

STORAGE NAME: h0123Ba.sec.doc

DATE: October 30, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 123-B

RELATING TO: Public Records/Pharmaceuticals

SPONSOR(S): Representative(s) Gelber & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SELECT COMMITTEE ON SECURITY YEAS 11 NAYS 0
 - (2)
 - (3)
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 - (5)
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I. SUMMARY:

Chapter 381, F.S., provides for the duties and powers of the Department of Health. Section 381.0203, F.S., authorizes the department to contract for the purchase drugs on a statewide basis and to operate a pharmacy in support of pharmaceutical services provided by county public health units.

This bill creates an unnumbered section of the Florida Statutes to provide an exemption to Chapter 119, F.S., relating to public records, to exempt from public disclosure information concerning the type and amounts of pharmaceutical materials, as well as the locations of any pharmaceutical depository maintained or directed by the state agency as a response to an act of terrorism.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect contingent upon the passage of HB 103-B, which creates section 775.30, F.S., and provides a definition of "terrorism." That bill becomes effective upon becoming law.

The committee adopted a strike-everything amendment at its October 29, 2001, meeting. That amendment is traveling with the bill. Please see section V. of this bill analysis for details.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Public Records Law

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and 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:

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.

Chapter 381, F.S., Relating to Public Health, General Provisions.

Section 381.0203, F.S., authorizes the Department of Health to contract on a statewide basis for the purchase of drugs for the use by state agencies and political subdivisions. The department is also authorized in this section to operate a central pharmacy to support pharmaceutical services provided county public health units.

C. EFFECT OF PROPOSED CHANGES:

The bill creates an unnumbered section of the Florida Statutes to exempt from public disclosure information concerning the type and amount of pharmaceutical materials, as well as the location of any pharmaceutical depository maintained or directed by a state agency as a response to an act of terrorism.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment.

The bill includes a legislative statement of public necessity for the creation of this public record exemption.

The bill takes effect contingent upon the passage of HB 103-B, which creates section 775.30, F.S., and provides a definition of "terrorism." That bill becomes effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see section II.c., above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee adopted without objection a strike-everything amendment at its October 29, 2001 meeting. That amendment is traveling with the bill. The substantive changes made by the strike-everything amendment include:

- providing that the certification of sufficiency of the type and amount of pharmaceutical materials maintained for the purpose of responding to an act of terrorism or the security of the location of those pharmaceutical materials is a public record;
- providing a contingent effective date that is tied to the passage of HB 103-B or similar legislation defining "terrorism" for the purposes of the Florida Criminal Code;
- moving forward the sunset date for the exemption by one year to October 2, 2006 to conform it to the requirements of the Open Government Sunset Review Act of 1995; and
- editorial changes that refine the text of the bill and to expand the bill title to better reflect the contents of the bill.

VI. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

David M. Greenbaum

Richard Hixson/Thomas Randle