

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCA 10-08 Public Records
SPONSOR(S): Health Care Appropriations Committee
TIED BILLS: CS/CS/HB 225 **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Appropriations Committee	9 Y, 3 N	Calamas	Massengale
1)				
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SUMMARY ANALYSIS

Proposed Committee Bill HCA 10-08 creates a public records exemption for reference statements made to the Florida Department of Health, Board of Pharmacy during the board’s registration process for practitioners authorized to prescribe controlled substances in Schedules II, III, IV or V. The board is required to register all controlled substance prescribing practitioners pursuant section 465.0276(3), Florida Statutes, as amended by Committee Substitute for House Bill 225, and must solicit reference statements from specified individuals during the registration process. The public records exemption makes the reference statement confidential and exempt from public records requests, except in investigations in which a finding of probable cause is made.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law

Section 24(a) of Article I of the 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, however, may provide by general law for the exemption of records from the requirements of Section 24(a) of Article I of the 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), Florida Statutes, guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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 that is necessary to meet one of the following purposes:³

- 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.

¹ Article I, s. 24(c), of the Florida Constitution.

² s. 119.15, F.s.

³ *Id.*

Public Records Exemption for Health Care Practitioner Investigations

Current law provides a public records exemption for materials related to the investigation of a complaint filed with the Department of Health against a health care practitioner.⁴ The appropriate practitioner regulatory board conducts an investigation after a complaint is filed. Investigative materials and the probable cause report used by the regulatory board are confidential and exempt⁵ from section 119.07(1), Florida Statutes, until and unless the practitioner waives his privilege of confidentiality or ten days after probable cause has been found to exist.⁶

Effect of Proposed Changes

Proposed Committee Bill HCA 10-08 creates a public record exemption for reference statements made to the Florida Department of Health, Board of Pharmacy during the board's registration process for practitioners authorized to prescribe controlled substances in Schedules II, III, IV or V. The board is required to register all controlled substance prescribing practitioners pursuant section 465.0276(3), Florida Statutes, as amended by Committee Substitute for House Bill 225, and must solicit reference statements from specified individuals during the registration process. The public records exemption makes the reference statement confidential and exempt from public records requests, except in investigations in which a finding of probable cause is made. The public records exemption protects the reference statement, which requests from a referring person whether, the person:

- Has personal knowledge of the practitioner;
- Has had an opportunity to form an opinion of the practitioner's medical skills and ethics;
- Is aware of any incidents in the practitioner's medical practice which reflect insufficient skill or medical ethics to properly dispense controlled substances;
- Is aware of any facts or circumstances which indicate the practitioner is likely to dispense controlled substances without clinical justification; and
- Recommends the practitioner for controlled substance dispensing registration.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.⁷

B. SECTION DIRECTORY:

Section 1: Provides an unnumbered section of law to create a public record exemption for statements of reference made to the Board of Pharmacy regarding controlled substance prescribing practitioners.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date dependent upon the adoption of House Bill 225 or similar legislation in the same legislative session or an extension thereof.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁴ s. 456.073, F.S.

⁵ 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 Rivera 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 designate 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 scheme. (See Attorney General Opinion 85-62, August 1, 1985).

⁶ s. 456.073(10), F.S.

⁷ Section 24(c), Art. I, Florida Constitution.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, insignificant fiscal impact on the Department of Health because staff responsible for complying with public records requests could require training related to creation of the public records exemption. In addition, the department could incur costs associated with redacting the 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:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state sales tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Section 24(c) of Article I of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created 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

Section 24(c) of Article I of the Florida 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; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES