

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 457 Pub. Rec./Dental Workforce Surveys

**SPONSOR(S):** Harrell

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N	Guzzo	O'Callaghan
2) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill creates a public record exemption for personal identifying information that is contained in a record provided by a dentist or dental hygienist in response to a dental workforce survey and held by the Department of Health.

The bill provides exceptions to the public record exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of upon becoming a law.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Public Records

Article I, s. 24(a) of the State 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Workforce Surveys

In 2009, the Department of Health (DOH) developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses.<sup>3</sup> Of the 11,272 dentists who renewed an active license by June 23, 2010, 89 percent responded to the voluntary survey.<sup>4</sup>

Responses to the survey are self-reported. The survey was designed to obtain information unavailable elsewhere on key workforce characteristics in order to better inform and shape public healthcare policy. Specifically, the survey consists of 25 core questions on demographics, education and training, practice characteristics and status, specialties, retention, and access to oral healthcare in Florida.<sup>5</sup>

Unlike dentists and dental hygienists, physicians are statutorily required to respond to physician workforce surveys as a condition of license renewal.<sup>6</sup> All personal identifying information contained in records provided by physicians in response to these workforce surveys is confidential and exempt under s. 458.3193, F.S., concerning allopathic physicians, and s. 459.0083, F.S., concerning osteopathic physicians.

#### **Effect of Proposed Changes**

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 466.013(2), F.S., authorizes DOH to adopt rules for the biennial renewal of licenses.

<sup>4</sup> Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists*, March 2011, at 11, [http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009\\_2010\\_Workforce\\_Survey\\_Dentists\\_Report.pdf](http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/2009_2010_Workforce_Survey_Dentists_Report.pdf) (last visited February 14, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> Section 381.4018, F.S. Language requiring the submission of physician workforce surveys for license renewal can be found in s. 458.3191, F.S., for allopathic physicians, and s. 459.0081, F.S., for osteopathic physicians.

The bill provides that personal identifying information that is contained in a record provided by a dentist or dental hygienist licensed under ch. 466, F.S., in response to a dental workforce survey and held by DOH is confidential and exempt<sup>7</sup> from public records requirements.

The bill provides exceptions to the exemption under certain circumstances. Specifically, the bill provides that personal identifying information contained in such a record:

- Must be disclosed with the express written consent of the individual, to whom the information pertains, or the individual's legally authorized representative;
- Must be disclosed by court order upon a showing of good cause; and
- May be disclosed to a research entity, if the entity seeks the record or data pursuant to a research protocol approved by DOH.

The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with DOH. The purchase and data-use agreement is required to:

- Prohibit the release of information by the research entity which would identify individuals;
- Limit the use of records or data to the approved research protocol; and
- Prohibit any other use of the records or data.

The bill provides that copies of records or data remain the property of DOH.

DOH is authorized to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of the confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>8</sup> The public necessity statement declares the public record exemption necessary to foster candid and honest responses to the workforce survey and to ensure DOH has accurate information on dentists and dental hygienists.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 466.051, F.S., relating to confidentiality of certain information contained in dental workforce surveys.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill likely could create a minimal fiscal impact on DOH, because staff responsible for complying with public record requests could require training related to creation of the new public record

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<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>8</sup> Section 24(c), Art. I of the State Constitution.

exemption. In addition, DOH could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

**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 appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the personal identifying information of dentists and dental hygienists who respond to dental workforce surveys. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making authority is necessary to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Voluntary Survey

The DOH developed a workforce survey for dentists and dental hygienists to complete on a voluntary basis in conjunction with the biennial renewal of dental licenses. However, it is unclear if there is any statutory authority for the creation of such survey.

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>9</sup> The bill does not contain a provision requiring retroactive application. As such, the public record exemption would only apply prospectively.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>9</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).