State Administration Council

Wednesday, March 22, 2006
1:00 PM – 2:00 PM
MORRIS HALL (17 HOB)

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Administration Council

Start Date and Time:	Wednesday, March 22, 2006 01:00 pm
End Date and Time:	Wednesday, March 22, 2006 02:00 pm
Location:	Morris Hall (17 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 461 Motor Vehicle License Plates by Jordan
HB 955 Veterans' Nursing Home of Florida Act by Proctor
HB 1001 CS Public Records by Adams
HB 7017 Review under the Open Government Sunset Review Act regarding Economic Development Agencies by Governmental Operations Committee
HB 7023 Review under the Open Government Sunset Review Act regarding Medical Facility Terrorism Response Information by Governmental Operations Committee
HB 7025 Review under the Open Government Sunset Review Act regarding Comprehensive Emergency Management Plan Components by Governmental Operations Committee
HB 7033 Review under the Open Government Sunset Review Act regarding Security System Plans by Governmental Operations Committee
HB 7035 Review under the Open Government Sunset Review Act regarding Motor Vehicle Crash Reports by Governmental Operations Committee
HB 7043 Review under the Open Government Sunset Review Act regarding Long-term Care Services by Governmental Operations Committee
HB 7045 Review under the Open Government Sunset Review Act regarding Supplemental Rebate Agreements by Governmental Operations Committee
HB 7059 Review under the Open Government Sunset Review Act regarding Temporary Cash Assistance by Governmental Operations Committee

NOTICE FINALIZED on 03/20/2006 16:23 by ELLINOR.MARTHA

HB 461

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 461 Motor Vehicle License Plates
SPONSOR(S): Jordan & others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee	7 Y, 0 N	Marino	Cutchins
2) Transportation Committee	17 Y, 0 N	Thompson	Miller
3) Transportation & Economic Development Appropriations Committee	19 Y, 0 N	McAuliffe	Gordon
4) State Administration Council		Marino	Bussey
5)			

SUMMARY ANALYSIS

House Bill 461 removes the July 1, 2006 expiration date currently set by statute for the Florida National Guard free motor vehicle license plate program. This would allow approximately 11,810 Florida National Guard members to continue to be eligible for this benefit.

In 2006-2007, this bill would have an estimated $561,802 impact on state revenues and an estimated $35,430 impact on local tax collectors for a total of $597,232. This bill does not appear to impact license tag sale funds distributed to the Grants and Donations Trust Fund, managed by the Florida Department of Veterans Affairs. See Fiscal Analysis & Economic Impact Statement below for details.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill would remove the license taxes and fees for one standard license plate for each active member of the Florida National Guard.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The 2005-2006 General Appropriations Implementing Act created s. 320.0846, F.S., which allows any owner or lessee of a motor vehicle, who resides in Florida and is an active member of the Florida National Guard (FNG), to be issued one standard license plate without charge. The 2005-2006 General Appropriations Act (GAA) appropriated $10,632,936 to the Highway Safety Operating Trust Fund for the Florida Department of Highway Safety and Motor Vehicle's (DHSMV) purchase of license plates. The department indicates that the FNG fee waiver program was covered by this appropriation in FY 2005-2006. Section 320.0846, F.S., is set to expire on July 1, 2006.

Under this section, FNG members may only receive one plate without charge, and any additional plates must be paid for in full. Also, this section does not waive any additional applicable fees required to purchase a specialty plate. The FNG member must provide proof of eligibility upon application for the free license plate.

In addition to this free plate program, under ss. 320.084 and 320.0842, F.S., certain low-income permanently and totally disabled veterans and wheelchair bound veterans are provided free license plates by the state. These sections and their subsequent free plate programs have no expiration.

Section 320.089, F.S., allows certain militarily affiliated persons, including members of the Florida National Guard, to stamp special plates with words such as "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," or "U.S. Reserve," as appropriate, in order to indicate their affiliation upon payment of the license tax. The first $100,000 in proceeds from these plates goes into the Grants and Donations Trust Fund, managed by the Florida Department of Veterans Affairs (FDVA), for the purpose of providing common benefits to the residents of the state run veterans' nursing homes, such as recreational equipment, improved facilities, and recreational supplies.

The DHSMV reports that 46,977[1] plates are stamped under s. 320.089, F.S., and of those, 1,884 license plates are stamped with "National Guard."

Other states allow for similar free license plates for certain veterans, such as Ex-POWs, Pearl Harbor survivors, etc. However, Florida appears to be the only state to offer free license plates to active National Guard members[2].

The Department of Military Affairs (DMA) reports there are presently 11,810[3] active FNG members.

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[1] Email from Steven Fielder. Department of Highway Safety and Motor Vehicles. January 13, 2006.
[2] Florida House of Representatives Committee on Military & Veteran Affairs. Veterans Benefits by State *DRAFT*. January 2005.
[3] Conversation with Glenn Sutphin, Legislative Director Florida Department of Military Affairs. January 12, 2006.

Effect of Proposed Changes:

This bill removes the July 1, 2006 expiration date in s. 320.0846, F.S. This would allow the FNG free motor vehicle license plate program to become permanent. This bill does not remove the yearly requirement for FNG motor vehicle owners or lessees to keep their vehicle registrations up-to-date.

The Grants and Donations Trust Fund under the FDVA does not appear to be impacted, since the other plates offered under s. 320.089, F.S., would offset the proceeds from the loss of revenue from the "National Guard" stamped plates.

Proviso language in line 2575 of the 2005-2006 GAA provided funding for the one-year FNG free license plate program. The department has indicated that its FY 2006-2007 budget request will be for the same amount appropriated in FY 2005-2006.

This bill would take effect upon becoming law.

C. SECTION DIRECTORY:

Section1: Amends s. 320.0846, F.S., by removing the section expiration date of July 1, 2006.

Section 2: Provides for act to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles (DHSMV) conducted a 2005-2006 fiscal impact study[4] of this program in 2005 and estimated a recurring cost of $632,154 based on 12,500 FNG members using this benefit during 2005-2006.

Using calculations based on the fees in the 2005 DHSMV fiscal study and the current 11,810 FNG membership strength, this bill would have an estimated revenue impact to the state for a loss of **$561,802 for 2006-2007**.

[4] Florida Department of Highway Safety and Motor Vehicles. Exempting Registration and Applicable Fees for Florida National Guard Fiscal Impact Study. On file with Committee on Military & Veteran Affairs.

	STATUE REF.	FEE	REVENUE LOSS	Fee Distribution - Trust Fund
AVERAGE LICENSE TAX FEE:	320.08	$36.97	$462,154	State Transportation TF
TRUST FUND FEES:				
Air Pollution Control Fee	320.03(6)	$1.00	$12,500	Air Pollution Control Trust Fund
FRVIS FEE	320.03(5)	$0.50	$6,250	Highway Safety Operating TF
Law Enf. Radio Sys Fee	320.0802	$1.00	$12,500	Law Enforcement Radio System TF
Surcharge St. Trans. Fee	320.0804	$2.00	$25,000	State Transportation TF
Trans. Disadvantage Fee	320.03(9)	$1.50	$18,750	Transportation Disadvantage TF
Advanced Replacement Fee	320.06(b)	$2.00	$25,000	Highway Safety Operating TF
EMS Fee	320.0801	$0.10	$1,250	Emergency Medical Service Trust Fund
Juvenile Justice Fee	320.08046	$1.00	$12,500	58% General Revenue – 42% Grants & Donation TF – Dept. Juvenile Justice
TRUST FUND FEES:	**STATUE REF.**	**FEE**	**REVENUE LOSS**	**Fee Distribution - Trust Fund**
Retroreflectorization Fee	320.06(3)(b)	$0.50	$6,250	Highway Safety Operating TF
Service Fee	320.04	$4.00	$12,500	$1 Hwy Safety Oper. TF ($3 goes to tax collectors)
		$13.60	$170,000	
		Total loss to state:	$561,802	For 11,810 FNG members

The Grants and Donations Trust Fund under the FDVA does not appear to be impacted. There would be no loss of revenue for the Trust Fund from the 1,884 "National Guard" plates, under s. 320.089, F.S., since the other stamped plates offered under s. 320.089, F.S., would make up the difference to cover the first $100,000 in proceeds that are to go to the Trust Fund.

2. Expenditures:

   There are no known or expected fiscal impacts on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Since $3 of each license plate sold goes toward a service fee for tax collectors at the local level, they would lose an estimated $35,430 collectively.

2. Expenditures:

   There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

FNG members who use this benefit would typically each save $50.57[5], the estimated average registration fee calculated by the FDHSMV. FNG members would still be required to pay applicable fees for additional standard plates and specialty or personalized license plates.

D. FISCAL COMMENTS:

[5] Florida Department of Highway Safety and Motor Vehicles. Exempting Registration and Applicable Fees for Florida National Guard Fiscal Impact Study. On file with Committee on Military & Veteran Affairs.

This DHSMV 2005-2006 fiscal impact study[6] is based on exempting 12,500 FNG registrants annually from paying the annual license tax and applicable required Trust Fund fees. This study uses $50.57 as the average registration fee. Of the $50.57, $13.60 is distributed to various trust funds as fees.

For this analysis, the committee staff used the current FNG strength of 11,810 to calculate the 2006-2007 fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The estimated statewide loss of $35,430 to local tax collectors, would be an insignificant fiscal impact, and therefore the bill is exempt from the mandates provision.

2. Other:

   There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[6] ib id.

1 A bill to be entitled
2 An act relating to motor vehicle license plates; amending
3 s. 320.0846, F.S.; removing expiration of provisions for
4 free license plates to active members of the Florida
5 National Guard; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 320.0846, Florida Statutes, is amended
10 to read:
11 320.0846 Free motor vehicle license plates to active
12 members of the Florida National Guard.--
13 (1) Any owner or lessee of a motor vehicle who resides in
14 this state and is an active member of the Florida National Guard
15 may, upon application and proof of eligibility, be issued one
16 standard license plate without charge. Applications for any
17 additional license plates must be accompanied by appropriate
18 fees established in this chapter.
19 (2) Eligible applicants of the Florida National Guard may
20 apply for a specialty license plate as provided in s. 320.08056
21 upon payment of the fees required in that section. All other
22 fees will be waived. Applications for any additional specialty
23 license plates must be accompanied by all appropriate fees
24 established in this chapter.
25 ~~(3) This section expires July 1, 2006.~~
26 Section 2. This act shall take effect upon becoming a law.

HB 955

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 955 Veterans' Nursing Home of Florida Act
SPONSOR(S): Proctor & others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1370

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Veteran Affairs Committee	7 Y, 0 N	Marino	Cutchins
2) Health Care Appropriations Committee	13 Y, 0 N	Massengale	Massengale
3) State Administration Council		Marino	Bussey
4)			
5)			

SUMMARY ANALYSIS

When Hurricane Katrina struck Florida and the Gulf Coast in August 2005, the Governor issued a series of executive orders promulgating a state of emergency, which allowed for mutual assistance between the coastal states affected by the hurricane. To assist eligible veteran disaster evacuees from Mississippi and Louisiana, the State Coordinating Officer issued a subsequent supplemental order providing a temporary waiver of the one-year residency requirement for admittance to Florida's veterans' nursing homes.

