

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 387 w/CS Public Records Exemption/Moffitt Center/Confidential Business Information
SPONSOR(S): Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>6 Y, 0 N w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>State Administration</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida. The law also requires a Florida not-for-profit corporation (corporation) to govern and operate the Cancer Center. Records of the corporation and its subsidiaries are public records.

This bill expands the public records exemption for the corporation to include:

- Information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation.
- Business transactions resulting from such research.
- Information received by the corporation from a person in another state or nation or the Federal Government which is otherwise confidential or exempt.

Expansion of this exemption conforms the corporation exemption to the public records exemption afforded state university divisions of sponsored research, as well as addresses the need to maintain the confidential or exempt status of information received from another state or nation or the Federal Government.

This bill provides for future review and repeal of the exemption and a statement of public necessity.

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

On March 26, 2003, this bill was recommitted to the Committee on State Administration.

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

STORAGE NAME: h0387b.sa.doc
DATE: March 28, 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 establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida. The law also requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Cancer Center. Records of the corporation and its subsidiaries are public records.¹

Current law provides a public records exemption for proprietary confidential business information owned or controlled by the corporation or its subsidiaries. “Proprietary confidential business information” (CBI) means information that is “intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of the not-for-profit corporation or its subsidiaries”.² CBI includes information concerning:

- Internal auditing controls and reports of internal auditors;
- Matters reasonably encompassed in privileged attorney-client communications;
- Contracts for managed-care arrangements and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;
- Bids or other contractual data, banking records, and credit;
- Information relating to private contractual data;
- Corporate officer and employee personnel information;
- Information relating to the proceedings and records of credentialing panels and committees and of the governing board of the corporation or its subsidiaries relating to credentialing;
- Minutes of meetings of the governing board of the corporation and its subsidiaries;³
- Information that reveals plans for marketing services that the corporation or its subsidiaries reasonably expect to be provided by competitors;
- Trade secrets, including reimbursement methodologies or rates; or
- The identity of donors or prospective donors of property who wish to remain anonymous or any information identifying such donors or prospective donors.

The law also provides for an exception to the public records exemption. Upon request, the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the State Board of

¹ Section 1004.43, F.S.

² Section 1004.43(8)(b), F.S.

³ This does not include minutes of meetings that are open to the public.

Education must be given access to all CBI pursuant to their oversight and auditing functions. The confidential and exempt⁴ status of the information received must be maintained.

The public records exemptions for the corporation and the University of South Florida's (USF) division of sponsored research differ. Because the corporation's affiliation with USF includes "significant coordination and joint development research discoveries", the differing public records exemptions have created confusion regarding the "scope of the protections of intellectual property enjoyed by" the corporation and USF.⁵ According to the Cancer Center, conforming the corporation's exemption to the USF's division of sponsored research exemption would allow the Cancer Center to more effectively fulfill its legislative mandate in the area of cancer research.

Effect of Bill

This bill expands the corporation's exemption to include:

- Information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation or its subsidiaries.
- Business transactions resulting from such research.
- Information received by the corporation or its subsidiaries from a person in another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

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

C. SECTION DIRECTORY:

Section 1. Amends s. 1004.43(8), F.S., expanding a current public records exemption for the H. Lee Moffitt Cancer Center and Research Institute.

Section 2. Provides for future review and repeal of the exemption.

Section 3. Provides a statement of public necessity.

Section 4. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

⁴ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

⁵ Letter to Representative Haridopolos from the Cancer Center's Director of Governmental Relations, January 22, 2003.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

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:

Comments

Following the review of HB 387 with CS under House Rule 6.3(b), the bill was re-referred to the Committee on State Administration on March 26, 2003.

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) 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), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995⁶ 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.

⁶ Section 119.15, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2003, the Committee on State Administration adopted an amendment to Representative Ambler's HB 387 and reported the bill favorably with CS. The bill with CS removes the cross-reference contained in the original bill and inserts into the exemption the applicable exemption language found in the cross-reference. It also expands the current exemption to include information received by the corporation or its subsidiaries from a person in another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

The bill with CS moves the review and repeal language to a separate section in the bill. Also, the statement of public necessity originally began with several lines of history regarding the creation of the Cancer Center exemption. This is not the standard format for a public necessity statement and as such could create confusion. As such, the bill with CS reformats the public necessity statement to reflect standard drafting conventions.