

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-07 OGSR Physician Workforce Surveys

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson

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.

Currently, personal identifying information contained in records provided by Florida-licensed medical physicians and osteopathic physicians in response to the Department of Health's (DOH) physician workforce survey is confidential and exempt from public records requirements. DOH must disclose the confidential and exempt information under specific circumstances.

The bill reenacts the public record exemptions, which will repeal on October 2, 2012, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Physician Workforce Surveys

Current law requires the Department of Health (DOH) to serve as the coordinating and strategic planning body to actively assess Florida's current and future physician workforce needs. DOH is directed to maximize the use of its existing programs and coordinate with other governmental and nongovernment stakeholders to develop a state physician workforce strategic plan.⁴ In support of this plan, DOH collects pertinent information by means of a physician workforce survey.

All Florida-licensed medical and osteopathic physicians are required to complete a physician workforce survey⁵ in conjunction with their biennial licensure renewal.⁶ The survey information must include, but is not limited to frequency and geographic location of practice within Florida, practice setting, percentage of time spent in direct patient care, anticipated change of license or practice status, areas of specialty or certification, and the availability and trends related to critically needed services, as specified in law and determined by the DOH.

The law provides DOH with rulemaking authority to implement the physician workforce survey.⁷ The survey must be completed on-line if the renewal is conducted on-line; otherwise, a paper copy of the survey must be completed and submitted with the renewal application.⁸

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

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

⁴ Chapter 2007-172, L.O.F.; codified in s. 381.4018, F.S.

⁵ Chapter 2007-172, L.O.F.; codified in s. 458.3191, F.S., for medical physicians, and s. 459.0081, F.S., for osteopathic physicians.

⁶ See s. 458.319, F.S., for medical physicians, and s. 459.008, F.S., for osteopathic physicians.

⁷ See s. 458.3191(4), F.S., for medical physicians, and 459.0081(4), F.S., for osteopathic physicians, which authorizes the promulgation of Rule 64B-9.002, F.A.C.

DOH is required to issue a non-disciplinary citation to any licensed medical or osteopathic physician if the physician fails to complete the survey within 90 days of licensure renewal.⁹ The citation notifies a physician who fails to complete the survey that he or she cannot renew his or her license, until the physician completes the survey.¹⁰

DOH must report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 each year.¹¹ This report is known as the Physician Workforce Annual Report.

Public Record Exemptions under Review

Current law provides that personal identifying information contained in records provided by Florida-licensed medical and osteopathic physicians in response to physician workforce surveys and held by DOH is confidential and exempt¹² from public records requirements.¹³ Such information may be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative;
- By court order upon a showing of good cause;
- To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by DOH, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with DOH, the fee provisions of which are consistent with s. 119.07(4), F.S.¹⁴

DOH is authorized to deny a request for records or data 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.¹⁵

Such an agreement between DOH and a research entity must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.¹⁶ Copies of records or data issued pursuant to such an agreement remain the property of DOH.¹⁷

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2012, unless reenacted by the Legislature.

⁸ See Rule 64B-9.002(1), F.A.C.

⁹ See Rule 64B-9.002(2), F.A.C., s. 458.3191(3)(a), F.S., for medical physicians, and s. 459.0081(3)(a), F.S., for osteopathic physicians.

¹⁰ See Rule 64B-9.002(2), F.A.C., s. 458.3191(3)(b), F.S., for medical physicians, and s. 459.0082, F.S., for osteopathic physicians.

¹¹ See s. 458.3192, F.S. for medical physicians, and 459.0082, F.S., for osteopathic physicians.

¹² 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).

¹³ See s. 458.3193, F.S., for medical physicians, and s. 459.0083, F.S., for osteopathic physicians.

¹⁴ See s. 458.3193(1), F.S., for medical physicians, and s. 459.0083(1), F.S., for osteopathic physicians.

¹⁵ See s. 458.3193(1)(c), F.S., for medical physicians, and s. 459.0083(1)(c), F.S., for osteopathic physicians.

¹⁶ *Id.*

¹⁷ *Id.*

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemptions for personal identifying information contained in records provided by Florida-licensed medical and osteopathic physicians in response to the physician workforce survey. It also removes superfluous language.

B. SECTION DIRECTORY:

Section 1 amends s. 458.3193, F.S., to reenact the public record exemption for personal identifying information contained in physician workforce surveys.

Section 2 amends s. 459.0083, F.S., to reenact the public record exemption for personal identifying information contained in physician workforce surveys.

Section 3 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2009 and 2010, 57,750 physicians were eligible for licensure renewal, and 99 percent of all the physicians renewing responded to the physician workforce survey.¹⁸

According to DOH and the medical community, the information contained in the survey is tied to the physician's license number and identifying information and, thus, confidential and sensitive in nature. The protection of this information from public disclosure likely promotes open and honest participation from responding physicians, thereby, ensuring the integrity of physician workforce data that is collected and analyzed in support of the State's physician workforce strategic plan.¹⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁸ Florida Department of Health Physician Workforce Annual Report 2010, published November 1, 2010, at 9 and 10, available at: http://www.doh.state.fl.us/Workforce/Workforce/Annual_Reports/PhysicianWorkforce_Nov2010.pdf (last visited on December 14, 2011).

¹⁹ Open Government Sunset Review of ss. 458.3193, and 459.0083, F.S., relating to the public record exemption for physician surveys, joint questionnaires sent to DOH, the Florida Osteopathic Medical Association, the Florida Medical Association, the Board of Medicine, and the Board of Osteopathic Medicine, by Senate and House staff, July and August 2011. (On file with the Government Operations Subcommittee).