House Bill 955 authorizes the executive director of the Florida Department of Veterans Affairs to waive the one-year residency requirement for admittance to a state veterans' nursing home for a veteran from another state who is otherwise eligible for admission to a Florida state veterans' home. The bill stipulates, however, that the waiver may only be invoked if the veteran is a disaster evacuee from a state under a declared state of emergency.

The bill also revises the admittance priority by ensuring that Florida veterans who meet all eligibility requirements for admittance to a state veterans' home retain priority over out-of-state veterans who have had the residency requirement waived.

The fiscal impact on state government is indeterminate, but likely minimal.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families—This bill provides a dwelling and health care for certain out-of-state disabled veterans during times of emergency.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida's Veterans' Nursing Home Act

The Veterans' Nursing Home of Florida Act[1] authorizes the Florida Department of Veterans' Affairs (FDVA) to run licensed health care facilities.[2] The law establishes veteran status, medical necessity, residency, and fiduciary requirements for an applicant to be admitted to any of Florida's five state veterans' nursing homes. The law creates an admittance priority that is based on the disability of the veteran and then on their ability to pay for nursing home care. The law also requires the state veterans' homes to receive contributions from their residents.

To be eligible for admittance to one of the state veterans' homes, a veteran[3] must:

- Be in need of nursing home care.
- Have been a Florida resident for one year immediately preceding, and at the time of application for, admission to the home.
- Not owe money to the FDVA for services rendered during any previous stay at a department facility.
- Have applied for all financial assistance reasonably available through governmental sources.[4]

In addition, the law disallows discrimination against admitting an applicant based on race, age, sex, creed, religion, national origin, or any other discriminatory reason except for the applicant's veteran status[5].

Regarding admittance priority, the law differentiates between veterans applying for admittance to a state veterans' home based on their disability. A veteran who has a service-connected disability[6] or who was discharged from military service for a disability received in the line of duty that resulted in the need for nursing home care, may be admitted into a state veterans' home.[7] Additionally, a veteran who has a non-service-connected disability, but is unable to defray the expense of "civilian" nursing home care, and who attests to such under oath, may be admitted into a state veterans' home.[8] The veteran with the service-connected disability, however, will receive admittance priority over the veteran with the non-service-connected disability.[9]

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[1] Part II, Chapter 296, F.S.
[2] Pursuant to Part II, Chapter 400, F.S.
[3] As defined in Section 1.01(14), F.S.
[4] The types of financial assistance from the government that veterans should apply for may include Medicare, Medicaid, and pension or disability benefits from the United States Department of Veterans Affairs.
[5] Section 296.35, F.S.
[6] as determined by the United States Department of Veterans Affairs.
[7] Section 296.36(2)(a), F.S.
[8] Section 296.36(2)(b), F.S.
[9] Section 296.36(2), F.S.

The law also requires that each state veterans' home cover, but not exceed, the actual cost of operating and maintaining the home primarily through contributions from the residents admitted to the home. The administrator of the nursing home, with the approval of the executive director of the FDVA, determines a sliding-scale payment schedule. Each resident who receives a pension or other compensation from the federal government, or income from any other source of more than $35 a month, contributes[10] to his or her maintenance and support based on his or her ability to pay.

Occupancy

Florida's veterans are reaping the benefits of the states veterans' nursing home program. According to the FDVA's Fiscal Year 2004-2005 Annual Report, the occupancy rate for the state veterans' home program is approximately 91 percent. This does not include, however, two new facilities that opened in 2003, which are allowed two years to meet state approved performance standards, and another facility that is undergoing Americans with Disabilities Act renovations. The overall occupancy decreases to 81 percent when all facilities are included. In the Annual Report, the FDVA claims it will continue to work towards achieving a 90 percent or higher occupancy rate.

The approximate wait times reported by the FDVA also reflect the high occupancy rate, as well as demand from the state's veterans. Although the FDVA does not maintain a waiting list for admittance into the state veterans' homes, the department did provide information regarding possible wait times.[11]

Facility	Number of People Waiting	Approximate Wait Time
Springfield	4	30–90 days
Lake City	0	3 days
Daytona	6	30 days
Pembroke Pines	22	60–120 days
Port Charlotte	15	30–90 days
Land O' Lakes	33	30–180 days

The department explained that some veterans are on the wait list because of the introduction of specialized Alzheimer's beds in the homes. This would have a bearing on admittance procedures for a veteran with Alzheimer's if the home to which they were applying was not equipped with enough such beds.

Residency

Disabled veterans may be subject to two types of residency criteria regarding the provision of medical services at state veterans' nursing care facilities. The first is the Veterans' Nursing Home of Florida Act admittance requirement for one year of residency in the state. The second relates to residency status for receiving governmental assistance, such as Medicaid, which must be applied for as another condition for admittance into the home.

The Medicaid Program has established certain rules relating to the provision of services inside and across state lines. These rules require the state of residence to be responsible for providing Medicaid to eligible residents of that state.[12] For institutionalized persons, such as those in veterans' nursing homes, these rules have determined that for the purposes of receiving Medicaid, the state of residence is the state where the individual is living with the intention to remain permanently or for an indefinite period of time.[13]

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[10] Section 296.37(1), F.S.
[11] Communication with Greg Puckett, Program Director State Veterans Homes. February 21, 2006. Email on file with Committee on Military & Veteran Affairs
[12] Title 42 C.F.R. s. 435.403(a).
[13] Title 42 C.F.R. s. 435.403(i)(4).

Additionally, the Medicaid rules prohibit a state from denying Medicaid eligibility:

- To an individual in an institution, who satisfied the Medicaid residency rules, even if that individual did not establish residency in the State before entering the institution,[14] or
- To an individual who has not resided in the state for a specific length of time.[15]

As noted above, should an individual from another state be admitted to a Florida veterans' nursing home, it would appear that the Medicaid rules relating to residency requirements would not be a deterrent to receiving Medicaid benefits as a subsidy to the cost of the nursing home care.

Effect of Proposed Changes:

When Hurricane Katrina struck Florida and the Gulf Coast in August 2005, the Governor issued a series of executive orders[16] promulgating a state of emergency, which allowed for mutual assistance between the coastal states affected by the hurricane. To assist eligible veteran disaster evacuees from Mississippi and Louisiana, the State Coordinating Officer issued a subsequent supplemental order,[17] providing a temporary waiver of the one-year residency requirement for admittance to Florida's veterans' nursing homes. As a result of the supplemental order, the FDVA reports that three such out-of-state veterans were helped.[18]

House Bill 955 authorizes the executive director of the FDVA to waive the one-year residency requirement for admittance to a state veterans' nursing home for a veteran from another state who is otherwise eligible for admission to a Florida state veterans' home. The bill stipulates, however, that the waiver may only be invoked if the veteran is a disaster evacuee from a state under a declared state of emergency. This provision, it should be noted, does not grant Florida residency to such a veteran; it simply waives the residency requirement under the Veterans' Nursing Home of Florida Act.

Without this bill, it appears that the only manner in which out-of-state disaster evacuee veterans would have access to Florida's veterans' homes in the future would be for the Governor to declare a state of emergency again. This would negatively affect those out-of-state veterans who are disaster evacuees if Florida did not declare its own state of emergency during the same time their home state declared a state of emergency. For example, had Katrina not hit south Florida, then the Governor would not have declared a state of emergency clearing the way for the waiver that eventually helped Mississippi and Louisiana veterans once Katrina turned north and hit those states.

HB 955 also revises the admittance priority by ensuring that a Florida veteran who meets all eligibility requirements for admittance to a state veterans' home has priority over an out-of-state veteran who has had the residency requirement waived as provided for above. This appears to have no impact on the residency considerations for Medicaid described in the present situation.

This bill takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 296.36, F.S., by authorizing the executive director of the FDVA to waive residency requirements for certain, otherwise eligible disabled veterans for admittance to a Florida veterans' nursing home, and by subsequently revising admittance priorities.

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[14] Title 42 C.F.R. s. 435.403(j)(2).
[15] Title 42 C.F.R. s. 435.403(j)(1).
[16] Executive Orders 2005-176, 2005-177, and 2005-183.
[17] Supplemental Order to Executive Order 2005-176 issued September 2, 2005 and amended October 4, 2005 (under Executive Order 2005-183).
[18] Communication with Jim Brodie, Legislative Director, Florida Department of Veterans' Affairs. March 1, 2006. Email on file with Committee on Military & Veterans Affairs.

Section 2. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   This bill has an indeterminate and, as the FDVA states, "possible minimal short term Medicaid impact[19]" on state government expenditures. The impact is indeterminate because every out-of-state veteran eligible under this bill will have a different set of circumstances. Some will have sufficient means to cover their support costs at a veterans' home and others will rely more on government assistance. The impact is minimal since even though Katrina was one of the most destructive storms on record, only four veterans from affected states even inquired about admission to a Florida veterans' home.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

   There are no known or expected fiscal impacts on local government expenditures.

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 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 revenues.

2. Other:

   There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

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[19] Amended Admission Policy for State Veteran Nursing Home Admission. Florida Department of Veterans' Affairs. August 18, 2005.

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the Veterans' Nursing Home of Florida
3 Act; amending s. 296.36, F.S.; authorizing the director of
4 the Department of Veterans' Affairs to waive the residency
5 requirement for admittance to a veterans' nursing home
6 under certain circumstances; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 296.36, Florida Statutes, is amended to
11 read:
12 296.36 Eligibility and priority of admittance.--
13 (1) To be eligible for admittance to the home, the person
14 must be a veteran as defined in s. 1.01(14) and must:
15 (a) Be in need of nursing home care.
16 (b) Have been a resident of the state for 1 year
17 immediately preceding, and at the time of application for,
18 admission to the home.
19 (c) Not owe money to the department for services rendered
20 during any previous stay at a department facility.
21 (d) Have applied for all financial assistance reasonably
22 available through governmental sources.
23 (2) The director may waive the residency requirement for a
24 veteran who is otherwise eligible under Florida law for
25 admittance to a home. The waiver must be limited to a veteran
26 who is a disaster evacuee of a state that is under a declared
27 state of emergency.

28 (3) ~~(2)~~ Admittance priority must be given to eligible
29 veterans ~~afforded~~ in the following order of priority ~~to an~~
30 ~~eligible veteran who is in need of nursing home care and who~~:
31 (a) An eligible veteran who is a resident of the State of
32 Florida.
33 (b) ~~(a)~~ An eligible veteran who has a service-connected
34 disability as determined by the United States Department of
35 Veterans Affairs, or was discharged or released from military
36 service for disability incurred or aggravated in the line of
37 duty and the disability is the condition for which nursing home
38 care is needed.
39 (c) ~~(b)~~ An eligible veteran who has a non-service-connected
40 disability and is unable to defray the expense of nursing home
41 care and so states under oath before a notary public or other
42 officer authorized to administer an oath.
43 Section 2. This act shall take effect July 1, 2006.

HB 1001 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1001 CS Public Records
SPONSOR(S): Adams
TIED BILLS: HB 151 CS **IDEN./SIM. BILLS:** SB 2292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Williamson
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for biometric identification information. It provides for retroactive application of the exemption, provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Current law provides public records exemptions for fingerprints under limited circumstances:

- Fingerprints collected under chapter 447, F.S., relating to labor organizations are confidential and exempt[1].[2]
- Fingerprints collected for identifying a child, in the event that the child becomes missing, are exempt.[3]
- Fingerprints of a child charged with or who committed certain offenses are confidential and exempt.[4]

A general public records exemption for fingerprints, applicable to all agencies in all circumstances, does not exist.

