

# 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 2434

SPONSOR: Education Committee and Senator Cowin

SUBJECT: Public Records/Recovery Network

DATE: April 3, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 2434 creates an exemption from public records laws for records of an educator who is in a recovery network treatment program after an investigation has commenced or for an educator who has entered into a deferred prosecution agreement under section 231.263(6)(c), F.S., which is created in SB 2432. The exemption is only for records pertaining to the treatment program; all other medical and psychological records are exempt through other provisions. The exemption is valid only so long as the educator is in the program and only if he or she successfully completes it.

This bill creates an undesignated section of the Florida Statutes and provides a statement of public necessity.

The effective date is contingent. If CS/SB 2432 becomes a law, this bill will take effect on its effective date. If CS/SB 2432 does not become a law, the bill will not take effect.

**II. Present Situation:**

**Recovery Network for Educators**

The Educator's Recovery Network Program is created in s. 231.263, F.S., and assists impaired educators to obtain treatment to overcome alcohol abuse, drug abuse, or a mental condition. Teachers in the program must execute releases to the program for all medical and treatment records regarding the impairment, and laws that apply to all such records require the recovery network to maintain the confidentiality of the records. A special exemption from public records laws is provided for the records relating to the impairment, *ie.* the identity of the educators in the program.

Committee Substitute for Senate Bill 2432 will authorize an educator who is under investigation by the Department of Education through the Education Practices Commission to enter into a

deferred prosecution agreement, under certain conditions that include enrollment in a program authorized by the recovery network.

### **Public Records Law**

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides the right to access any public records in connection with official state business, unless the records are specifically exempted. This section provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a law 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides public access to public records. Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of three criteria and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government. The exemption is justified 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.

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

The legislation under consideration will create an exemption from public records laws for records of an educator who successfully completes a recovery network treatment program after an investigation has commenced, and for an educator who has entered into a deferred prosecution agreement, as provided in the amendment to s. 232.263(6)(c), which is contemplated by CS/SB 2432.

The exemption is only for records pertaining to the treatment program. In practice, the only record that would likely need protection under this bill is the fact that the teacher is *in* the treatment program or has agreed to terms for deferring prosecution. Medical and psychological records are exempt because of other provisions.

No such exemption is provided for educators who do not successfully complete the program and the investigation is re-opened.

The exemption is repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

The Committee Substitute contains a statement of public necessity in that it would be an invasion of privacy of participants who successfully complete a recovery network treatment program.

**IV. Constitutional Issues:**

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Educators who might not otherwise engage in a program to overcome an impairment might be motivated to do so, knowing that the fact of their participation would not be publicly disclosed if they successfully completed the program.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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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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