

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 09-12 OGSR Florida Patient Safety Corporation

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: IDEN./SIM. BILLS: SB 1896

|              | REFERENCE                             | ACTION    | ANALYST    | STAFF DIRECTOR |
|--------------|---------------------------------------|-----------|------------|----------------|
| Orig. Comm.: | Governmental Affairs Policy Committee | 10 Y, 0 N | Williamson | Williamson     |
| 1)           |                                       |           |            |                |
| 2)           |                                       |           |            |                |
| 3)           |                                       |           |            |                |
| 4)           |                                       |           |            |                |
| 5)           |                                       |           |            |                |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Patient Safety Corporation (corporation) is a not-for-profit corporation. Its purpose is to serve as a learning organization dedicated to assisting health care providers in the state to improve the quality and safety of health care rendered and to reduce harm to patients. Furthermore, the corporation is to promote the development of a culture of patient safety in the health care system, but it is not to regulate health care providers.

Current law provides a public record and public meeting exemption for the corporation. The following information is confidential and exempt from public records requirements: information identifying a patient and that is contained in patient safety data; information identifying a person or entity reporting patient safety data; and information identifying a health care practitioner or health care facility. Such information may be released under certain circumstances. Further, any portion of a meeting held by the corporation during which confidential and exempt information is discussed is exempt from public meetings requirements.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2009, unless reenacted by the Legislature.

The bill repeals the corporation and repeals the public record and public meeting exemptions under review.

The bill does not appear to have a fiscal impact on state or local governments.

## 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:

##### BACKGROUND

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Florida Patient Safety Corporation

The Florida Patient Safety Corporation (corporation) is a not-for-profit corporation.<sup>4</sup> Its purpose is to serve as a learning organization dedicated to assisting health care providers in the state to improve the quality and safety of health care rendered and to reduce harm to patients. Furthermore, the

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 381.0271(2)(a), F.S.

corporation is to promote the development of a culture of patient safety in the health care system, but it is not to regulate health care providers.<sup>5</sup>

The Legislature assigned several powers and duties to the corporation. It must:

- Collect, analyze, and evaluate patient safety data<sup>6</sup> and quality and patient safety indicators, medical malpractice closed claims, and adverse incidents<sup>7</sup> reported to the Agency for Health Care Administration (AHCA) and the Department of Health for the purpose of recommending changes in practices and procedures for health care practitioners and facilities.
- Establish a “near-miss”<sup>8</sup> patient safety reporting system;
- Develop and recommend core competencies in patient safety that can be incorporated into undergraduate and graduate health care curricula;
- Develop and recommend programs to educate the public about the role of health care consumers in promoting patient safety; and
- Provide recommendations for interagency coordination of patient safety efforts in the state.<sup>9</sup>

The Legislature has appropriated a total of \$2.9 million for the corporation, which was provided annually through contract between AHCA and the corporation. The corporation received \$650,000 for fiscal year 2004-2005 and \$750,000 for fiscal years 2005-2006, 2006-2007, and 2007-2008. The state did not appropriate funds to the corporation in fiscal year 2008-2009.<sup>10</sup>

On January 29, 2009, the Board of Directors of the corporation unanimously voted to seek repeal of the statutes establishing the corporation, for among other reasons, the absence of state funding for the activities of the corporation.<sup>11</sup>

#### Public Record and Public Meeting Exemptions under Review

Current law provides a public record and public meeting exemption for the Florida Patient Safety Corporation (corporation).<sup>12</sup>

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<sup>5</sup> Section 381.0271(3)(a), F.S.

<sup>6</sup> “Patient safety data” means reports made to patient safety organizations. Reports include all health care data, interviews, memoranda, analyses, root cause analyses, products of quality assurance or quality improvement processes, corrective action plans, or information collected or created by a health care facility licensed under chapter 395, F.S., or a health care practitioner, as a result of an occurrence related to the provision of health care services which exacerbates an existing medical condition or could result in injury, illness, or death. Section 766.1016(1)(a), F.S.

