

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2082

SPONSOR: Senator Grant

SUBJECT: Public Records/Abandoned Newborns

DATE: March 17, 2000                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Article I, s. 24 of the Florida Constitution, and ch. 119, the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates a public records exemption for the identity of a parent who leaves a newborn infant with a hospital as provided by SB 2080.

This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

**Public Records**

Section 24 of article I of the Florida Constitution provides the right of access to public records by stating that every person has the right to inspect or copy any public records<sup>1</sup> made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in chapter 119, F.S., which provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose and it must be no broader than necessary to meet the public purpose it serves. The

<sup>1</sup>Public records are defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” See §119.011(1), F.S. An agency is defined to include “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” See §119.011(2), F.S.

public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose can not be accomplished without the exemption and satisfies one of three other criterion relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. *See* § 119.07(1), F.S.

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption. *See* §119.15, F.S.

### **Confidentiality of Patient Identity at Hospitals and Parent Identity in Adoptions.**

Section 395.3025, F.S., provides that patient records are confidential and exempt from section 119.07(1) F.S., and must not be disclosed without the consent of the patient except in the enumerated circumstances which include:

- Facility personnel and attending physicians
- Agency for Health Care Administration for specified purposes
- Upon issuance of a subpoena in a civil, criminal or administrative matter
- Department of Children and Families for purposes of investigating abuse, neglect and exploitation
- Organ procurement
- Department of Health for specified purposes

Section 63.162, F.S., provides an exemption from s. 119.07(1) F.S., for "Papers and records of the [Department of Children and Family Services], a court, or any other governmental agency, which papers and records relate to adoptions. . . ." Since the leaving of a child at a hospital may not be directly related to a later adoption of that child, this section would not protect the identity of the parent leaving the child in all cases covered by s. 383.50, F.S.

### **III. Effect of Proposed Changes:**

Section 1 establishes an exemption from the public records disclosure requirements of Art. I, s. 24(a) of the State Constitution, and s. 119.07(1), F.S. A public hospital receiving a child in accordance with s. 383.50, F.S., (created in SB 2080) would be prohibited from disclosing the identity of the parent leaving the child should that identity be known to the hospital.

Section 2 provides findings of public necessity for the exemption. This includes the necessity to keep the identity of parents of newborns left at a hospital confidential in order to encourage them to take the newborn infant to a hospital rather than abandoning the child where it could suffer from exposure or die.

Section 3 provides a contingent effective date based on the passage of corresponding legislation.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

The Florida Constitution authorizes the Legislature to provide public records exemptions by general law. However, such a law must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. Additionally, it must relate only to exemptions and enforcement of public records.

As the bill relates only to an exemption, states the specific public necessity upon which the exemption is based, and is no broader than necessary to meet that necessity, it meets these requirements.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

