

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.)

BILL: CS/SB 1408

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Cowin

SUBJECT: Public Records; Child Death Review

DATE: March 23, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1408 maintains the confidential or exempt status of information that is already confidential or exempt from the public records requirements and that is provided to the State Child Death Review Committee or a local committee or a panel or committee assembled by the state or local committee or that is obtained by a hospital or health care practitioner from such a committee or panel. The bill also makes confidential and exempt any information relating to a child death that could be used to identify a person in reports and records created by these committees as well as portions of meetings or proceedings which relate solely to child fatalities and in which specific persons or incidents are discussed. The bill makes all information acquired by the State Child Death Review Committee and local committees confidential and not subject to subpoena, discovery or introduction as evidence in any civil or criminal proceeding, with the exception of documents which are otherwise available from other sources. Information regarding case reviews involving a child's death may be shared between the state and local child death review committees and with a hospital or licensed health care practitioner that has provided treatment or diagnosis to a child whose death has been reviewed, and such information is made confidential and exempt.

The bill provides criminal penalties for disclosure of information made confidential and exempt by this section of the law. The exemptions are made subject to the Open Government Sunset Review Act of 1995. The bill provides statements of public necessity for the public records and public meetings exemptions.

The bill is tied to SB 1406, which establishes the State Child Death Review Committee.

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. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹ Article I, s. 24, Florida 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 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 Florida Constitution, the Public Records Law² 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 agency³ 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.⁴

¹Article I, s. 24 of the Florida Constitution.

²Chapter 119, F.S.

³The 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 Florida Constitution.

⁴Section 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.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, Florida 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 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.⁷

The Open Government Sunset Review Act of 1995⁸ 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.⁹

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

⁵*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁷Art. I, s. 24(c) of the Florida Constitution.

⁸Section 119.15, F.S.

⁹Section 119.15(4)(b), F.S.

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.

There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information that is in the possession of a health care practitioner or a state agency is confidential,¹⁰ 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:

- 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;
- 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.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1408 maintains the confidential or exempt status of information that is already confidential or exempt from the public records requirements and that is provided to the State Child Death Review Committee or a local committee or a panel or committee assembled by the state or local committee or that is obtained by a hospital or health care practitioner from such a committee or panel and makes this information exempt from s. 119.07 (1) F.S., and Article I, s. 24, Florida Constitution. The bill is linked to Senate Bill 1406, which creates the Child Death Review Committee.

The bill also makes confidential and exempt any information relating to a child death that could be used to identify a person in reports and records created by the State Child Death Review

¹⁰Section 455.667, F.S. (formerly 455.241, F.S.).

Committee or a local committee or a panel or committee assembled by a the state or local committee. Portions of meetings of the State Child Death Review Committee or a local committee or a panel or committee assembled by a the state or local committee which relate solely to child fatalities during which specific persons or incidents are discussed are exempted from the open meetings and notice requirements of s. 286.011, F.S., and Article I, s. 24 (b), Florida Constitution.

The bill makes all information acquired by the State Child Death Review Committee and local committees not subject to subpoena, discovery or introduction as evidence in any civil, criminal or administrative proceeding, excepting information, documents and records otherwise available from other sources, solely because they were presented to or reviewed by a committee.

The bill allows the State Child Death Review Committee and local committees to share information with each other and with a hospital or licensed health care practitioner who has provided treatment or diagnosis to a child whose death is being reviewed, and makes this shared information confidential and exempt.

The bill makes disclosure of information made confidential and exempt by this section of the law a first degree misdemeanor.

The bill makes the section subject to the Open Government Sunset Review Act of 1995 and repeals the section on October 2, 2004, unless reviewed and reenacted by the Legislature.

The bill makes legislative findings that the exemptions created are a public necessity because the public disclosure of this sensitive or personal information concerning persons who are identified in a child death review would hamper communication and coordination among the parties involved in child fatality reviews. The bill finds that the harm to the public from the release of this information substantially outweighs minimal public benefit which might be derived from the release of the information.

The bill takes effect upon the same date that legislation creating the State Child Death Review Committee or similar legislation takes effect, provided that such legislation is enacted in the same legislative session or an extension thereof.

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:

This bill creates exemptions to ss. 119.07(1) and 286.011, F.S., and Article I, Subsections 24(a) and (b) of the Florida Constitution. The bill provides the required statement of public necessity.

C. Trust Funds Restrictions:

None.

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.

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