

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: March 31, 1998 Revised: _____

Subject: Public Records and Meetings; Social Work Practice

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides that the public records and meetings exemptions for information concerning participation in the impaired practitioner treatment program, disciplinary complaints, and related investigative information, and the proceedings of the probable cause panel for health care professionals under the regulatory jurisdiction of the Department of Health are extended to also apply to: licensed master social workers and licensed bachelor social workers. Several statements of legislative findings justifying the exemptions also are included in the bill. The exemptions will be repealed, subject to prior legislative review, October 2, 2003.

This bill creates section 468.854, Florida Statutes. The bill creates two undesignated sections of general law. The bill republishes portions of sections 455.621 and 455.707, Florida Statutes, to clarify that the existing laws protect the same types of records for the professionals specified in CS/SB 870.

II. Present Situation:

Part II of chapter 455, F.S., provides the general regulatory provisions for professions regulated by the Department of Health. Section 455.621, F.S., provides procedures for disciplinary proceedings against professions under the department's regulatory jurisdiction. Section 455.621, F.S., provides that complaints and information obtained by the Department of Health during its investigations are exempt from the public records law until 10 days after probable cause has been found to exist by the probable cause panel of the appropriate board or the department, or until the subject of the investigation waives confidentiality.

Section 455.707, F.S., requires the Department of Health to retain one or more impaired practitioner consultants to administer and implement the impaired practitioner program. The

section requires the consultant to be a licensed practitioner or recovered practitioner under the agency's jurisdiction and at least one of the consultants must be a medical physician, osteopathic physician, or nurse. The consultant works closely with approved treatment providers regarding intervention, evaluation, and treatment of impaired practitioners participating in the program. An approved treatment provider is required, upon request, to disclose to the consultant all information in its possession regarding an impaired practitioner's impairment and participation in the program.

Section 455.707, F.S., provides that this treatment information maintained by the Department of Health, or the consultant as the agency's agent, is confidential and exempt from the public records law. If, in the opinion of the consultant, after consultation with the treatment provider, the impaired practitioner fails to satisfactorily progress in a treatment program, all information regarding the practitioner's impairment and participation in the treatment program must be disclosed to the department. The disclosure constitutes a disciplinary complaint, which remains confidential until probable cause is found that the licensee has violated regulations applicable to the practice of the licensee's profession.

Chapter 491, F.S., provides for the regulation of psychotherapists by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within the Department of Health. Section 491.0047, F.S., extends public records and meetings exemptions for information relating to participation in the impaired practitioner treatment program, disciplinary complaints and related investigative information, and the proceedings of the probable cause panel for health care professionals under the regulatory jurisdiction of the Department of Health to: provisionally licensed psychologists under ch. 490, F.S.; registered clinical social worker interns, registered marriage and family therapist interns, registered mental health counselor interns, and provisionally licensed clinical social workers, marriage and family therapists, and mental health counselors licensed pursuant to ch. 491, F.S. An identical provision is codified in section 490.00515, F.S. in the psychology practice act.

The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. The State Constitution provides that records and meetings of public bodies are to be open to the public, but it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const., governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const., provides that any bill that contains an exemption may not contain other substantive provisions, other than provisions relating to enforcement.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created

or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only 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. (See s. 119.15(4)(b), F.S.)

III. Effect of Proposed Changes:

The bill creates s. 468.854, F.S., to extend existing public records and meetings exemptions for information relating to participation in the impaired practitioner treatment program, disciplinary complaints and related investigative information, and the proceedings of the probable cause panel for health care professionals under the regulatory jurisdiction of the Department of Health or its agents to: licensed master social workers or licensed bachelor social workers regulated by the Department of Health or its agents.

Several statements of the public necessity justifying the exemptions are provided. The exemptions created by the bill would be repealed October 2, 2003, subject to prior legislative review, in accordance with s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

A contingent effective date is provided. The exemptions created by the bill would only become effective if related legislation creating part XV of ch. 468, F.S., to establish social worker licensing categories is enacted by the 1998 Legislature.

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 Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Several public records and meetings exemptions would be created by the bill for specified records maintained by the Department of Health or its agent. The bill would extend current exemptions for records relating to health care professionals regulated by the Department of

Health participating in an impaired practitioner program to a licensed master social worker or licensed bachelor social worker. Records relating to disciplinary proceedings of social workers also would be protected. Several statements of the public necessity justifying the exemptions are provided in section 4 of the bill. The bill relates only to exemptions. For these reasons, the bill complies with the requirements of s. 24(a) and (b), Art. I, State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, subsection 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:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.