This bill creates a public records exemption for biometric identification information, which includes fingerprints, held by an agency. Biometric identification information means "any record of friction ridge detail, fingerprints, palm prints, and footprints.

The bill provides for retroactive application of the exemption and provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for biometric identification information.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date that is contingent upon the passage of HB 151 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See 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 certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

[2] Section 447.045, F.S.

[3] Section 937.028(1), F.S.

[4] Section 985.212(1), F.S.

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt biometric identification information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Public Records Law

Article I, s. 24(a), 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 Article I, s. 24(a), 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.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[5] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Governmental Operations Committee adopted a strike-all amendment to HB 1001 and reported the bill favorably with committee substitute. The strike-all amendment:

- Placed the exemption in chapter 119, Florida Statutes, which is the Public Records Act.
- Created a public records exemption for "biometric identification information" in lieu of "fingerprint identification information." Biometric identification information only includes the information made confidential and exempt in the bill – any record of friction ridge detail, fingerprints, palm prints, and footprints.
- Corrected a cross-reference.
- Conformed the public necessity statement to the public records exemption.

[5] Section 119.15, F.S.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to public records; amending s. 119.071,
7 F.S.; exempting from public records requirements biometric
8 identification information held by an agency before, on,
9 or after the effective date of the exemption; providing a
10 definition; providing for future legislative review and
11 repeal; providing a finding of public necessity; providing
12 a contingent effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraph (g) is added to subsection (5) of
17 section 119.071, Florida Statutes, to read:
18 119.071 General exemptions from inspection or copying of
19 public records.--
20 (5) OTHER PERSONAL INFORMATION.--
21 (g)1. Biometric identification information held by an
22 agency before, on, or after the effective date of this exemption
23 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State

24 Constitution. As used in this paragraph, the term "biometric
25 identification information" means:
26 a. Any record of friction ridge detail;
27 b. Fingerprints;
28 c. Palm prints; and
29 d. Footprints.
30 2. This paragraph is subject to the Open Government Sunset
31 Review Act in accordance with s. 119.15 and shall stand repealed
32 on October 2, 2011, unless reviewed and saved from repeal
33 through reenactment by the Legislature.
34 Section 2. The Legislature finds that it is a public
35 necessity that biometric identification information held by an
36 agency before, on, or after the effective date of this exemption
37 be made exempt from public records requirements. Biometric
38 identification information is used to verify the identity of
39 persons and by its very nature involves matters uniquely related
40 to individual persons. The use of multiple methods of biometric
41 identification is a growing technology in detecting and solving
42 crime, in preventing identity theft, and in providing enhanced
43 levels of security in agency and other operations. Given
44 existing technological capabilities for duplicating, enhancing,
45 modifying, and transferring records, the availability of
46 biometric identification information creates the opportunity for
47 improper, illegal, or otherwise harmful use of such information.
48 At the same time, use of biometric identification information by
49 agencies is a useful and increasingly valuable tool. Thus, the
50 Legislature finds that it is a public necessity to protect

51 biometric identification information held by an agency before,
52 on, or after the effective date of this act.
53 Section 3. This act shall take effect July 1, 2006, if
54 House Bill 151, or similar legislation relating to fingerprint
55 identification information held by an agency, is adopted in the
56 same legislative session or an extension thereof and becomes
57 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7017 PCB GO 06-09 OGSR Economic Development Agencies
SPONSOR(S): Governmental Operations Committee, Rivera & others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 1 N	Williamson	Williamson
1) Economic Development, Trade & Banking Committee	8 Y, 0 N	Olmedillo	Carlson
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts the public records exemption for certain business information held by an economic development agency. Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt from public records requirements for a limited period of time. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a public records exemption for certain business information held by an economic development agency.[1] Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt[2] from public records requirements for a limited period of time.[3] The information remains confidential and exempt:

- For 24 months after the date an economic development agency receives a request for confidentiality;
- Until disclosed by the business requesting confidentiality; or
- Until the information is otherwise disclosed, whichever occurs first.[4]

Pursuant to the Open Government Sunset Review Act,[5] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes, reorganizes the exemption, and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

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[1] "Economic development agency" means the Office of Tourism, Trade, and Economic Development; an industrial development authority; the Florida Space Authority; the Florida Aerospace Finance Corporation; a local government economic development agency; a research and development authority; or a private entity authorized by the state or a local government to promote the business interests of the state or that local government. Section 288.075(1), F.S.

[2] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[3] Section 288.075(2), F.S.

[4] *Id.*

[5] Section 119.15, F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The 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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding economic development agencies;
4 amending s. 288.075, F.S., which provides an exemption
5 from public records requirements for information held by
6 an economic development agency concerning plans,
7 intentions, or interests of a private corporation,
8 partnership, or person to locate, relocate, or expand any
9 of its business activities in this state; making editorial
10 changes; removing superfluous provisions; removing the
11 scheduled expiration of the exemption under the Open
12 Government Sunset Review Act; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 288.075, Florida Statutes, is amended
17 to read:
18 288.075 Confidentiality of records.--
19 (1) As used in this section, the term "economic
20 development agency" means:
21 (a) The Office of Tourism, Trade, and Economic
22 Development;~~,~~
23 (b) Any industrial development authority created in
24 accordance with part III of chapter 159 or by special law;~~,~~
25 (c) The Florida Space Authority created in part II of
26 chapter 331;~~,~~
27 (d) The Florida Aerospace Finance Corporation created in
28 part III of chapter 331;~~,~~

29 (e) The public economic development agency of a county or
30 municipality;~~, or~~
31 (f) Any research and development authority created in
32 accordance with part V of chapter 159; or~~. The term also~~
33 ~~includes~~
34 (g) Any private agency, person, partnership, corporation,
35 or business entity when authorized by the state, a municipality,
36 or a county to promote the general business interests or
37 industrial interests of the state or that municipality or
38 county.
39 (2) Upon written request from a private corporation,
40 partnership, or person, ~~records of an economic development~~
41 ~~agency which contain or would provide~~ information held by an
42 economic development agency concerning plans, intentions, or
43 interests of that ~~such~~ private corporation, partnership, or
44 person to locate, relocate, or expand any of its business
45 activities in this state is ~~are~~ confidential and exempt from s.
46 119.07(1) and s. 24(a), Art. I of the State Constitution for 24
47 months after the date an economic development agency receives a
48 request for confidentiality or ~~until disclosed by an economic~~
49 ~~development agency pursuant to subsection (4) or by the party~~
50 ~~requesting confidentiality under this section. Confidentiality~~
51 ~~must be maintained until the expiration of the 24-month period~~
52 ~~or~~ until ~~documents or~~ information is ~~are~~ otherwise disclosed,
53 whichever occurs first. ~~Any confidentiality provided under this~~
54 ~~section does not apply when any party petitions a court of~~
55 ~~competent jurisdiction and, in the opinion of the court, proves~~
56 ~~need for access to such documents. This exemption expires~~

57 ~~October 2, 2006, and is subject to review by the Legislature~~
58 ~~under the Open Government Sunset Review Act of 1995 in~~
59 ~~accordance with s. 119.15.~~
60 (3) An economic development agency may extend the period
61 of confidentiality specified in subsection (2) for up to an
62 additional 12 months upon written request from the private
63 corporation, partnership, or person who originally requested
64 confidentiality under this section and upon a finding by the
65 economic development agency that the private corporation,
66 partnership, or person is still actively considering locating,
67 relocating, or expanding its business activities in this state.
68 A request to extend the period of confidentiality must be
69 received prior to the expiration of confidentiality provided in
70 subsection (2) ~~This section does not waive any provision of~~
71 ~~chapter 120 or any other provision of law requiring a public~~
72 ~~hearing~~.
73 (4) Trade secrets as defined in s. 812.081 relating to the
74 plans, intentions, or interests of a corporation, partnership,
75 or person who has requested confidentiality pursuant to this
76 section, held by an economic development agency, are
77 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
78 of the State Constitution for 10 years after the date on which
79 an economic development agency receives a request for
80 confidentiality or until otherwise disclosed, whichever occurs
81 first.
82 (5) A public officer or employee may not enter into a
83 binding agreement with any corporation, partnership, or person
84 who has requested confidentiality of information pursuant to

85 this section, until 90 days after such information is made
86 public, unless such public officer or employee is acting in an
87 official capacity, the agreement does not accrue to the personal
88 benefit of such public officer or employee, and, in the
89 professional judgment of such officer or employee, the agreement
90 is necessary to effectuate an economic development project.
91 ~~(5) An economic development agency may extend the period~~
92 ~~of confidentiality specified in subsection (2) for up to an~~
93 ~~additional 12 months upon written request from the private~~
94 ~~corporation, partnership, or person who originally requested~~
95 ~~confidentiality under this section and upon a finding by the~~
96 ~~economic development agency that such private corporation,~~
97 ~~partnership, or person is still actively considering locating,~~
98 ~~relocating, or expanding its business activities in this state.~~
99 ~~Such a request for an extension in the period of confidentiality~~
100 ~~must be received prior to the expiration of any confidentiality~~
101 ~~originally provided under this section.~~
102 (6) ~~Notwithstanding the period of confidentiality~~
103 ~~specified in subsection (2), trade secrets, as defined by s.~~
104 ~~812.081, contained in the records of an economic development~~
105 ~~agency relating to the plans, intentions, or interests of a~~
106 ~~corporation, partnership, or person who has requested~~
107 ~~confidentiality pursuant to this section are confidential and~~
108 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~
109 ~~Constitution for 10 years after the date an economic development~~
110 ~~agency receives a request for confidentiality or until otherwise~~
111 ~~disclosed, whichever occurs first. The 10-year period of~~
112 ~~confidentiality provided by this subsection does not apply to~~

113 ~~any portion of the records other than trade secrets as defined~~
114 ~~by s. 812.081.~~
115 ~~(7)~~ Any person who is an employee of an economic
116 development agency who violates the provisions of this section
117 commits a misdemeanor of the second degree, punishable as
118 provided in s. 775.082 or s. 775.083.
119 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7023 PCB GO 06-11 OGSR Medical Facility Information
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Domestic Security Committee	8 Y, 0 N	Newton	Newton
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts the public records exemption for information concerning the ability of a medical facility, storage facility, or laboratory to defend against an act of terrorism. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 381.95, F.S., provides a public records exemption for certain information concerning medical facilities, storage facilities, and laboratories maintained by the Department of Health as part of the state's plan to defend against terrorism. Information specifically made exempt[1] includes information that identifies or describes the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities for certain individual medical facilities, storage facilities, or laboratories to defend against an act of terrorism. The exemption was enacted in the 2001 C special session following the September 11, 2001, attacks on the United States.

Pursuant to the Open Government Sunset Review Act,[2] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It makes editorial changes and reorganizes the section.

