

STORAGE NAME: h2019.llc.doc
DATE: March 11, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR LIFELONG LEARNING
ANALYSIS

BILL #: HB 2019 (PCB LLC 02-02)
RELATING TO: Public records and public meetings
SPONSOR(S): Council for Lifelong Learning and Rep. Melvin
TIED BILL(S): HB 2017 (PCB LLC 02-01)
ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) COUNCIL FOR LIFELONG LEARNING YEAS 18 NAYS 0
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

On July 1, 2001 the powers and duties of the State Board for Independent Colleges and Universities and the State Board for Nonpublic Career Education (SBNCE) were combined and transferred to a single board – the Commission for Independent Education (Commission). The SBNCE held a public records exemption and public meetings exemption for certain investigations conducted by that board.

This bill expands the public records exemption for information obtained by the Commission in the course of an investigation and the public meetings exemption for the proceedings of the probable cause panel associated with such investigations to include all institutions under the jurisdiction of the Commission. These exemptions are subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2007, unless reviewed and reenacted by the Legislature. The bill contains a statement of public necessity which provides that exemption from disclosure of information obtained in the course of investigating a complaint and closing access to the probable cause proceedings prevent unnecessary damage to the good name of an institution or persons associated with the institution that could result from the release of unfounded complaints. Information will be released after a finding of probable cause.

The bill also expands the public records exemptions relating to the H. Lee Moffitt Cancer Center and Research Institute (Institute) to include materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted at the Institute, its not-for-profit corporation, or its subsidiaries. The bill contains a statement of public necessity which provides that disclosure of this information could adversely impact the Institute or its subsidiaries in the highly competitive health care and medical research environment and effectively prevent the Institute from expeditiously fulfilling its mission of cancer treatment, research, and education.

The bill has no fiscal impact. The bill has a contingent effective date of January 7, 2003, if PCB LLC 02-01 or similar legislation is adopted in the same legislative session or an extension thereof.

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"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Public Records and Public Meetings 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.

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.

In regard to public meetings, Article I, s. 24(b), Florida Constitution, provides that:

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.

Additionally, s. 286.011, F.S., provides that

[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political

subdivision, except as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records and meetings 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 this purpose.

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.

Investigations of suspected violations of statutory provisions related to nonpublic postsecondary career schools

Sections 246.201 – 246.231, F.S., provide the minimum legal requirements for the establishment and operation of nonpublic postsecondary career schools. Prior to July 1, 2001, the State Board of Nonpublic Career Education was responsible for administering the provisions of ss. 246.201 – 246.231, F.S.

Section 246.226, F.S., directs the State Board of Nonpublic Career Education to investigate any suspected violation of a provision of ss. 246.201 – 246.231, F.S., or rule of the board. The State Board of Nonpublic Career Education must investigate complaints in a timely manner. Section 246.226(2), F.S., provides that the complaint and all information obtained by the State Board of Nonpublic Career Education in the course of an investigation are confidential and exempt from the provisions of s. 119.07(1), F.S., for a maximum of 10 days after the probable-cause panel declares a

finding of probable cause. Section 246.226(3), F.S., provides that proceedings of the probable cause panel are exempt from the public meetings requirements of s. 286.011, F.S., until the panel declares a finding of probable cause.

Sections 246.011 – 246.151, F.S., provide the minimum legal requirements for the establishment and operation of nonpublic colleges. Prior to July 1, 2001, the State Board of Independent Colleges and Universities was responsible for administering the provisions of ss. 246.011 – 246.151, F.S.

Chapter 2001-170, L.O.F., combines the powers and duties of the State Board of Independent Colleges and Universities and the State Board for Nonpublic Career Education and transfers those powers and duties to a single board named the Commission for Independent Education. The Commission for Independent Education has jurisdiction over all of the institutions that were under the State Board of Independent Colleges and Universities and the State Board of Nonpublic Career Education with the exception of certain private colleges and universities that participate in the Florida Resident Access Grant (FRAG) program and certain religious colleges. The existing public records exemption and public meetings exemption held by the State Board of Nonpublic Career Education do not appear to cover the full jurisdiction of the Commission for Independent Education.

Subsection (7) of Section 3, ch. 2000-321, L.O.F., repeals ch. 246, F.S., effective January 7, 2003.

PCB LLC 02-01, creates s. 1005.38, F.S., which provides for actions against an institution licensed by the Commission for Independent Education. The Commission is authorized to conduct disciplinary proceedings through an investigation of any suspected violation of ch. 1005, F.S. The Commission must notify an institution or individual of the substance of any complaint that is under investigation unless the executive director and chair of the Commission concur that notification would impede the investigation. The Commission may also withhold notification to a person under investigation for an act that constitutes a criminal offense. PCB LLC 02-01 has an effective date of January 7, 2003 except as otherwise provided in the bill.

