SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1200

SPONSOR: Senator Brown-Waite

SUBJECT: Public Records and Meetings

DATE: March 3, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem	Wilson	HC	Favorable
2.			JU	
3.			GO	
4.			RE	
5.				
6.				

I. Summary:

The bill creates exemptions from chapter 119, F.S., the Public Records Law, and Section 24(a), Article I of the State Constitution, and the open meetings provisions of s. 286.011, F.S., and Section 24(b) of the State Constitution. Information contained in the notification and reports of adverse incidents involving long-term care facilities is made confidential, except in the instance of disciplinary proceedings by the Department of Health or a regulatory board, in which case the records are available to the health care professional against whom probable cause has been found. The information may be disclosed to a law-enforcement agency, where it remains confidential and exempt until criminal charges are filed. Meetings of an internal risk-management and quality-assurance committee of a long-term care facility are not open to the public. The bill makes the exemptions subject to a future review and repeal date of October 1, 2006, as required by s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The bill provides findings and statements of public necessity to justify the creation of the public records and public meetings exemptions.

The bill is tied to Senate Bill 1202, and takes effect on the same date as that bill or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof.

This bill creates two undesignated sections of law.

II. Present Situation:

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. 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.

The Public Records Law, chapter 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. While the state constitution provides that records and meetings of public bodies are to be open to the public, 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, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle begins in 2001. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Senate Bill 1202 requires nursing homes and certain assisted living facilities to implement an internal risk-management and quality-assurance program. The purpose of this program is to assess patient care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, shared-risk agreements, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies.

Senate Bill 1202 requires long-term care facilities to have a risk-management and quality-assurance committee that is required to meet monthly. Facilities must develop policies and procedures to implement the program, including the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents. The internal risk-management and quality-assurance program must include the use of incident reports that are to be filed with the risk manager and the facility administrator.

Senate Bill 1202 requires long-term care facilities to notify the Agency for Health Care Administration within one business day after the occurrence of an adverse incident. The agency is allowed to investigate any such incident, as it deems appropriate, and is allowed to prescribe measures that must or may be taken in response to the incident. The agency is to review each incident and determine whether the incident potentially involved conduct by a health care professional who is subject to disciplinary action. If this is the case, the provisions related to disciplinary proceedings of s. 456.073, F.S., apply. The notification is confidential and not discoverable or admissible in any civil or administrative action, except disciplinary proceedings

by the agency or regulatory boards. Each facility must submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence, on a form developed by the agency. The agency is to review the information, and determine whether the incident potentially involved conduct subject to the disciplinary proceedings of s. 456.073, F.S. If such conduct is believed to be grounds for professional discipline, the conduct is to be reported to the appropriate regulatory board.

Senate Bill 1202 requires the agency, as part of its licensure inspection process, to review the internal risk-management and quality-assurance program at each facility to determine whether the program meets standards in laws and rules, is being conducted in a manner designed to reduce adverse incidents and is appropriately reporting incidents as required by this section.

III. Effect of Proposed Changes:

Senate Bill 1200 makes records of meetings of risk-management and quality assurance committees in long-term care facilities licensed under part II or part III of ch. 400, F.S., confidential and exempt from public inspection. Incident reports filed with a facility risk manager, and adverse-incident notifications and reports from the facility are likewise confidential and exempt. Staff of the Agency for Health Care Administration are, however, allowed to disclose information reasonably believed to be criminal activity or grounds for disciplinary action to the appropriate law enforcement agency or regulatory board. Records obtained by a regulatory board are not available to the public as part of the investigation and prosecution in a disciplinary proceeding, except the records that form the basis of a determination of probable cause may be released to the professional against whom probable cause has been found. Records disclosed to a law-enforcement agency are made confidential and exempt from public inspection until criminal charges are filed.

Meetings of internal risk-management and quality-assurance committees in long-term care facilities licensed under part II or part III of ch. 400, F.S., are exempt from open meetings requirements and closed to the public.

These exemptions are repealed October 1, 2006, unless saved from repeal and reenacted by the Legislature.

The bill contains findings of public necessity for the exemptions from the public records and meetings requirements. It is in the interest of the health and safety of the public for the facilities covered by the bill to operate the internal risk-management and quality assurance programs contained in SB 1202. It is also in the interest of the public that the Agency for Health Care Administration reviews such programs. The bill contains legislative findings that these programs are most effective in reducing risk to residents and improving quality when facility staff have open and frank internal communication regarding risks and quality-assurance problems and that public access to these discussions or agency records will inhibit this frank and open internal communication.

The bill takes effect on the same date that SB 1202 or similar legislation takes effect, if such legislation is adopted 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 public records exemptions and open meetings exemptions related to internal risk-management and quality-assurance activities of long-term care facilities licensed under part II or part III of ch. 400, F.S. A statement of public necessity is provided.

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.