively applied in order to serve its intended purposes."[38]

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any fiscal impact resulting from the provisions of the bill are indeterminable and would occur only as indirect consequences of the business activities of the private-sector entities that lease public hospitals or other public health care facilities. Whether a private-sector entity would avoid certain business transactions if the public records exemption provided by this bill were unavailable is impossible to surmise in the abstract. However, if certain business transactions were avoided by private-sector entities that lease a public hospital because they would have to conduct all discussions relating to the transactions in a public forum, a definite negative fiscal impact would result.

C. Government Sector Impact:

None.

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[34]*Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition denied, 424 So.2d 764 (1982).

[35]*Blankenship v. Dugger*, 521 So.2d 1097 (Fla. 1988).

[36]*Serna v. Milanese*, Inc. 643 So.2d 36 (Fla. 3rd DCA).

[37]*L. Ross, Inc. v. R.W. Roberts Constr. Co.*, 466 So.2d 1096 (Fla. 5th DCA 1985), approved 481 So.2d 484 (Fla. 1985).

[38]*City of Orlando v. Desjardins*, 493 So.2d 1027 (Fla. 1986).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Proponents of private corporate entities leasing public hospitals and other public health care facilities assert that such arrangements, if structured properly, contribute, in a positive and responsible manner, to the fiscal well being of the governmental entity that leases the facility. This assertion is based, in part, on the ability of the governmental entity that owns the facility to reallocate funds that it has committed to the operation of the facility to other uses or to the expansion of the population served or services provided.

Opponents of such arrangements emphasize the public accountability that public discussion assures in protecting the public's interest that the private entity will be responsive to community interest in ensuring that indigent care, as well as other matters, will be addressed. They often point to the potential for decreased access to health care for the community's medically indigent, indigent, and non-indigent and working uninsured residents.

VIII. Amendments:

None.