The bill removes the provision requiring an agency with authorized access to such information to maintain the exempt status of that information. In *Ragsdale v. State*,[3] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.[4]

In *City of Riviera Beach v. Barfield*,[5] the court stated "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[6] As such, the provision is

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[1] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[2] Section 119.15, F.S.
[3] 720 So.2d 203 (Fla. 1998).
[4] *Id.* at 206, 207.
[5] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.
[6] *Id.* at 1137.

unnecessary and has been removed, because had the Legislature intended for the exempt status to evaporate then the Legislature would have stated as much.

C. SECTION DIRECTORY:

Section 1 amends s. 381.95, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding medical facility terrorism
4 response information; amending s. 381.95, F.S.;
5 reorganizing provisions, making editorial changes, and
6 removing superfluous language; removing the scheduled
7 repeal of the exemption under the Open Government Sunset
8 Review Act; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 381.95, Florida Statutes, is amended to
13 read:
14 381.95 Medical facility information maintained for
15 terrorism response purposes; confidentiality.--
16 (1) Any information identifying or describing the name,
17 location, pharmaceutical cache, contents, capacity, equipment,
18 physical features, or capabilities of individual medical
19 facilities, storage facilities, or laboratories established,
20 maintained, or regulated by the Department of Health as part of
21 the state's plan to defend against an act of terrorism as
22 defined in s. 775.30 is exempt from ~~the requirements of~~ s.
23 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~The~~
24 ~~certification by the Governor of the sufficiency of any~~
25 ~~location, pharmaceutical cache, contents, capacity, equipment,~~
26 ~~physical features, or capabilities of individual medical~~
27 ~~facilities, storage facilities, or laboratories established,~~
28 ~~maintained, or regulated by the Department of Health as part of~~

29 ~~the state's plan to defend against an act of terrorism is a~~
30 ~~public record.~~ This exemption is remedial in nature, and it is
31 the intent of the Legislature that this exemption apply ~~be~~
32 ~~applied~~ to information held ~~received~~ by the Department of Health
33 before, on, or after the effective date of this section.
34 (2) Information made exempt by this section may be
35 disclosed by the custodial agency to another state or federal
36 agency in order to prevent, detect, guard against, respond to,
37 investigate, or manage the consequences of any attempted or
38 actual act of terrorism, or to prosecute those responsible for
39 such attempts or acts~~, and the exempt status of such information~~
40 ~~shall be retained while in the possession of the receiving~~
41 ~~agency~~. ~~This section is subject to the Open Government Sunset~~
42 ~~Review Act of 1995 in accordance with s. 119.15 and shall stand~~
43 ~~repealed October 2, 2006, unless reviewed and saved from repeal~~
44 ~~through reenactment by the Legislature.~~
45 (3) The certification by the Governor of the sufficiency
46 of any location, pharmaceutical cache, contents, capacity,
47 equipment, physical features, or capabilities of individual
48 medical facilities, storage facilities, or laboratories
49 established, maintained, or regulated by the Department of
50 Health as part of the state's plan to defend against an act of
51 terrorism is a public record.
52 Section 2. This act shall take effect October 1, 2006.

HB 7025

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7025 PCB GO 06-12 OGSR Comprehensive Emergency Management Plans
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Domestic Security Committee	8 Y, 0 N	Newton	Newton
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

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

The bill reenacts the public records exemptions provided for portions of a comprehensive emergency management plan addressing a public or private hospital's response to an act of terrorism. It also reenacts the public meetings exemption for those portions of meetings wherein such confidential and exempt plan is discussed. The exemptions will repeal on October 2, 2006, if this bill does not become law.

The bill appears to have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 395.1056, F.S., provides public records and public meetings exemptions regarding emergency management plans. The exemptions were enacted during the 2001 C special session following the September 11, 2001, attacks on the United States.

Public Records Exemptions

Portions of a comprehensive emergency management plan that address a public or private hospital's response to an act of terrorism, held by the Agency for Health Care Administration, a state or local law enforcement agency, a local government emergency management agency, the Executive Office of the Governor, the Department of Health, or the Department of Community Affairs, is confidential and exempt[1] from public records requirements.[2] Portions of a comprehensive emergency management plan that address a public hospital's response to an act of terrorism held by that public hospital is confidential and exempt from public disclosure.[3]

Portions of an emergency management plan that address a hospital's response to terrorism include

> [S]ecurity systems or plans; vulnerability analyses; emergency evacuation transportation; sheltering arrangements; postdisaster activities, including provisions for emergency power, communications, food, and water; postdisaster transportation; supplies, including drug caches; staffing; emergency equipment; and individual identification of residents, transfer of records, and methods of responding to family inquiries.[4]

The exemptions do not apply to the Governor's certification of sufficiency of a comprehensive emergency management plan addressing a hospital's response to an act of terrorism.[5]

Public Meetings Exemption

Any portion of a public meeting that would reveal confidential and exempt emergency management plans is exempt from public meetings requirements.[6]

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[1] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[2] Section 395.1056(1), F.S.
[3] Section 395.1056(2), F.S.
[4] Section 395.1056(1) and (2), F.S.
[5] Section 395.1056(4), F.S.
[6] Section 395.1056(3), F.S.

Open Government Sunset Review Act

Pursuant to the Open Government Sunset Review Act,[7] the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal dates, thereby reenacting the public records and public meetings exemptions. It reorganizes the section and makes editorial changes.

The bill removes the provision requiring an agency with authorized access to such plan to maintain the confidential and exempt status of that plan. In *Ragsdale v. State*,[8] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.[9]

In *City of Riviera Beach v. Barfield*,[10] the court stated "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[11] As such, the provision is unnecessary and has been removed, because had the Legislature intended for the exempt status to evaporate then the Legislature would have stated as much.

C. SECTION DIRECTORY:

Section 1 amends s. 395.1056, F.S., to remove the repeal dates.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[7] Section 119.15, F.S.
[8] 720 So.2d 203 (Fla. 1998).
[9] *Id.* at 206, 207.
[10] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.
[11] *Id.* at 1137.

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the public records exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The 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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding comprehensive emergency
4 management plan components; amending s. 395.1056, F.S.,
5 which provides an exemption from public records
6 requirements for those portions of a comprehensive
7 emergency management plan that address the response of a
8 public or private hospital to an act of terrorism and
9 which provides an exemption from public meetings
10 requirements for that portion of a public meeting which
11 would reveal information contained in a comprehensive
12 emergency management plan that addresses the response of a
13 hospital to an act of terrorism; reorganizing provisions,
14 making editorial changes, and removing superfluous
15 language; removing the scheduled repeal of the exemptions
16 under the Open Government Sunset Review Act; providing an
17 effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 395.1056, Florida Statutes, is amended
22 to read:
23 395.1056 Plan components addressing a hospital's response
24 to terrorism; public records exemption; public meetings
25 exemption.--
26 (1)(a) Those portions of a comprehensive emergency
27 management plan that ~~which~~ address the response of a public or
28 private hospital to an act of terrorism as defined by s. 775.30

29 ~~and which are~~ held by ~~filed with or are in the possession of~~ the
30 agency, a state or local law enforcement agency, a county or
31 municipal emergency management agency, the Executive Office of
32 the Governor, the Department of Health, or the Department of
33 Community Affairs are confidential and exempt from ~~the~~
34 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
35 Constitution. ~~This exemption is remedial in nature, and it is~~
36 ~~the intent of the Legislature that this exemption be applied to~~
37 ~~plans filed with the agency before, on, or after the effective~~
38 ~~date of this section.~~
39 (b) Information made confidential and exempt by this
40 subsection may be disclosed by a custodial agency to another
41 state or federal agency to prevent, detect, guard against,
42 respond to, investigate, or manage the consequences of any
43 attempted or actual act of terrorism, or to prosecute those
44 persons who are responsible for such attempts or acts~~, and the~~
45 ~~confidential and exempt status of such information shall be~~
46 ~~retained while in the possession of the receiving agency~~.
47 (c) Portions of a comprehensive emergency management plan
48 that ~~which~~ address the response of a public or private hospital
49 to an act of terrorism include those portions addressing:
50 1. Security systems or plans;
51 2. Vulnerability analyses;
52 3. Emergency evacuation transportation;
53 4. Sheltering arrangements;
54 5. Postdisaster activities, including provisions for
55 emergency power, communications, food, and water;
56 6. Postdisaster transportation;

57 7. Supplies, including drug caches;
58 8. Staffing;
59 9. Emergency equipment; and
60 10. Individual identification of residents, transfer of
61 records, and methods of responding to family inquiries. ~~This~~
62 ~~subsection is subject to the Open Government Sunset Review Act~~
63 ~~of 1995 in accordance with s. 119.15 and shall stand repealed~~
64 ~~October 2, 2006, unless reviewed and saved from repeal through~~
65 ~~reenactment by the Legislature.~~
66 (2) Those portions of a comprehensive emergency management
67 plan that ~~which~~ address the response of a public hospital to an
68 act of terrorism as defined by s. 775.30 ~~and which are~~ held by
69 ~~in the custody of~~ that public hospital are exempt from ~~the~~
70 ~~requirements of~~ s. 119.07(1) and s. 24(a), Art. I of the State
71 Constitution. Portions of a comprehensive emergency management
72 plan that ~~which~~ address the response of a public hospital to an
73 act of terrorism include those portions addressing:
74 (a) Security systems or plans;
75 (b) Vulnerability analyses;
76 (c) Emergency evacuation transportation;
77 (d) Sheltering arrangements;
78 (e) Postdisaster activities, including provisions for
79 emergency power, communications, food, and water;
80 (f) Postdisaster transportation;
81 (g) Supplies, including drug caches;
82 (h) Staffing;
83 (i) Emergency equipment; and

84 (j) Individual identification of residents, transfer of
85 records, and methods of responding to family inquiries. ~~This~~
86 ~~subsection is subject to the Open Government Sunset Review Act~~
87 ~~of 1995 in accordance with s. 119.15 and shall stand repealed~~
88 ~~October 2, 2006, unless reviewed and saved from repeal through~~
89 ~~reenactment by the Legislature.~~
90 (3) The public records exemptions provided by this section
91 are remedial in nature, and it is the intent of the Legislature
92 that the exemptions apply to plans held by a custodial agency
93 before, on, or after the effective date of this section.
94 (4) That ~~Any~~ portion of a public meeting which would
95 reveal information contained in a comprehensive emergency
96 management plan that ~~which~~ addresses the response of a hospital
97 to an act of terrorism is exempt from ~~the provisions of~~ s.
98 286.011 and s. 24(b), Art. I of the State Constitution. ~~This~~
99 ~~subsection is subject to the Open Government Sunset Review Act~~
100 ~~of 1995 in accordance with s. 119.15 and shall stand repealed~~
101 ~~October 2, 2006, unless reviewed and saved from repeal through~~
102 ~~reenactment by the Legislature.~~
103 (5) ~~(4)~~ The certification by the Governor, in coordination
104 with the Department of Health, of the sufficiency of a
105 comprehensive emergency management plan that addresses the
106 response of a hospital to an act of terrorism is not exempt.
107 Section 2. This act shall take effect October 1, 2006.

HB 7033

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB GO 06-05 OGSR Security System Plans
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Domestic Security Committee	8 Y, 0 N	Newton	Newton
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

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

The bill reenacts the public records and public meetings exemptions regarding security system plans held by an agency for property owned by or leased to the state or its political subdivisions and for privately owned or leased property. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 119.071(3)(a), F.S., provides a public records exemption and s. 286.0113, F.S., provides a related public meetings exemption designed to protect security system plans for property owned by or leased to the state or its political subdivisions and for privately owned or leased property. These provisions were enacted during the 2001 C special session following the September 11, 2001, attacks on the United States.

