

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 18-C

SPONSOR: Criminal Justice Committee and Senators Brown-Waite and Smith

SUBJECT: Public Records Exemption - Hospital Comprehensive Emergency-Management Plans

DATE: November 27, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson/Rhea	Cannon	CJ	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates an exemption from public records and meetings requirements for hospital comprehensive emergency management plans that establish planned responses to acts of terrorism. It also provides that a certification of sufficiency of a plan is not exempt.

This committee substitute creates an exemption in section 395.1056, Florida Statutes.

II. Present Situation:

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. The Public Records Law¹ and the Public Meetings Law² specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection.³ Section 119.011(1), F.S., defines “public records” to mean:

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.

¹ Chapter 119, F.S.
² Section 286.011, F.S.
³ Section 119.07(1), F.S.

An “agency” is defined as “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”⁴

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice.⁵ The amendment had the effect of including in the State Constitution provisions similar to those of the Public Meetings Law and the Public Records Law and of applying those provisions to all three branches of government.

The constitution authorizes the Legislature to create exemptions from public access requirements by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. A law that creates a public records or public meetings exemption is required by the constitution to relate only to exemptions and their enforcement.

Under the Public Records Act, provision is made for an accelerated hearing to enforce public access requirements. Whenever an action is filed to enforce the act, a court is required to set an immediate hearing, giving the case priority over other pending cases.⁶ A court may not issue a stay unless it determines that there is a “substantial probability” that opening the records for inspection will result in significant damage.⁷

The Open Government Sunset Review Act of 1995,⁸ ss. 119.15 and 286.0111, F.S., provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after creation of, or substantial modification to, the exemption. The 1995 law also provides criteria for the Legislature to consider prior to creating or reenacting an exemption. The act authorizes the creation or expansion of an exemption only if⁹ the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

⁴ Section 119.011(2), F.S.

⁵ Section 24, Art. I of the State Constitution.

⁶ Section 119.11, F.S.

⁷ Section 119.11(3), F.S.

⁸ Sections 119.15 and 286.011, F.S.

⁹ While s. 119.15, F.S., establishes standards for the creation, expansion or continuation of an exemption, the provision cannot limit the authority of the Legislature to create, expand or continue an exemption because one session of the Legislature may not bind a future session of the Legislature.

information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁰

Chapter 395, F.S., provides for hospital licensing and regulation. Section 395.1055(1)(c), F.S., requires the Agency for Health Care Administration (AHCA) to adopt rules that ensure that a comprehensive emergency management (CEM) plan is prepared and updated annually. Standards for the plans must be included in the rules. A hospital CEM plan may contain information prepared in anticipation of, or in response to, an act of terrorism.

III. Effect of Proposed Changes:

This committee substitute creates an exemption from public records requirements for hospital comprehensive emergency management (CEM) plans that establish planned responses to acts of terrorism that are filed with the Agency for Health Care Administration, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Community Affairs, or the Department of Health. The committee substitute identifies numerous components that are contained in these plans. The committee substitute provides that a certification by the Governor of the sufficiency of the plan is not exempt.

The committee substitute provides that the exemption is remedial in nature and that it applies to all plans filed with an agency before, on, or after, the effective date of the committee substitute. The committee substitute also makes explicit that the confidential and exempt status of the plan travels with the record.

The committee substitute also creates an exemption from public meetings requirements for meetings at which all or a portion of a plan is discussed.

The committee substitute contains a statement of public necessity as required by the State Constitution. The statement notes that the portions of a comprehensive emergency management plan which address the response of a public or private hospital to an act of terrorism are vital plan components that affect the health and safety of the public. Knowledge of those component parts could be utilized by terrorists to maximize injuries and death.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The committee substitute exempts only those portions of a hospital comprehensive emergency management plan which address response of a public or private hospital to an act

¹⁰ Section 119.15(4)(b), F.S.

of terrorism. Other components of a comprehensive emergency management plan, such as evacuation routes during a hurricane, would still be open for public review.

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:

The committee substitute provides that certification of the sufficiency of a plan is not exempt; however, there is no requirement in substantive law requiring certification.

VIII. Amendments:

None.