H. Lee Moffitt Cancer Center and Research Institute

Section 240.512, F.S., establishes the H. Lee Moffitt Cancer Center and Research Institute (Institute) at the University of South Florida and requires the Board of Regents to enter into an agreement for utilization of the facilities known as the H. Lee Moffitt Cancer Center and Research Institute with a Florida not-for-profit corporation organized solely for the purpose of governing and operating the Institute. The not-for-profit corporation, acting as an instrumentality of the state, must govern and operate the Institute in accordance with terms of its agreement with the Board of Regents.

With prior approval of the Board of Regents, the not-for-profit corporation is authorized to create not-for-profit subsidiaries to fulfill its mission. The not-for-profit corporation and its subsidiaries are authorized to receive, hold, invest, and administer property and any moneys received from private, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the Institute, for the benefit of the Institute and the fulfillment of its mission.

Section 240.512(8)(b), F.S., provides a public records exemption for proprietary confidential business information owned or controlled by the not-for-profit corporation or its subsidiaries. The exemption covers information concerning :

1. Internal auditing controls and reports of individual auditors;
2. Matters reasonably encompassed in privileged attorney-client communications;
3. Contracts for managed-care arrangements and any documents directly related to the negotiation, performance, and implementation of any such contracts;
4. Bids or other contractual data, banking records, and credit agreements which would impair efforts to contract for goods or services on favorable terms;
5. Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information;
6. Corporate officer and employee personnel information;
7. Information relating to the proceedings and records of credentialing panels and committees and of the governing board relating to credentialing;
8. Minutes of meetings of the governing board except minutes of meetings that are open to the public;
9. Information that reveals plans for marketing services reasonably expected to be provided by competitors;
10. Trade secrets as defined in s. 688.002, F.S.; and
11. The identity of donors or prospective donors who wish to remain anonymous.

Subsection (7) of Section 3, ch. 2000-321, L.O.F., repeals ch. 240, F.S., effective January 7, 2003.

Chapter 2001-170, L.O.F., abolishes the Board of Regents effective July 1, 2001, and transfers all powers, duties, functions, personnel, etc. to the Florida Board of Education.

PCB LLC 02-01 creates s. 1004.43, F.S., H. Lee Moffitt Cancer Center and Research Institute, and restates, with the exception of changes necessitated by the governance changes resulting from ch. 2001-170, L.O.F., the provisions of s. 240.512, F.S.

C. EFFECT OF PROPOSED CHANGES:

PCB LLC 02-02 creates s. 1005.385, F.S., and expands the current public records exemption relating to investigatory materials held by the Commission for Independent Education and the public meetings exemption for probable cause panels formed to conduct such investigations to address the increase in number and types of institutions now under the jurisdiction of the Commission. The

bill provides that the Commission may provide such information to law enforcement and regulatory agencies. The public records exemption and the public meetings exemption are subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2007, unless reviewed and reenacted by the Legislature.

The bill contains a statement of public necessity for the exemptions created for the Commission for Independent Education. Exemption from disclosure of information obtained in the course of investigating a complaint and closing access to the proceedings determining a finding of probable cause prevent unnecessary damage to the good name of an institution or persons associated with the institution that could result from the release of unfounded complaints. The exemption for information obtained during the course of the investigation and the proceedings of the probable cause panel is for a maximum of 10 days after the probable cause panel declares a finding of probable cause.

PCB LLC 02-02 amends s. 1004.43, F.S., as created by PCB LLC 02-01, and expands the current public records exemption held by the H. Lee Moffitt Cancer Center and Research Institute to include materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted at the Institute or by the not-for-profit corporation or its subsidiaries. The bill contains a statement of public necessity for the expansion of this exemption. The public necessity statement provides that the exemption is necessary because the records covered by the exemption contain information that, if disclosed, would adversely impact the not-for-profit corporation or its subsidiaries in the competitive health care and medical research environment. The highly confidential nature of proprietary pharmaceutical and other cancer-related research necessitate that the not-for-profit corporation and its subsidiaries be authorized to maintain confidential information it receives from, or generates for, the sponsors of its research. Disclosure of such information could place the not-for-profit corporation and its subsidiaries on an unequal footing in the marketplace as compared with its private health care and medical research competitors that are not required to disclose such information. Disclosure of such information would effectively prevent the not-for-profit corporation and its subsidiaries from expeditiously fulfilling the H. Lee Moffitt Cancer Center and Research Institute's mission of cancer treatment, research, and education.

The bill has a contingent effective date of January 7, 2003 if PCB LLC 02-01, or similar legislation, is adopted in the same legislative session or an extension thereof.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2002, the Council for Lifelong Learning amended PCB LLC 02-02 to expand the public records exemption for the H. Lee Moffitt Cancer Center and Research Institute to include proprietary confidential business information concerning materials that relate to methods of manufacture or

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production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted at the Institute or by the not-for-profit corporation or its subsidiaries.

VII. SIGNATURES:

COUNCIL FOR LIFELONG LEARNING:

Prepared by:

Council Director:

Betty H. Tilton, Ph.D.

Patricia Levesque