Section 119.071(3)(a), F.S., makes confidential and exempt[1] such security system plan or portion thereof held by an agency. "Security system plan" includes

> [A]ll records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by any agency or any private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training.[2]

Section 286.0113, F.S., provides a public meetings exemption for meetings in which confidential and exempt security system plans or portions thereof would be revealed.

Pursuant to the Open Government Sunset Review Act,[3] the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal dates, thereby reenacting the public records and public meetings exemptions. It also reorganizes the provisions by relocating the description of a "security system plan" to the beginning of the exemption.

The bill removes the provision requiring an agency with authorized access to such plan to maintain the confidential and exempt status of that plan. In *Ragsdale v. State*,[4] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the

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[1] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[2] Section 119.071(3)(a), F.S.
[3] Section 119.15, F.S.
[4] 720 So.2d 203 (Fla. 1998).

policy behind the exemption and not on the simple fact that the information has changed agency hands.[5]

In *City of Riviera Beach v. Barfield*,[6] the court stated "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[7] As such, the provision is unnecessary and has been removed, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

Finally, the bill makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(3)(a), F.S., to remove the repeal date.

Section 2 amends s. 286.0113, F.S., to remove the repeal date.

Section 3 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to

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[5] *Id.* at 206, 207.

[6] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

[7] *Id.* at 1137.

public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The 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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding security system plans;
4 amending s. 119.071, F.S., which provides an exemption
5 from public records requirements for security system plans
6 for any property owned by or leased to the state or any of
7 its political subdivisions and any privately owned or
8 leased property; reorganizing provisions, making editorial
9 changes, and removing superfluous language; removing the
10 scheduled repeal of the exemption under the Open
11 Government Sunset Review Act; amending s. 286.0113, F.S.,
12 which provides an exemption from public meetings
13 requirements for a meeting that would reveal a security
14 system plan or portion thereof; making editorial changes;
15 removing the scheduled repeal of the exemption under the
16 Open Government Sunset Review Act; providing an effective
17 date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Paragraph (a) of subsection (3) of section
22 119.071, Florida Statutes, is amended to read:
23 119.071 General exemptions from inspection or copying of
24 public records.--
25 (3) SECURITY.--
26 (a)1. As used in this paragraph, the term "security system
27 plan" includes all:

28 a. Records, information, photographs, audio and visual
29 presentations, schematic diagrams, surveys, recommendations, or
30 consultations or portions thereof relating directly to the
31 physical security of the facility or revealing security systems;
32 b. Threat assessments conducted by any agency or any
33 private entity;
34 c. Threat response plans;
35 d. Emergency evacuation plans;
36 e. Sheltering arrangements; or
37 f. Manuals for security personnel, emergency equipment, or
38 security training.
39 2. A security system plan or portion thereof for:
40 a.~~1.~~ Any property owned by or leased to the state or any
41 of its political subdivisions; or
42 b.~~2.~~ Any privately owned or leased property
43
44 ~~which plan or portion thereof is~~ held by an ~~any~~ agency is
45 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
46 of the State Constitution. ~~As used in this paragraph, the term a~~
47 ~~"security system plan" includes all records, information,~~
48 ~~photographs, audio and visual presentations, schematic diagrams,~~
49 ~~surveys, recommendations, or consultations or portions thereof~~
50 ~~relating directly to the physical security of the facility or~~
51 ~~revealing security systems; threat assessments conducted by any~~
52 ~~agency or any private entity; threat response plans; emergency~~
53 ~~evacuation plans; sheltering arrangements; or manuals for~~
54 ~~security personnel, emergency equipment, or security training.~~
55 This exemption is remedial in nature and it is the intent of the

56 Legislature that this exemption apply ~~be applied~~ to security
57 system plans held by an agency before, on, or after the
58 effective date of this paragraph.
59 3. Information made confidential and exempt by this
60 paragraph may be disclosed by the custodian of public records
61 ~~custodial agency~~ to:
62 a. The property owner or leaseholder; or
63 b. ~~Such information may be disclosed by the custodial~~
64 ~~agency to~~ Another state or federal agency to prevent, detect,
65 guard against, respond to, investigate, or manage the
66 consequences of any attempted or actual act of terrorism, or to
67 prosecute those persons who are responsible for such attempts or
68 acts~~, and the confidential and exempt status of such information~~
69 ~~shall be retained while in the possession of the receiving~~
70 ~~agency~~. ~~This paragraph is subject to the Open Government Sunset~~
71 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
72 ~~on October 2, 2006, unless reviewed and saved from repeal~~
73 ~~through reenactment by the Legislature.~~
74 Section 2. Section 286.0113, Florida Statutes, is amended
75 to read:
76 286.0113 General exemptions from public meetings.--That
77 portion ~~Those portions~~ of a ~~any~~ meeting that ~~which~~ would reveal
78 a security system plan or portion thereof made confidential and
79 exempt by s. 119.071(3)(a) is ~~are~~ exempt from ~~the provisions of~~
80 s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~This~~
81 ~~section is subject to the Open Government Sunset Review Act, in~~
82 ~~accordance with s. 119.15, and shall stand repealed on October~~

83 ~~2, 2006, unless reviewed and saved from repeal through~~
84 ~~reenactment by the Legislature.~~
85 Section 3. This act shall take effect October 1, 2006.

HB 7035

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB GO 06-10 OGSR Motor Vehicle Crash Reports
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 2 N	Williamson	Williamson
1) Transportation Committee	14 Y, 0 N	Pugh	Miller
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts the public records exemption for motor vehicle crash reports. Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt for a period of 60 days. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal, non-recurring positive fiscal impact on state and local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law requires a law enforcement officer to file a written report for a motor vehicle crash if the crash:

- Resulted in death or personal injury;
- Resulted in damage to a vehicle or other property; or
- Rendered the vehicle inoperative and required a wrecker to remove it from traffic.[1]

The driver of the vehicle is required to file a written report if a law enforcement officer does not do so.[2] Supplemental written reports also might be required.[3] A driver failing to file the appropriate reports commits a noncriminal traffic infraction that is punishable as a nonmoving violation as provided in chapter 318, F.S. ($30 penalty).[4]

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt[5] for a period of 60 days after the date the report is filed.[6] Such reports are immediately available to:

- The party involved in the crash and his or her legal representative, licensed insurance agent, insurer, or person under contract with such insurer to provide claims or underwriting information;
- Prosecutorial authorities;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation;[7] and
- Any local, state, or federal agency.[8]

A person with immediate access to confidential and exempt information contained in such reports must present a valid driver's license or other photo identification, proof of status, or identification that demonstrates his or her qualifications to access such reports. The person also must file a written

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[1] Section 316.066(3)(a), F.S.
[2] Section 316.066(1), F.S.
[3] Section 316.066(2), F.S.
[4] Section 316.066(6), F.S.
[5] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[6] Section 316.066(3)(c), F.S.
[7] The following are not newspapers for purposes of the exemption: newspapers intended for members of a particular profession or occupational group; newspapers with the primary purpose of distributing advertising; and newspapers with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes. *Id.*
[8] *Id.*

sworn statement[9] with the custodian of such reports attesting that the confidential and exempt information will not be used for commercial solicitation[10] of accident victims or knowingly disclosed to any third party for the purpose of solicitation, during the 60-day period.[11]

The following persons are guilty of a felony of the third degree[12] for violating the provisions of the exemption:

- An agency employee who willfully and knowingly discloses the confidential and exempt information to an unauthorized person;[13]
- A person without authorized access to such information and who obtains or attempts to obtain the information;[14] and
- A person who uses such information in violation of the sworn statement.[15]

Pursuant to the Open Government Sunset Review Act,[16] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It makes editorial and conforming changes and reorganizes the section.

The bill removes a clause reiterating the general requirement that an agency granted access to confidential and exempt information must maintain the status of that information. In *Ragsdale v. State*,[17] the Florida Supreme Court held that:

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.[18]

In *City of Riviera Beach v. Barfield*,[19] the court stated, "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[20] As such, the provision is unnecessary and has been removed, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

---

[9] In lieu of the written sworn statement, the custodial agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers provided the contract states the confidential and exempt information will not be used for commercial solicitation. *Id.*

[10] Commercial solicitation does not include the use of a crash report for purposes of publication in a newspaper or a radio or television broadcast. Section 316.066(4), F.S.

[11] Section 316.066(3)(c), F.S.

[12] A felony of the third degree is punishable by a term of imprisonment not exceeding five years (s. 775.082(3)(d), F.S.) and a fine not exceeding $5,000 (s. 775.083(1)(c), F.S.)

[13] Section 316.066(3)(d), F.S.

[14] Section 316.066(3)(e), F.S.

[15] Section 316.066(3)(f), F.S.

[16] Section 119.15, F.S.

[17] 720 So.2d 203 (Fla. 1998).

[18] *Id.* at 206, 207.

[19] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

[20] *Id.* at 1137.

C. SECTION DIRECTORY:

Section 1 amends s. 316.066, F.S., to remove the October 2, 2006, repeal date.

Section 2 amends s. 324.051, F.S., to correct a cross-reference.

Section 3 amends s. 921.0022, F.S., to correct a cross-reference.

Section 4 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal, non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   HB 7035 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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding motor vehicle crash reports;
4 amending s. 316.066, F.S., which provides an exemption
5 from public records requirements for required motor
6 vehicle crash reports that reveal the identity, home or
7 employment telephone number, or home or employment address
8 of, or other personal information concerning, parties
9 involved in a motor vehicle crash and that are held by any
10 agency that regularly receives or prepares information
11 from or concerning the parties to motor vehicle crashes;
12 reorganizing provisions, making editorial and conforming
13 changes, and removing superfluous language; removing the
14 scheduled repeal of the exemption under the Open
15 Government Sunset Review Act; amending ss. 324.051 and
16 921.0022, F.S.; correcting cross-references; providing an
17 effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 316.066, Florida Statutes, is amended
22 to read:
23 316.066 Written reports of crashes.--
24 (1) The driver of a vehicle which is in any manner
25 involved in a crash resulting in bodily injury to or death of
26 any person or damage to any vehicle or other property in an
27 apparent amount of at least $500 shall, within 10 days after the
28 crash, forward a written report of such crash to the department

29 or traffic records center. However, when the investigating
30 officer has made a written report of the crash pursuant to
31 subsection ~~paragraph~~ (3) ~~(a)~~, no written report need be forwarded
32 to the department or traffic records center by the driver.
33 (2) The receiving entity may require any driver of a
34 vehicle involved in a crash of which a written report must be
35 made as provided in this section to file supplemental written
36 reports whenever the original report is insufficient in the
37 opinion of the department and may require witnesses of crashes
38 to render reports to the department.
39 (3)(a) Every law enforcement officer who in the regular
40 course of duty investigates a motor vehicle crash:
41 1. Which crash resulted in death or personal injury shall,
42 within 10 days after completing the investigation, forward a
43 written report of the crash to the department or traffic records
44 center.
45 2. Which crash involved a violation of s. 316.061(1) or s.
46 316.193 shall, within 10 days after completing the
47 investigation, forward a written report of the crash to the
48 department or traffic records center.
49 3. In which crash a vehicle was rendered inoperative to a
50 degree which required a wrecker to remove it from traffic may,
51 within 10 days after completing the investigation, forward a
52 written report of the crash to the department or traffic records
53 center if such action is appropriate, in the officer's
54 discretion.
55 (b) ~~However,~~ In every case in which a crash report is
56 required by this section and a written report to a law