<sup>7</sup> “Adverse incident” means an event over which health care personnel could exercise control and which is associated in whole or in part with medical intervention, rather than the condition for which such intervention occurred, and which:

- Results in death; brain or spinal damage; permanent disfigurement; fracture or dislocation of bones or joints; a resulting limitation of neurological, physical, or sensory function which continues after discharge from the facility; any condition that required specialized medical attention or surgical intervention resulting from nonemergency medical intervention, other than an emergency medical condition, to which the patient has not given his or her informed consent; or any condition that required the transfer of the patient, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the patient's condition prior to the adverse incident;
- Was the performance of a surgical procedure on the wrong patient, a wrong surgical procedure, a wrong-site surgical procedure, or a surgical procedure otherwise unrelated to the patient's diagnosis or medical condition;
- Required the surgical repair of damage resulting to a patient from a planned surgical procedure, where the damage was not a recognized specific risk, as disclosed to the patient and documented through the informed-consent process; or
- Was a procedure to remove unplanned foreign objects remaining from a surgical procedure.

See ss. 395.1097, 458.351, and 459.026, F.S.

<sup>8</sup> Section 381.0271(7)(a)3.a., F.S., defines “near-miss” as any potentially harmful event that could have had an adverse result, but through chance or intervention in which, harm was prevented.

<sup>9</sup> Section 381.0271(7)(a), F.S.

<sup>10</sup> Senate Bill Analysis and Fiscal Impact Statement for PSB 7046, Health Regulation Committee, February 14, 2009, at 2.

<sup>11</sup> See DRAFT Minutes, January 29, 2009 meeting of the Board of Directors of the Florida Patient Safety Corporation. A copy is on file with the Governmental Affairs Policy Committee.

<sup>12</sup> Section 381.0273, F.S.

The following information is confidential and exempt<sup>13</sup> from public records requirements:

- Information identifying a patient and that is contained in patient safety data.<sup>14</sup>
- Information identifying a person or entity reporting patient safety data.<sup>15</sup>
- Information identifying a health care practitioner or health care facility.<sup>16</sup>

Such information may be released:

- With the express written consent of the:
  - Patient or patient's legally authorized representative in compliance with any federal or state law;
  - Person or entity reporting the patient safety data; or
  - Health care practitioner or health care facility.
- By court order upon a showing of good cause.
- To a health research entity under limited circumstances.

Further, any portion of a meeting held by the corporation and its subsidiaries, advisory committees, or contractors during which confidential and exempt information is discussed is exempt from public meetings requirements.<sup>17</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2009, unless reenacted by the Legislature.

## **EFFECT OF BILL**

The bill repeals s. 381.0271, F.S., which creates the corporation and establishes its powers and duties. It also repeals s. 381.0273, F.S., which provides the public record and public meeting exemptions under review.

### **B. SECTION DIRECTORY:**

Section 1 repeals s. 381.0271, F.S., which creates the Florida Patient Safety Corporation and establishes its powers and duties.

Section 2 repeals s. 381.0273, F.S., which provides a public record and public meeting exemption for the corporation.

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.

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<sup>13</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>14</sup> Section 381.0273(1), F.S.

<sup>15</sup> Section 381.0273(2), F.S.

<sup>16</sup> Section 381.0273(3), F.S.

<sup>17</sup> Section 381.0273(4), F.S.

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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:  
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Certification as a Patient Safety Organization

On November 5, 2008, the corporation was certified under the federal Patient Safety and Quality Improvement Act of 2005<sup>18</sup> as a Patient Safety Organization (PSO). The Act establishes a structure to improve patient safety and reduce the incidence of events that adversely affect patient safety by facilitating PSOs and other entities collecting, aggregating, and analyzing confidential information reported by health care providers. The Act also provides for legal privilege and confidentiality protections to information that is assembled and reported by providers to a PSO or developed by a PSO, which is referred to as patient safety work product,<sup>19</sup> for the conduct of patient safety activities notwithstanding any other provision of federal, state, or local law.

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<sup>18</sup> Public Law 109-41.

<sup>19</sup> "Patient safety work product" is defined in the Act to mean any data, reports, records, memoranda, analyses (such as cause analyses), or written or oral statements which: are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization, or are developed by a patient safety organization for the conduct of patient safety activities, and which could result in improved patient safety, health care quality, or health care outcomes; or identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

Although there would be no requirement in statute for the corporation to continue its mission and objectives, the corporation has indicated that it intends to continue with its patient safety activity as a certified PSO.<sup>20</sup>

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>20</sup> See DRAFT Minutes, January 29, 2009 meeting of the Board of Directors of the Florida Patient Safety Corporation. A copy is on file with the Governmental Affairs Policy Committee.