

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Policy Committee

BILL: SPB 7002

INTRODUCER: For consideration by Health Policy Committee

SUBJECT: Public Records Exemption/Medical Records

DATE: January 17, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill creates a public records exemption for medical records held by an agency before, on, or after October 1, 2007. The bill defines “medical record” to mean any patient-specific record created by a licensed health care practitioner for the purpose of diagnosing or treating human illness, including a prescription for treating the patient. The exemption does not supersede any other applicable public records exemption that exists before October 1, 2007. Legislative findings and a statement of public necessity are expressed for the public records exemption created in the bill. The public records exemption created in the bill is scheduled to be repealed on October 2, 2012, unless it is reviewed and saved from repeal in accordance with the Open Government Sunset Review Act.

This bill amends section 119.071, Florida Statutes, and creates one undesignated section of law.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State

Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- 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; or
- 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.

Senate Interim Project 2007-132

The Open Government Sunset Review Act was amended in 2005 to modify the review process so that consideration will be given to reducing the number of exemptions by merging multiple similar exemptions during the review of an exemption subject to sunset review. In *Interim Project 2007-132*, staff reviewed existing exemptions for medical records and health information held by agencies to determine whether these exemptions could be appropriately merged.

With regard to medical records, staff recommended that a new public records exemption be created in ch. 119, F.S., for an individual patient’s medical records held by agencies. The exemption should define “medical records” so that the exemption only applies to individual

patient medical records that are created by a licensed health care practitioner to document the diagnosis, treatment, or prescription of a human illness. Staff also recommended that the exemption should clarify that the new exemption does not supersede any other applicable public records exemptions for medical records and health information existing prior to the effective date of the exemption, or created thereafter.

With regard to other health information held by agencies, staff found that it would be inappropriate to create a single public records exemption in ch. 119, F.S. Staff's findings and recommendations are detailed in *Interim Project Report 2007-132*.

III. Effect of Proposed Changes:

The bill creates a public records exemption for medical records held by an agency before, on, or after October 1, 2007. The bill defines "medical record" to mean any patient-specific record created by a licensed health care practitioner for the purpose of diagnosing or treating human illness, including a prescription for treating the patient. The exemption does not supersede any other applicable public records exemption that exists before October 1, 2007, or that is created thereafter. Legislative findings and a statement of public necessity are expressed for the public records exemption created in the bill. The public records exemption created in the bill is scheduled to be repealed on October 2, 2012, unless it is reviewed and saved from repeal in accordance with the Open Government Sunset Review Act.

The effective date of the bill is October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption and is, therefore, subject to the two-thirds vote requirement of Article I, s. 24 of the State Constitution. The bill contains the required statement of public necessity to justify the exemption.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