57 enforcement officer is not prepared, the law enforcement officer
58 shall provide each party involved in the crash a short-form
59 report, prescribed by the state, to be completed by the party.
60 The short-form report must include~~, but is not limited to~~:
61 1. The date, time, and location of the crash;
62 2. A description of the vehicles involved;
63 3. The names and addresses of the parties involved;
64 4. The names and addresses of witnesses;
65 5. The name, badge number, and law enforcement agency of
66 the officer investigating the crash; and
67 6. The names of the insurance companies for the respective
68 parties involved in the crash.
69 (c) Each party to the crash shall provide the law
70 enforcement officer with proof of insurance to be included in
71 the crash report. If a law enforcement officer submits a report
72 on the accident, proof of insurance must be provided to the
73 officer by each party involved in the crash. Any party who fails
74 to provide the required information is guilty of an infraction
75 for a nonmoving violation, punishable as provided in chapter 318
76 unless the officer determines that due to injuries or other
77 special circumstances such insurance information cannot be
78 provided immediately. If the person provides the law enforcement
79 agency, within 24 hours after the crash, proof of insurance that
80 was valid at the time of the crash, the law enforcement agency
81 may void the citation.
82 (4)(a)~~(b)~~ One or more counties may enter into an agreement
83 with the appropriate state agency to be certified by the agency
84 to have a traffic records center for the purpose of tabulating

85 and analyzing countywide traffic crash reports. The agreement
86 must include: certification by the agency that the center has
87 adequate auditing and monitoring mechanisms in place to ensure
88 the quality and accuracy of the data; the time period in which
89 the traffic records center must report crash data to the agency;
90 and the medium in which the traffic records must be submitted to
91 the agency.
92 (b) In the case of a county or multicounty area that has a
93 certified central traffic records center, a law enforcement
94 agency or driver must submit to the center within the time limit
95 prescribed in this section a written report of the crash. A
96 driver who is required to file a crash report must be notified
97 of the proper place to submit the completed report.
98 (c) Fees for copies of public records provided by a
99 certified traffic records center shall be charged and collected
100 as follows:
101
102 For a crash report....$2 per copy.
103 For a homicide report....$25 per copy.
104 For a uniform traffic citation....$0.50 per copy.
105
106 The fees collected for copies of the public records provided by
107 a certified traffic records center shall be used to fund the
108 center or otherwise as designated by the county or counties
109 participating in the center.
110 (5)(a) ~~(c)~~ Crash reports that ~~required by this section~~
111 ~~which~~ reveal the identity, home or employment telephone number
112 or home or employment address of, or other personal information

113 concerning the parties involved in the crash and that ~~which~~ are
114 held ~~received or prepared~~ by any agency that regularly receives
115 or prepares information from or concerning the parties to motor
116 vehicle crashes are confidential and exempt from s. 119.07(1)
117 and s. 24(a), Art. I of the State Constitution for a period of
118 60 days after the date the report is filed.
119 (b) Crash ~~However, such~~ reports held by an agency under
120 paragraph (a) may be made immediately available to the parties
121 involved in the crash, their legal representatives, their
122 licensed insurance agents, their insurers or insurers to which
123 they have applied for coverage, persons under contract with such
124 insurers to provide claims or underwriting information,
125 prosecutorial authorities, victim services programs, radio and
126 television stations licensed by the Federal Communications
127 Commission, newspapers qualified to publish legal notices under
128 ss. 50.011 and 50.031, and free newspapers of general
129 circulation, published once a week or more often, available and
130 of interest to the public generally for the dissemination of
131 news. For the purposes of this section, the following products
132 or publications are not newspapers as referred to in this
133 section: those intended primarily for members of a particular
134 profession or occupational group; those with the primary purpose
135 of distributing advertising; and those with the primary purpose
136 of publishing names and other personal identifying information
137 concerning parties to motor vehicle crashes.
138 (c) Any local, state, or federal agency~~, victim services~~
139 ~~program, agent, or employee~~ that is authorized to have access to
140 crash ~~such~~ reports by any provision of law shall be granted such

141 access in the furtherance of the agency's statutory duties
142 ~~notwithstanding the provisions of this paragraph~~. ~~Any local,~~
143 ~~state, or federal agency, agent, or employee receiving such~~
144 ~~crash reports shall maintain the confidential and exempt status~~
145 ~~of those reports and shall not disclose such crash reports to~~
146 ~~any person or entity.~~
147 (d) As a condition precedent to accessing a crash report
148 within 60 days after the date the report is filed, a person must
149 present a valid driver's license or other photographic
150 identification, proof of status, or identification that
151 demonstrates his or her qualifications to access that
152 information, and file a written sworn statement with the state
153 or local agency in possession of the information stating that
154 information from a crash report made confidential and exempt by
155 this section will not be used for any commercial solicitation of
156 accident victims, or knowingly disclosed to any third party for
157 the purpose of such solicitation, during the period of time that
158 the information remains confidential and exempt. In lieu of
159 requiring the written sworn statement, an agency may provide
160 crash reports by electronic means to third-party vendors under
161 contract with one or more insurers, but only when such contract
162 states that information from a crash report made confidential
163 and exempt by this section will not be used for any commercial
164 solicitation of accident victims by the vendors, or knowingly
165 disclosed by the vendors to any third party for the purpose of
166 such solicitation, during the period of time that the
167 information remains confidential and exempt, and only when a

168 copy of such contract is furnished to the agency as proof of the
169 vendor's claimed status.
170 (e) This subsection does not prevent the dissemination or
171 publication of news to the general public by any legitimate
172 media entitled to access confidential and exempt information
173 pursuant to this section. ~~A law enforcement officer as defined~~
174 ~~in s. 943.10(1) may enforce this subsection. This exemption is~~
175 ~~subject to the Open Government Sunset Review Act of 1995 in~~
176 ~~accordance with s. 119.15, and shall stand repealed on October~~
177 ~~2, 2006, unless reviewed and saved from repeal through~~
178 ~~reenactment by the Legislature.~~
179 (6)(a)~~(d)~~ Any driver failing to file the written report
180 required under subsection (1) or subsection (2) commits a
181 noncriminal traffic infraction, punishable as a nonmoving
182 violation as provided in chapter 318.
183 (b) Any employee of a state or local agency in possession
184 of information made confidential and exempt by this section who
185 knowingly discloses such confidential and exempt information to
186 a person not entitled to access such information under this
187 section is guilty of a felony of the third degree, punishable as
188 provided in s. 775.082, s. 775.083, or s. 775.084.
189 (c)~~(e)~~ Any person, knowing that he or she is not entitled
190 to obtain information made confidential and exempt by this
191 section, who obtains or attempts to obtain such information is
192 guilty of a felony of the third degree, punishable as provided
193 in s. 775.082, s. 775.083, or s. 775.084.
194 (d)~~(f)~~ Any person who knowingly uses confidential and
195 exempt information in violation of a filed written sworn

196 statement or contractual agreement required by this section
197 commits a felony of the third degree, punishable as provided in
198 s. 775.082, s. 775.083, or s. 775.084.
199 (7) ~~(4)~~ Except as specified in this subsection, each crash
200 report made by a person involved in a crash and any statement
201 made by such person to a law enforcement officer for the purpose
202 of completing a crash report required by this section shall be
203 without prejudice to the individual so reporting. No such report
204 or statement shall be used as evidence in any trial, civil or
205 criminal. However, subject to the applicable rules of evidence,
206 a law enforcement officer at a criminal trial may testify as to
207 any statement made to the officer by the person involved in the
208 crash if that person's privilege against self-incrimination is
209 not violated. The results of breath, urine, and blood tests
210 administered as provided in s. 316.1932 or s. 316.1933 are not
211 confidential and shall be admissible into evidence in accordance
212 with the provisions of s. 316.1934(2). Crash reports made by
213 persons involved in crashes shall not be used for commercial
214 solicitation purposes; however, the use of a crash report for
215 purposes of publication in a newspaper or other news periodical
216 or a radio or television broadcast shall not be construed as
217 "commercial purpose."
218 (8) A law enforcement officer, as defined in s. 943.10(1),
219 may enforce this section.
220 ~~(5) For purposes of this section, a written report~~
221 ~~includes a report generated by a law enforcement agency through~~
222 ~~the use of a computer.~~

223 ~~(6) Any driver failing to file the written report required~~
224 ~~under subsection (1) or subsection (2) commits a noncriminal~~
225 ~~traffic infraction, punishable as a nonmoving violation as~~
226 ~~provided in chapter 318.~~
227 Section 2. Paragraph (a) of subsection (1) of section
228 324.051, Florida Statutes, is amended to read:
229 324.051 Reports of crashes; suspensions of licenses and
230 registrations.--
231 (1)(a) Every law enforcement officer who, in the regular
232 course of duty either at the time of and at the scene of the
233 crash or thereafter by interviewing participants or witnesses,
234 investigates a motor vehicle crash which he or she is required
235 to report pursuant to s. 316.066(3)~~(a)~~ shall forward a written
236 report of the crash to the department within 10 days of
237 completing the investigation. However, when the investigation of
238 a crash will take more than 10 days to complete, a preliminary
239 copy of the crash report shall be forwarded to the department
240 within 10 days of the occurrence of the crash, to be followed by
241 a final report within 10 days after completion of the
242 investigation. The report shall be on a form and contain
243 information consistent with the requirements of s. 316.068.
244 Section 3. Paragraph (c) of subsection (3) of section
245 921.0022, Florida Statutes, is amended to read:
246 921.0022 Criminal Punishment Code; offense severity
247 ranking chart.--
248 (3) OFFENSE SEVERITY RANKING CHART
249

Florida Felony Description

Statute	Degree	
250		
		(c) LEVEL 3
251		
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
252		
316.066(6)(a)-(d) ~~(3)(d)-(f)~~	3rd	Unlawfully obtaining or using confidential crash reports.
253		
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
254		
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
255		
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
256		
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
257		
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
258		

	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
259			
	327.35(2)(b)	3rd	Felony BUI.
260			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
261			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
262			
	370.12(1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
263			
	370.12(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.

264	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
265	400.903(3)	3rd	Operating a clinic without a license or filing false license application or other required information.
266	440.105(3)(b)	3rd	Receipt of fee or consideration without approval by judge of compensation claims.
267	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
268	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
269	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
270	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.

271	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
272	697.08	3rd	Equity skimming.
273	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
274	796.05(1)	3rd	Live on earnings of a prostitute.
275	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
276	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
277	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
278	812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
279	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less

			than $10,000.
280			
	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
281			
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
282			
	817.233	3rd	Burning to defraud insurer.
283			
	817.234(8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
284			
	817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
285			
	817.236	3rd	Filing a false motor vehicle insurance application.
286			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
287			
	817.413(2)	3rd	Sale of used goods as new.
288			

289	817.505(4)	3rd	Patient brokering.
290	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
291	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
292	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
293	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
294	843.19	3rd	Injure, disable, or kill police dog or horse.
295	860.15(3)	3rd	Overcharging for repairs and parts.
296	870.01(2)	3rd	Riot; inciting or encouraging.
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s.

