

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1715 (PCB SA 03-12A) Public Records Exemption/Worker's Comp Claimant Information
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Insurance</u>	<u></u>	<u>Thomas</u>	<u>Schulte</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption 5 years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2 of the fifth year after enactment.

This bill reenacts and expands the public records exemption for information identifying an ill or injured employee, which will repeal on October 2, 2003, if this bill does not become law.

Current law provides a public records exemption for information identifying an ill or injured employee contained in a workers' compensation report of injury or illness. However, such information contained in other documents is not afforded the same protection. This bill expands the exemption to include an ill or injured employee's identifying information contained in *all* documents held by the Department of Financial Services, the Department of Education, and the Division of Administrative Hearings.

This bill provides for retroactive application and future review and repeal of the exemption, and provides a finding of public necessity.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1715a.in.doc
DATE: April 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

Florida law charges the Department of Insurance (duties now reside with the Department of Financial Services), Agency for Health Care Administration, Department of Education, and the Division of Administrative Hearings with administering the Workers' Compensation Law in a manner that facilitates the self-execution of the system and ensures a prompt and cost-effective delivery of payments.¹

The law establishes reporting requirements for employers and carriers relating to ill or injured employees. An employee who has suffered an injury arising out of and in the course of employment must advise his or her employer of the injury within 30 days after the date of or initial manifestation of the injury. The employer must report such injury or death to its carrier within seven days after actual knowledge of such injury or death. Within 14 days following the employer's receipt of the form, the carrier must then file the information with the Department of Insurance.²

Florida law also provides a public records exemption for information in a report of injury or illness that would identify an ill or injured employee.³ In addition to the initial report of illness or injury, employers and carriers are required to file subsequent reports with the Department of Insurance relating to an injured worker that also contain such information but that are not confidential or exempt from public disclosure. Also, an employee might file information in support of the informal dispute resolution process, which is similar to the information that is made confidential and exempt with regard to a report of injury or illness, but that is publicly available when submitted by that employee. Furthermore, if a dispute concerning entitlement to benefits is referred to the Office of the Judges of Compensation Claims of the Division of Administrative Hearings (DOAH), information found in the petition and the final order is similar to the confidential and exempt information contained in the report of injury or illness, but is available for public disclosure when held by DOAH.

Current law provides for future review and repeal of the public records exemption identifying information contained in reports of injury or illness submitted to the Department of Insurance. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 440.185(11), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to the Department of Insurance and had meetings with department staff.

¹ Section 440.015, F.S.

² Section 440.185, F.S.

³ Section 440.185(11), F.S.

Effect of Bill

As a result of those meetings and the questionnaire response, this bill reenacts and expands the public records exemption.

This bill expands the exemption to include an ill or injured employee's identifying information contained in *all* documents held by the Department of Financial Services. It also expands the exemption by applying it to such information when held by the Department of Education and DOAH.

This bill creates an exception to the exemption for a law enforcement agency in the furtherance of the agency's duties and responsibilities. The law enforcement agency must maintain the confidential and exempt status of the information received.

This bill provides for retroactive application⁴ and future review and repeal of the exemption, and provides a finding of public necessity.

C. SECTION DIRECTORY:

Section 1. Repeals s. 440.185(11), F.S., which provides a public records exemption for information in a report of injury or illness that would identify an ill or injured employee.

Section 2. Creates s. 440.592, F.S., which reenacts and expands the current exemption for an ill or injured employee's identifying information held by the Department of Financial Services, the Department of Education, or the Division of Administrative Hearings.

Section 3. Provides for future review and repeal.

Section 4. Provides a statement of public necessity for the exemption.

Section 5. Provides that the effective date of this bill is October 1, 2003.

II. 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.

⁴ On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995⁵ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of art. 1, s. 24, Fla. Const.. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 19, 2003, the Committee on State Administration adopted a strike-everything amendment. The strike-everything amendment reenacted and expanded the public records exemption for an ill or injured employee's identifying information, whereas the original bill repealed the public records exemption. The strike-everything amendment also provided for retroactive application and future review and repeal in addition to a statement of public necessity.

⁵ Section 119.15, F.S.