

**STORAGE NAME:** s0020Cs1.sec.doc  
**DATE:** December 3, 2001

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

**BILL #:** CS/SB 20-C  
**RELATING TO:** Public Records/Pharmaceutical  
**SPONSOR(S):** Senate Committee on Criminal Justice, Brown-Waite, and others  
**TIED BILL(S):**

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

- (1) SECURITY, SELECT
  - (2)
  - (3)
  - (4)
  - (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 of 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 exempt from public disclosure information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the State's plan to defend against an act of terrorism, as defined in s. 775.30.

Additionally, the certification by the Governor of the sufficiency of any location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the State's plan to defend against an act of terrorism, as defined in s. 775.30, is a public record.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.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 legislation that creates a definition of "terrorism," a term that is used in the bill.

II. 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 identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the State's plan to defend against an act of terrorism, as defined in s. 775.30. The exemption proposed in this bill is to be remedial in nature, that is, it is to be applied to information, now in the hands of agencies, for which this exemption would otherwise be applicable. Additionally, the records being made exempt by this bill may be disclosed by the custodial agency to another state or federal agency to prevent, detect, guard against, respond to, or manage the consequences of any attempted or actual terrorist act or to prosecute persons for such attempts or acts and that the information shall retain its exempt status in the hands of the receiving agency.

Additionally, the certification by the Governor of the sufficiency of any location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the State's plan to defend against an act of terrorism, as defined in s. 775.30, is a public record.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, 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 legislation that creates a definition of "terrorism," a term that is used in the bill.

**D. SECTION-BY-SECTION ANALYSIS:**

Please see section II.c., above.

III. 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

IV. 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

**Notable Differences Between HB123-B/CS 60-B(2001B) and CS/SB 20-C(2002)**

Amendments adopted in floor action in the Senate on December 2, 2001, significantly changed the listing of information covered by this proposed exemption. In HB 123-B, the type, amount, and location of pharmaceutical materials to be held in response to a terrorist act were to be exempted from public disclosure. CS/SB 20-C does not exempt from public disclosure the types and amounts of drugs that are maintained by the Department of Health for responding to a terrorist act, but does continue to exempt the location of what are now termed "pharmaceutical caches" as well as the information that would disclose the physical characteristics of the facilities where these caches are located.

**Legislative History**

This issue originated as House Bill 123-B, which was reported favorably with one amendment by the Select Committee on Security on October 29, 2001. The amendment was adopted and the bill passed the House on a 118-1 vote on October 30, 2001. It died in Senate Messages on November 1, 2001. Its companion, Senate Bill 60-B, died on the Senate calendar at the expiration of 2001 Special Session B.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

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David M. Greenbaum

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Richard Hixson/Tom Randle