			893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
297	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
298	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
299	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
300	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
301			

	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
302			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
303			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
304			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
305			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
306			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a

		fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 4. This act shall take effect October 1, 2006.

HB 7043

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7043 PCB GO 06-18 OGSR Long-term Care Services
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) Elder & Long-Term Care Committee	7 Y, 0 N	Walsh	Walsh
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts the public records exemption for personal identifying information that relates to an individual's health or eligibility or receipt of health-related, elder care, or long-term care services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Department of Elderly Affairs (DOEA) is tasked with a variety of responsibilities, including serving as the primary state agency responsible for administering human services programs for the elderly[1] and promoting the maintenance and improvement of the physical well-being and mental health of elderly persons.[2] To accomplish these purposes, the DOEA offers a variety of services. Some services first require an individual to submit personal information regarding his or her identity, physical health, and financial resources in order to determine eligibility and to arrange for receipt of services.[3]

In 2001, the Legislature enacted s. 430.105, F.S., which consolidated a number of the DOEA's public records exemptions. Personal identifying information relating to an individual's health or eligibility for or receipt of health-related, elder care or long-term care services is confidential and exempt[4] from public records requirements. Such information may not be disclosed publicly unless the affected client or elder person or his or her legal representative provides written consent. Pursuant to the Open Government Sunset Review Act,[5] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 430.105, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

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[1] Section 430.03(1), F.S.
[2] Section 430.03(11), F.S.
[3] For example, the DOEA states its nursing home pre-admission screening program involves medical and functional assessments of potential clients.
[4] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[5] Section 119.15, F.S.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding long-term care services;
4 amending s. 430.105, F.S., which provides an exemption
5 from public records requirements for personal identifying
6 information in a record held by the Department of Elderly
7 Affairs that relates to an individual's health or
8 eligibility for or receipt of health-related, elder care,
9 or long-term care services; making editorial changes;
10 removing superfluous language; removing the scheduled
11 repeal of the exemption; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 430.105, Florida Statutes, is amended
16 to read:
17 430.105 Confidentiality of information.--
18 ~~(1)~~ Personal identifying information <u>in a record held by</u>
19 <u>the department that relates</u> ~~relating~~ to an individual's health
20 or eligibility for or receipt of health-related, elder care, or
21 long-term care services ~~received as a result of services~~
22 ~~rendered under any program administered or funded by the~~
23 ~~department~~ is confidential and exempt from ~~the provisions of~~ s.
24 119.07(1) and s. 24(a), Art. I of the State Constitution~~, except~~
25 ~~as otherwise provided by law. Such information may be contained~~
26 ~~in records created by or received by the department or its~~
27 ~~service providers or obtained through files, reports,~~
28 ~~inspections, or otherwise by employees of the department,~~

29 ~~persons who volunteer services through programs administered by~~
30 ~~the department or its contract providers, or by contract~~
31 ~~providers~~. Such information ~~made confidential and exempt from~~
32 ~~the public records law under this section~~ may ~~not~~ be disclosed:
33 (1) To another governmental entity for the purpose of
34 administering the department's programs for the elderly; or
35 (2) If ~~publicly unless~~ the affected individual ~~client or~~
36 ~~elder person~~ or his or her legal representative provides written
37 consent.
38 ~~(2) This section is subject to the Open Government Sunset~~
39 ~~Review Act of 1995, in accordance with s. 119.15, and shall~~
40 ~~stand repealed on October 2, 2006, unless reviewed and saved~~
41 ~~from repeal through reenactment by the Legislature.~~
42 Section 2. This act shall take effect October 1, 2006.

HB 7045

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7045 PCB GO 06-16 OGSR Supplemental Rebate Agreements
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	5 Y, 0 N	Williamson	Williamson
1) Health Care Regulation Committee	8 Y, 0 N	Bell	Mitchell
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts the public records exemption relating to supplemental rebate agreements. It narrows the exemption by removing the public records exemption for trade secrets. It reenacts the public meetings exemption for the Medicaid Pharmaceutical and Therapeutics Committee. In addition, it requires that a record be made of each portion of an exempt meeting. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information. The bill requires the Medicaid Pharmaceutical and Therapeutics Committee to make a record of each portion of an exempt meeting.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2001 Florida Legislature significantly expanded its efforts to control pharmaceutical costs in the state's Medicaid program by enacting a program called the preferred drug list (PDL).[1] Under this law, Medicaid prescribing practitioners are required to prescribe the medications on the PDL, or must obtain prior authorization from the Agency for Health Care Administration (AHCA) to prescribe a medication not on the PDL, in order for Medicaid to pay for the prescription.

In order for a drug manufacturer to have its medications considered for inclusion on the PDL, it must agree to provide the state both federally mandated rebates and state-mandated supplemental rebates. Since rebate negotiations involve disclosure by pharmaceutical manufacturers of proprietary information regarding the elements of their wholesale pricing, federal law prohibits disclosure of information received by Medicaid agencies from manufacturers that discloses identities of manufacturers or wholesalers or the prices charged by these manufacturers or wholesalers.[2] The federal prohibition applies to the U.S. Secretary of the Department of Health and Human Services, the U.S. Secretary of Veterans Affairs, or a state agency or contractor.

To address the federal confidentiality requirements and to ensure the use of this pricing information for negotiating state supplemental rebate agreements, the 2001 Legislature enacted a public records and public meetings exemption related to rebate negotiations.[3] Trade secrets, rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebates with respect to supplemental rebate negotiations are confidential and exempt[4] from public records requirements.

According to Senate interim project report 2006-219, the state supplemental rebate negotiation process has been facilitated by this exemption and has been successful in benefiting the people of Florida. Since its implementation in 2002, the PDL program has generated over $262 million in state supplemental rebates, with $292 million in additional costs savings projected for Fiscal Year 2005-2006, a significant portion of which will be derived from supplemental rebate negotiations.

Current law also provides a public meetings exemption applicable in limited circumstances. Portions of meetings of the Medicaid Pharmaceutical and Therapeutics Committee are exempt from public meetings requirements if the aforementioned confidential and exempt records are discussed.[5]

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[1] Chapter 2001-104, L.O.F.
[2] 42 U.S.C. 1396r 8
[3] Chapter 2001 216, L.O.F.; codified in s. 409.91196, F.S.
[4] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[5] Section 409.91196(2), F.S.

Pursuant to the Open Government Sunset Review Act,[6] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.[7] House staff reviewed the public records and public meetings exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.[8] Based on AHCA's survey response, it appeared that the public records exemption for trade secrets was unnecessary because AHCA stated that rebate agreements and supplemental rebate amounts were trade secrets for purposes of the exemption. Such information is protected under the current public records exemption.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions. It narrows the public records exemption by removing the exemption for trade secrets.

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is created within AHCA,[9] to make a record of each portion of an exempt meeting. The record must include the time of commencement and termination, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The record of the exempt portion of a meeting is a public record; however, the rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate included in the record is confidential and exempt from public disclosure because of the public records exemption already afforded AHCA.[10]

Finally, the bill makes editorial changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 409.91196, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate local expenditures.

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[6] Section 119.15, F.S.
[7] Section 409.91196(3), F.S.
[8] Staff surveyed and interviewed AHCA staff.
[9] Section 409.91195, F.S.
[10] *See* s. 409.91196(1), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is a part of AHCA, to maintain a record of exempt portions of meetings. This could create a negative fiscal impact; however, the committee already hires a court reporter to keep a record of the open portion of the meeting. As such, additional expenditures should be avoided.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding supplemental rebate
4 agreements; amending s. 409.91196, F.S., which provides an
5 exemption from public records requirements for the rebate
6 amount, percent of rebate, manufacturer's pricing, and
7 supplemental rebate held by the Agency for Health Care
8 Administration relative to a preferred drug list
9 established by the agency and an exemption from public
10 meetings requirements for that portion of a meeting of the
11 Medicaid Pharmaceutical and Therapeutics Committee at
12 which such rebate amounts, percent of rebates,
13 manufacturer's pricing, and supplemental rebates are
14 discussed; making editorial changes; removing superfluous
15 language; requiring that a record of an exempt portion of
16 a meeting be made and maintained; removing the scheduled
17 repeal of the exemption; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 409.91196, Florida Statutes, is amended
22 to read:
23 409.91196 Supplemental rebate agreements; public
24 ~~confidentiality of~~ records and public meetings exemption.--
25 (1) The ~~Trade secrets,~~ rebate amount, percent of rebate,
26 manufacturer's pricing, and supplemental rebate held by ~~rebates~~
27 ~~which are contained in records of~~ the Agency for Health Care
28 Administration under s. 409.912(39)(a)7. ~~and its agents with~~

29 ~~respect to supplemental rebate negotiations and which are~~
30 ~~prepared pursuant to a supplemental rebate agreement under s.~~
31 ~~409.912(40)(a)7.~~ are confidential and exempt from s. 119.07(1)
32 and s. 24(a), Art. I of the State Constitution.
33 (2) That portion of a meeting ~~Those portions of meetings~~
34 of the Medicaid Pharmaceutical and Therapeutics Committee at
35 which the ~~trade secrets,~~ rebate amount, percent of rebate,
36 manufacturer's pricing, and supplemental rebate ~~rebates~~ are
37 discussed is ~~disclosed for discussion or negotiation of a~~
38 ~~supplemental rebate agreement under s. 409.912(40)(a)7. are~~
39 exempt from s. 286.011 and s. 24(b), Art. I of the State
40 Constitution. A record shall be made of each exempt portion of a
41 meeting. Such record must include the times of commencement and
42 termination, all discussions and proceedings, the names of all
43 persons present at any time, and the names of all persons
44 speaking. No exempt portion of a meeting may be held off the
45 record.
46 ~~(3) Subsections (1) and (2) are subject to the Open~~
47 ~~Government Sunset Review Act of 1995 in accordance with s.~~
48 ~~119.15, and shall stand repealed on October 2, 2006, unless~~
49 ~~reviewed and saved from repeal through reenactment by the~~
50 ~~Legislature.~~
51 Section 2. This act shall take effect October 1, 2006.

HB 7059

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7059 PCB GO 06-17 OGSR Temporary Cash Assistance
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brazzell/Williamson	Williamson
1) State Administration Council		Williamson	Bussey
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings 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 bill reenacts and narrows the public records exemption for information that identifies a temporary cash assistance program participant, a participant's family, or a participant's family or household member. It reenacts the public meetings exemption for those portions of meetings at which such information is discussed. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

The state receives federal funding under the Temporary Assistance to Needy Families (TANF) block grant program. The state may use the funds for employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job, and improve their economic circumstances.[1] Chapter 414, F.S., authorizes the use of such funds to provide temporary cash assistance to certain eligible families. Temporary cash assistance payments meet the definition of "assistance" under federal law and, thus, subject the state to federal requirements to "restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government."[2] As such, the 2001 Legislature created public records and public meetings exemptions to protect the identity of a person receiving temporary cash assistance.[3]

Information that identifies a temporary cash assistance program participant, a participant's family, or a participant's family or household member is confidential and exempt[4] from public records requirements.[5] The exemption does not apply to information identifying a noncustodial parent. The custodians of such information include the Department of Children and Family Services, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, the Department of Health, the Department of Revenue, the Department of Education, and a regional workforce board or local committee.

