

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 10, 1998 Revised: 4/14/98 \_\_\_\_\_

Subject: Public Records Exemptions/Information Regarding Florida Kids Health Program Participants

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Williams</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. Committee Substitute for Senate Bill 1230 exempts identifying information contained in an application for determination of eligibility for the Florida Kids Health program. The exemption includes medical information, family financial information, and any information obtained through quality assurance activities and patient satisfaction surveys that identifies program participants. A statement of public necessity for the exemption is included.

The bill creates two undesignated sections of law.

**II. Present Situation:**

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.<sup>1</sup> In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.<sup>2</sup> Article I, s. 24, State Constitution, provides:

(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

<sup>1</sup>Section 1, ch. 5942.

<sup>2</sup>Article I, s. 24 of the State Constitution.

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.

In addition to the State Constitution, the Public Records Law<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the

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

<sup>4</sup>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.

<sup>5</sup>Section 119.011(1), F.S.

<sup>6</sup>*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup>*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

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.<sup>8</sup>

The Open Government Sunset Review Act of 1995<sup>9</sup> states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and 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. The three statutory criteria are if the exemption:

- 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>10</sup>

Article I, s. 23, State Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

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.

### **Confidentiality of Patient Information and Medical Records**

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<sup>8</sup>Art. I, s. 24(c) of the State Constitution.

<sup>9</sup>Section 119.15, F.S.

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

There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information is confidential in the possession of a health care practitioner or a state agency, as provided under s. 455.667, F.S.,<sup>11</sup> except under certain specific circumstances. As confidential information, patient records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient. There are some significant exceptions to the, otherwise, exclusive control given patients over such information. These exceptions include: 1) release, without written authorization, of physical or mental examination or administered treatment information to a person that procures such examination or treatment with the patient's consent, 2) forwarding of examination results obtained when a compulsory physical examination is performed for purposes of civil litigation in conformity with the Rules of Civil Procedure or upon issuance of a subpoena in a civil or criminal action and under other similar circumstances.

### **The Florida Kids Health Program**

The Balanced Budget Act of 1997 (P.L. 105-33), provided almost \$40 billion over the next 10 years to help states expand insurance coverage to more children, either through Medicaid or other health plans. The State Children's Health Insurance Program has the potential to significantly reduce the number of uninsured children nationally and in Florida. The act, which created Title XXI of the Social Security Act, will help states expand health care coverage to the nation's estimated 10 million uninsured children. The act initially allocates funds to states based on the number of uninsured children in the state and subsequently on the number of low-income children residing in a state. The new law is specific to the use of funds for "targeted low-income children." States may set income eligibility at up to 200 percent of the federal poverty level, or at 50 percent above their current eligibility level, whichever is higher.

Senate Bill 1228 is a bill to implement in Florida a children's health insurance program in conformance with the State Children's Health Insurance Program provisions of the federal Balanced Budget Act of 1997 (P.L. 105-33). The bill extends optional Medicaid eligibility to children ages 0 to 1 whose family income is between 185 percent and 200 percent of the federal poverty level, and to children ages 15 to 19 whose family income is between 28 percent and 100 percent of the federal poverty level. The bill creates "The Florida Kids Health Act" to establish a children's health insurance program called Florida Kids Health, which includes Medicaid coverage for children, the Florida Healthy Kids program, private health insurance and HMO coverage, and coverage through alternative coverage providers. Under the provisions of this draft bill, certain applicant and participant information, some of which may be of a sensitive nature relating to personal medical information and family financial information, will need to be provided to the state.

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<sup>11</sup>Formerly s. 455.241, F.S.

### III. Effect of Proposed Changes:

**Section 1.** Creates an exemption from the requirements of s. 119.07, F.S., and Art. I, s. 24(a) of the State Constitution. The exemption created applies to information contained in an application for determination of eligibility for the Florida Kids Health program that identifies applicants, including medical information and family financial information, and any information obtained through quality assurance activities and patient satisfaction surveys that identifies program participants. These provisions are made subject to the Open Government Sunset Review Act of 1995, and are scheduled for subsequent review and repeal under that act.

**Section 2.** Provides a statement of public necessity stating the need for the exemption. The successful administration of the Florida Kids Health program is contingent upon applicant and participant willingness to provide certain otherwise personal information to the state, and this need outweighs the public benefit derived from releasing such information.

**Section 3.** Specifies that this bill will take effect on the effective date of the companion substantive measure creating the Florida Kids Health program.

### 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 Florida Constitution.

#### B. Public Records/Open Meetings Issues:

This bill creates an exemption from the Public Records Law, s. 119.07(1), F.S., and the public records requirements of Art. I, s. 24(a) of the Florida Constitution. The exemption pertains to information contained in an application for determination of eligibility for the Florida Kids Health program that *identifies* applicants, including medical information and family financial information, and any information obtained through quality assurance activities and patient satisfaction surveys that *identifies* program participants that, under the provisions of the companion substantive bill, is to be obtained by the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Health in the administration of the Florida Kids Health program. The statement of public necessity, however, is not drafted as narrowly as the exemption. The statement of public necessity states that:

The Legislature finds that exempting *information* contained in applications for eligibility determination under the Florida Kids Health program, including medical information and family financial information. . . .

To be consistent with the exemption, the statement of public necessity should refer to *identifying* information.

Additionally, to be consistent with the language in the Open Government Sunset Review Act, language in the statement of public necessity relating to administration of the program should state that the exemption assists in the *effective and efficient* administration of the program, the administration of which would be significantly impaired.

The provisions of this bill have no impact on open meetings issues under the Open Meetings Law, s. 286.011, F.S., and the requirements of s. 24(b) of Art. I of the Florida Constitution.

**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 Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

See Paragraph B. under Constitutional Issues *supra*.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Governmental Reform and Oversight:

Technical amendment that conforms language in the statement of public necessity to the exemption.

#2 by Governmental Reform and Oversight:

Technical amendment that provides a more detailed explanation for the exemption in the statement of public necessity.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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