

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 387 w/CS Public Records and Meetings Exemptions/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>	<u>6 Y, 0 N w/CS</u>	<u>Williamson</u>	<u>Everhart</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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

This bill expands the public records exemption for the Cancer Center 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; and information received by the corporation from a person in this or another state or nation or the Federal Government which is otherwise exempt or confidential.

This bill expands the public records exemption for the Alzheimer's Center to include proprietary confidential business information. It provides exceptions to the exemption. This bill also provides that all meetings of the governing board of the Alzheimer's Center are closed to the public unless the board discusses the expenditure of dollars appropriated by the state.

This bill provides for future review and repeal of the exemptions and provides statements 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: h0387c.sa.doc
DATE: April 8, 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:

H. Lee Moffitt Cancer Center and Research Institute

Background

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida (USF). 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

The public records exemptions for the corporation and USF’s 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.³ According to the Cancer Center, conforming the corporation’s exemption to 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.

¹ Section 1004.43, F.S.

² Section 1004.43(8)(b), F.S.

³ Letter to Representative Haridopolos from the Cancer Center’s Director of Governmental Relations, January 22, 2003.

- Information received by the corporation or its subsidiaries from a person in this or another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of this or another 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.

Florida Alzheimer's Center and Research Institute

Background

Florida law also establishes the Florida Alzheimer's Center and Research Institute (Alzheimer's Center) at USF. The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Alzheimer's Center. Records of the corporation and its subsidiaries are public records.⁴

Current law provides a public records exemption for the personal identifying information of program clients, patient medical or health records, certain trade secret information, the identity of donors to the Alzheimer's Center, information received which is otherwise confidential and exempt, and exempt or confidential information received from a person from another state or nation or the Federal Government. Like the Cancer Center, the public records exemptions for the Alzheimer's Center and USF's division of sponsored research differ.

Effect of Bill

This bill expands the Alzheimer's Center public records exemption in order to conform to those exemptions provided to the Cancer Center and USF's division of sponsored research. The exemption is expanded to include CBI. CBI includes information concerning:

- Internal auditing controls and reports of internal auditors;
- 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 agreements;
- 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;⁵ and
- Information that reveals plans for marketing services that the corporation or its subsidiaries reasonably expect to be provided by competitors.

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 Education must be given access to all CBI pursuant to their oversight and auditing functions. The confidential and exempt⁶ status of the information received must be maintained.

⁴ Section 1004.445, F.S.

⁵ This does not include minutes of meetings that are open to the public.

⁶ 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

This bill also provides a public meetings exemption for all meetings of the governing board of the Alzheimer's Center unless the board is discussing the expenditure of state dollars appropriated to the not-for-profit corporation. The exemption duplicates the Cancer Center's public meetings exemption. This exemption raises concerns because it works under the presumption that all meetings are closed unless required to be open. The Florida Constitution requires that all meetings be open unless a public meetings exemption exists.⁷

Finally, this bill provides for future review and repeal, 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 expanded Cancer Center exemption.

Section 3. Provides a statement of public necessity for such expansion.

Section 4. Amends s. 1004.445, F.S., expanding the Alzheimer Institute's public records exemption by conforming it to the Cancer Center's exemption, and creating a public meetings exemption for such institute.

Section 5. Providing for future review and repeal of the Alzheimer Institute's expanded public records exemption and newly created public meetings exemption.

Section 6. Providing a statement of public necessity for such exemptions.

Section 7. 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

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.

⁷ Article I, s. 24(b), Florida Constitution.

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:

Public Records and Public Meetings Laws

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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings 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, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995⁸ 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.

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

⁸ Section 119.15, F.S.

exemption. This is not the standard format for a public necessity statement and as such could create confusion. The bill with CS reformats the public necessity statement to reflect standard drafting conventions.

On April 8, 2003, the Committee on State Administration adopted an amendment to HB 387 with CS, and reported the bill favorably with CS.

The bill with CS clarifies that the H. Lee Moffitt Cancer Center and Research Institute will retain the exempt or confidential status of information received from another agency within this state as well as from an agency of another state. It also provides the Florida Alzheimer's Center and Research Institute with the same exemptions afforded the other research institutes and divisions of research throughout the state.