Such information may be released for purposes including:

- The administration of the temporary assistance for needy families plan under Title IV-A of the Social Security Act;
- The administration of the state's plan;
- Any investigation or prosecution or any criminal, civil, or administrative proceeding conducted in connection with the administration of the temporary assistance for needy families plan or the state's plan;
- The administration of any other state, federal, or federally assisted program that provides assistance or services on the basis of need;
- An audit conducted in connection with the administration of the federal or state plan;
- The administration of the unemployment compensation program;

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[1] Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance. *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families through the TANF Program,* p. 4. http://www.acf.dhhs.gov/programs/ofa/funds2.htm.

[2] 42 USC s. 602(a)(1)(iv).

[3] Chapter 2001-160, L.O.F.; codified as ss. 414.295, 414.106, and 445.007(9), F.S.

[4] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[5] Section 414.295(1), F.S.

- The reporting of abuse to the appropriate agency; or
- The administration of services to elderly persons.[6]

If a subpoena is received for such information, then the information must be submitted to the court for an inspection in camera. The receiving entities must maintain the confidential and exempt status of the information.[7] This provision is superfluous because the court already has the authority to require an inspection in camera and to require the receiving parties to maintain the confidential and exempt status of the information.

Current law provides two public meetings exemptions for any portion of a meeting held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee at which such information is discussed.[8] These public meetings exemptions are nearly identical in their substance except that one exemption lists the Department of Children and Family Services[9] while the other does not.[10]

Pursuant to the Open Government Sunset Review Act,[11] the public records and public meetings exemptions will repeal on October 2, 2006, unless reenacted by the Legislature. House staff reviewed the public records and public meetings exemptions pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemptions meet the requirements for reenactment.[12]

The public records exemption should be amended to exclude the Department of Management Services (DMS) as a custodian of such information because DMS, in its survey response, indicated that it neither maintains nor shares the protected information. The public records exemption should be amended further to authorize access to such confidential and exempt information by school districts and the Department of Military Affairs (DMA). In its survey response, the Department of Education indicated that school districts share information with the Department of Children and Family Services (DCFS) through the Learnfare program.[13] The program is designed to curtail truancy and requires school districts to share with DCFS the names of truant students who are temporary cash assistance recipients. In turn, DCFS reduces the amount of benefits the truant students receive. DCFS also shares with DMA the names of children who receive temporary cash assistance for its Forward March and About Face programs. Both programs provide academic and extracurricular enrichment to children who are recipients.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions regarding temporary cash assistance participants. It also makes editorial changes.

The bill narrows the exemption by eliminating the Department of Management Services as a records custodians. It further narrows the exemption by authorizing access to the confidential and exempt information by school districts and the DMA.

The bill removes the provision authorizing a person to subpoena such information and allowing the court to provide for an inspection in camera. The court already has the authority to issue a subpoena and provide for such inspection.

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[6] Paragraphs (a) – (h) of s. 414.295, F.S.
[7] Section 414.295(2), F.S.
[8] Sections 414.106and 445.007(9), F.S.
[9] Section 414.106, F.S.
[10] Section 445.007(9), F.S.
[11] Section 119.15, F.S.
[12] Staff surveyed affected agencies.
[13] The program is outlined in s. 414.1251, F.S.

The bill removes the public meetings exemption found in s. 445.007, F.S., because it is duplicative of the public meetings exemption provided in s. 414.106, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 414.106, F.S., to remove the repeal date.

Section 2 amends s. 414.295, F.S., to remove the repeal date.

Section 3 amends s. 445.007, F.S., to remove a duplicative public meetings exemption.

Section 4 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and regional workforce board expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, the state and regional workforce boards may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

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:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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 records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting 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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding temporary cash assistance;
4 amending s. 414.106, F.S., which provides an exemption
5 from public meetings requirements for that portion of a
6 meeting held by the Department of Children and Family
7 Services, Workforce Florida, Inc., or a regional workforce
8 board or local committee at which personal identifying
9 information contained in records relating to temporary
10 cash assistance is discussed; removing the scheduled
11 repeal of the exemption; amending s. 414.295, F.S., which
12 provides an exemption from public records requirements for
13 personal identifying information of a temporary cash
14 assistance program participant, a participant's family, or
15 a participant's family or household member, except for
16 information identifying a noncustodial parent, held by the
17 Department of Children and Family Services, the Agency for
18 Workforce Innovation, Workforce Florida, Inc., the
19 Department of Health, the Department of Revenue, the
20 Department of Education, or a regional workforce board or
21 local committee; narrowing the exemption; making editorial
22 changes; revising provisions relating to the authorized
23 release of such confidential and exempt information;
24 removing superfluous language; removing the scheduled
25 repeal of the exemption; amending s. 445.007, F.S.;
26 removing the exemption from public meetings requirements
27 for any meeting or portion of a meeting held by Workforce
28 Florida, Inc., or a regional workforce board or local

29 committee at which specified personal identifying
30 information contained in records relating to temporary
31 cash assistance is discussed; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Section 414.106, Florida Statutes, is amended
36 to read:
37 414.106 Exemption from public meetings law.--That ~~Any~~
38 ~~meeting or~~ portion of a meeting held by the department,
39 Workforce Florida, Inc., or a regional workforce board or local
40 committee created pursuant to s. 445.007 at which personal
41 identifying information contained in records relating to
42 temporary cash assistance is discussed is exempt from s. 286.011
43 and s. 24(b), Art. I of the State Constitution if the
44 information identifies a participant, a participant's family, or
45 a participant's family or household member. ~~This section is~~
46 ~~subject to the Open Government Sunset Review Act of 1995 in~~
47 ~~accordance with s. 119.15, and shall stand repealed on October~~
48 ~~2, 2006, unless reviewed and saved from repeal through~~
49 ~~reenactment by the Legislature.~~
50 Section 2. Section 414.295, Florida Statutes, is amended
51 to read:
52 414.295 Temporary cash assistance programs; public records
53 exemption.--
54 (1) Personal identifying information of a ~~contained in~~
55 ~~records relating to~~ temporary cash assistance program ~~which~~
56 ~~identifies a~~ participant, a participant's family, or a

57 participant's family or household member, except for information
58 identifying a noncustodial parent, ~~and which is~~ held by the
59 department, the Agency for Workforce Innovation, Workforce
60 Florida, Inc., ~~the Department of Management Services,~~ the
61 Department of Health, the Department of Revenue, the Department
62 of Education, or a regional workforce board or local committee
63 created pursuant to s. 445.007 is~~, or service providers under~~
64 ~~contract with any of these entities shall be held~~ confidential
65 and exempt from ~~the requirements of~~ s. 119.07(1) and s. 24(a),
66 Art. I of the State Constitution. Such ~~information made~~
67 confidential and exempt information may be released for purposes
68 directly connected with:
69 (a) The administration of the temporary assistance for
70 needy families plan under Title IV-A of the Social Security Act,
71 as amended, by ~~which may include disclosure of information~~
72 ~~within and among~~ the department, the Agency for Workforce
73 Innovation, Workforce Florida, Inc., the Department of Military
74 Affairs ~~Management Services~~, the Department of Health, the
75 Department of Revenue, the Department of Education, a regional
76 workforce board or local committee created pursuant to s.
77 445.007, or a school district ~~service providers under contract~~
78 ~~with any of these entities~~.
79 (b) The administration of the state's plan or program
80 approved under Title IV-B, Title IV-D, or Title IV-E of the
81 Social Security Act, as amended, or under Title I, Title X,
82 Title XIV, Title XVI, Title XIX, Title XX, or Title XXI of the
83 Social Security Act, as amended.

84 (c) Any investigation, prosecution, or any criminal,
85 civil, or administrative proceeding conducted in connection with
86 the administration of any of the plans or programs specified in
87 paragraph (a) or paragraph (b) by~~. Such information shall be~~
88 ~~disclosed to~~ a federal, state, or local governmental entity,
89 upon request by that entity, when such request is made pursuant
90 to the proper exercise of that entity's duties and
91 responsibilities.
92 (d) The administration of any other state, federal, or
93 federally assisted program that provides assistance or services
94 on the basis of need, in cash or in kind, directly to a
95 participant.
96 (e) Any audit or similar activity, such as a review of
97 expenditure reports or financial review, conducted in connection
98 with the administration of any of the plans or programs
99 specified in paragraph (a) or paragraph (b) by a governmental
100 entity authorized by law to conduct such audit or activity.
101 (f) The administration of the unemployment compensation
102 program.
103 (g) The reporting to the appropriate agency or official of
104 information about known or suspected instances of physical or
105 mental injury, sexual abuse or exploitation, or negligent
106 treatment or maltreatment of a child or elderly person receiving
107 assistance, if circumstances indicate that the health or welfare
108 of the child or elderly person is threatened.
109 (h) The administration of services to elderly persons
110 under ss. 430.601-430.606.

111 ~~(2) If a subpoena is received for any information made~~
112 ~~confidential and exempt by this section, the public record or~~
113 ~~part thereof in question shall be submitted to the court for an~~
114 ~~inspection in camera. The court may make such provision as it~~
115 ~~finds necessary to maintain appropriate confidentiality. Except~~
116 ~~pursuant to court order, the receiving entities shall retain the~~
117 ~~confidential and exempt status of such personal identifying~~
118 ~~information as otherwise provided for in this section.~~
119 (2) ~~(3)~~ If information is obtained from a participant
120 through an integrated eligibility process so that the
121 requirements of more than one state or federal program apply to
122 the information, the requirements of the program that is the
123 provider of the information shall prevail. If the department
124 cannot determine which program is the provider of the
125 information, the requirements of each applicable state or
126 federal program shall be met.
127 ~~(4) This section is subject to the Open Government Sunset~~
128 ~~Review Act of 1995 in accordance with s. 119.15, and shall stand~~
129 ~~repealed on October 2, 2006, unless reviewed and saved from~~
130 ~~repeal through reenactment by the Legislature.~~
131 Section 3. Subsection (9) of section 445.007, Florida
132 Statutes, is amended to read:
133 445.007 Regional workforce boards~~; exemption from public~~
134 ~~meetings law~~.--
135 ~~(9) Any meeting or portion of a meeting held by Workforce~~
136 ~~Florida, Inc., or a regional workforce board or local committee~~
137 ~~created under this section at which personal identifying~~
138 ~~information contained in records relating to temporary cash~~

139 ~~assistance, as defined in s. 414.0252, is discussed is exempt~~
140 ~~from s. 286.011 and s. 24(b), Art. I of the State Constitution~~
141 ~~if the information identifies a participant, a participant's~~
142 ~~family, or a participant's family or household member, as~~
143 ~~defined in s. 414.0252. This subsection is subject to the Open~~
144 ~~Government Sunset Review Act of 1995 in accordance with s.~~
145 ~~119.15, and shall stand repealed on October 2, 2006, unless~~
146 ~~reviewed and saved from repeal through reenactment by the~~
147 ~~Legislature.~~
148 Section 4. This act shall take effect October 1, 2006.