

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 15-03 Public Records Exemption

**SPONSOR(S):** Finance & Tax Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Wolfgang	Langston

**SUMMARY ANALYSIS**

The companion proposed committee bill (PCB FTC 15-02), an act relating to hospital capital recovery, requires hospital districts and county hospitals to collect and submit to an approved provider under contract with the Department of Financial Services (department) information on claims, and denial of claims, for payment for medical services issued to insurers and governmental entities. Using this information, the approved provider under contract with the department will calculate a “denial rate”, which will affect whether the hospital district can levy additional ad valorem taxes or the county hospital can receive certain additional county funding.

This bill, which is linked to the passage of PCB FTC 15-02, creates a public records exemption for personally identifiable health information obtained as part of the hospital capital recovery review, including information covered by the federal Health Insurance Portability and Accountability Act of 1996. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date that is contingent on the passage of the hospital capital recovery PCB or similar legislation.

**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 exemption. The bill creates a 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. This 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.

###### PCB FTC 15-02

The bill requires that each hospital district or county hospital submit a capital recovery report to the approved provider under contract with the Department of Financial Services (department) within 60 calendar days of the end of the fiscal year. The report must contain data on all claims submitted electronically by a county hospital or all medical facilities in a hospital district to a government entity or insurance company for payment during the fiscal year, along with data on the response/payment status of all such claims. A certified public accountant must attest that the report is accurate, complete, and consistent with generally accepted accounting principles.

Each hospital district or county hospital may prepare the report itself, or it may hire an approved provider to prepare the report on its behalf. The report is used by the department's approved provider to calculate a denial rate. The denial rate is defined as the dollar value of all unpaid electronically submitted claims (based on the contracted or published rate for such claims) as a percentage of the total claims submitted electronically during the same time period. Any claims made to an insurer that has declared bankruptcy are removed from the calculation of the denial rate.

If the hospital district or county hospital does not meet denial rate benchmarks set in the bill or if it does not timely submit a capital recovery report to the department, then the hospital district will not be able to increase its tax revenues and the county hospital will not be able to receive additional county funding.

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

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

<sup>2</sup> See s. 119.15, F.S.

This bill provides that personally identifiable information in the capital recovery report required by PCB FTC 15-02 is confidential and exempt<sup>3</sup> from public record requirements. It allows the information to be provided only to the department or an approved provider unless any identifying patient information is removed. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>4</sup>

The bill provides an effective date that is contingent upon the passage of PCB FTC 15-02 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

#### B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law to create a public record exemption for personally identifiable information in a capital recovery report.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date contingent upon the passage of PCB FTC 15-02 or similar legislation.

## 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:

#### D. FISCAL COMMENTS:

None.

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<sup>3</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>4</sup> Section 24(c), Art. I of the State Constitution.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 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 exemption. The bill creates a new 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 exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information contained in a capital recovery report. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its stated purpose.

###### Right to Privacy

Article I, s. 23 of the State Constitution grants all Florida citizens the right to privacy. Consequently, Florida courts have recognized patients' rights to secure the confidentiality of their health information (medical records); however, that right must be balanced with and yields to any compelling state interest.<sup>5</sup>

#### B. RULE-MAKING AUTHORITY:

None.

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

None.

### V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>5</sup> See *State v. Johnson*, 814 So.2d 390 (Fla. 2002); distinguished in *Limbaugh v. State of Florida* 887 So.2d 387 (Fla. 4th DCA 2004); and *Rasmussen v. S. Fla. Blood Serv. Inc.*, 500 So.2d 533 (Fla. 1987) (privacy interests of blood donors defeated AIDS victim's claim to obtain via subpoena names and addresses of blood donors who may have contributed the tainted blood).