

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 520

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: January 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	<b>Favorable</b>
2.			GO	
3.			RC	

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## I. Summary:

SB 520 creates a public records exemption for personal identifying information provided by dentists or dental hygienists to the Department of Health (DOH) in their responses to dental workforce surveys. The information is designated confidential and exempt, but must be disclosed by the DOH when authorized by the person who is identified or pursuant to court order. The bill allows the DOH to release the information for research purposes subject to specific conditions.

The bill provides for review and repeal of the exemption pursuant to the Open Government Sunset Review Act. The bill also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### Workforce Surveys

The DOH currently administers two optional workforce surveys—one for dentists and one for dental hygienists—which may be completed as part of licensure renewal. The DOH first offered

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<sup>4</sup> Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

the survey to dentists in 2009 and 89 percent of all dentists with active licenses responded.<sup>13</sup> The DOH offered the survey to dental hygienists in 2011 and 87.9 percent responded.<sup>14</sup> The data from both surveys are analyzed by the DOH Public Health Dental Program. The Public Health Dental Program disseminates the workforce reports on dentists and dental hygienists in two primary ways—by posting on the DOH website and through the Oral Health Florida Coalition, which is a broad-based organization of local stakeholders committed to improving oral health in Florida.<sup>15</sup>

Unlike dentists and dental hygienists, medical and osteopathic physicians are *required* to respond to a workforce survey as a condition of license renewal.<sup>16</sup> Findings from the survey are used by the Physician Workforce Advisory Council, which provides advice and recommendations to the DOH on issues related to physician workforce planning.<sup>17</sup> All personal identifying information contained in records provided by physicians in response to the survey is confidential and exempt.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill creates a public records exemption for dental workforce surveys that is, with one exception, identical to the exemption currently in law for physician workforce surveys. The exemption for physician workforce surveys makes disclosure of the information to research entities mandatory when the research entity has complied with the specified conditions. By contrast, SB 520 makes disclosure permissive.<sup>19</sup>

Specifically, the bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to a dental workforce survey and held by the DOH, is confidential and exempt<sup>20</sup> from public records requirements. However, the DOH must disclose the information under the following circumstances:

- With the express written consent of the person who is identified or the person's legally authorized representative; or
- By court order upon a showing of good cause.

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<sup>13</sup> Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists* (March 2011) (on file with the Senate Health Policy Committee).

<sup>14</sup> Florida Department of Health, *2013 Bill Analysis, Economic Statement, and Fiscal Note for SB 1066*, on file with the Senate Health Policy Committee.

<sup>15</sup> E-mail from Katherine Kamaya, Florida Department of Health (Jan. 23, 2014) (on file with the Senate Committee on Health Policy). Oral Health Florida, under the facilitation of the Florida Public Health Institute, is working with national, state, and local stakeholders to improve oral health in Florida. The coalition's mission is to increase public understanding of and public support for programs and policies that aim to improve oral health in Florida.

<sup>16</sup> See ss. 458.3191 and 459.0081, F.S.

<sup>17</sup> Section 381.4018, F.S.

<sup>18</sup> See ss. 458.3193 and 459.0083, F.S.

<sup>19</sup> SB 520 is the substance of bills that have either passed, or been considered by, the Senate in each of the following Sessions: 2010, 2011, 2012, and 2013. All prior bills made disclosure of the information to research entities mandatory when the research entity complied with the required conditions for disclosure.

<sup>20</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. See *supra* note 6.

In addition, the DOH may disclose the information to a research entity, if the entity:

- Seeks the record or data pursuant to a research protocol approved by the DOH;
- Maintains the records in accordance with the protocol; and
- Enters into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that 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 authorizes the DOH to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity, which is required by the Florida Constitution.<sup>21</sup> The statement finds that preserving the confidentiality of the information will result in more candid responses to the surveys, which, in turn, are important to addressing the availability of the dental workforce in Florida.

The bill will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

###### **Public Necessity Statement**

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

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<sup>21</sup> Section 24(c), Art. I of the Florida Constitution.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

SB 520 could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests may need training related to the new public records exemption. In addition, the DOH could incur costs associated with redacting the confidential and exempt information prior to releasing a record. These costs; however, can be absorbed by the DOH as part of current operations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 466.051.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.