

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

H. Lee Moffitt Cancer Center and Research Institute

Background

Florida law establishes the H. Lee Moffitt Cancer Center and Research Institute (Cancer Center) at the University of South Florida (USF). The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Cancer Center. Records of the corporation and its subsidiaries are public records.¹

Current law provides a public records exemption for proprietary confidential business information owned or controlled by the corporation or its subsidiaries. “Proprietary confidential business information” (CBI) means information that is “intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of the not-for-profit corporation or its subsidiaries”.²

The public records exemptions for the corporation and USF’s division of sponsored research differ. Because the corporation’s affiliation with USF includes “significant coordination and joint development research discoveries”, the differing public records exemptions have created confusion regarding the “scope of the protections of intellectual property enjoyed by” the corporation and USF.³ According to the Cancer Center, conforming the corporation’s exemption to USF’s division of sponsored research exemption would allow the Cancer Center to more effectively fulfill its legislative mandate in the area of cancer research.

Effect of Bill

HB 147 with CS expands the corporation’s exemption to include:

- Information relating to methods of manufacture or production, potential trade secrets, potentially patentable material, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the corporation or its subsidiaries.
- Business transactions resulting from such research.
- Information received by the corporation or its subsidiaries from a person in this or another state or nation or the Federal Government which is otherwise exempt or confidential.

¹ Section 1004.43, F.S.

² Section 1004.43(8)(b), F.S.

³ Letter from the Cancer Center’s Director of Governmental Relations, January 22, 2003.

This bill provides for future review and repeal of the exemption, and provides a statement of public necessity.

Florida Alzheimer's Center and Research Institute

Background

Florida law also establishes the Florida Alzheimer's Center and Research Institute (Alzheimer's Center) at USF. The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Alzheimer's Center. Records of the corporation and its subsidiaries are public records.⁴

Current law provides a public records exemption for the personal identifying information of program clients, patient medical or health records, certain trade secret information, the identity of donors to the Alzheimer's Center, information received which is otherwise confidential and exempt, and exempt or confidential information received from a person from another state or nation or the Federal Government. Like the Cancer Center, the public records exemptions for the Alzheimer's Center and USF's division of sponsored research differ.

Effect of Bill

HB 147 with CS expands the Alzheimer's Center public records exemption in order to conform it to those exemptions provided to the Cancer Center and USF's division of sponsored research. The exemption is expanded to include CBI, which includes information concerning:

- Reimbursement methodologies or rates;
- Internal auditing controls and reports of internal auditors;
- Contracts for managed-care⁵ arrangements and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;
- Bids or other contractual data, banking records, and credit agreements;
- Information relating to private contractual data;
- Corporate officer and employee personnel information;
- Information relating to the proceedings and records of credentialing panels and committees and of the governing board of the corporation or its subsidiaries relating to credentialing;
- Minutes of closed meetings of the governing board of the corporation and its subsidiaries; and
- Information that reveals plans for marketing services that the corporation or its subsidiaries do not want revealed to its competitors.

An exception to the public records exemption is provided. The Auditor General, the Office of Program Policy Analysis and Government Accountability, and the State Board of Education must be given access to all CBI pursuant to their oversight and auditing functions. The confidential and exempt⁶ status of the information received must be maintained.

⁴ Section 1004.445, F.S.

⁵ HB 147 with CS defines "managed care" as "systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services."

⁶ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes 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 to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

A public meetings exemption for the Alzheimer's Center is created. Meetings or portions of meetings of the governing board of the Alzheimer's Center wherein confidential and exempt information is discussed are closed to public access.

Finally, a statement of public necessity and provisions for future review and repeal of the exemptions are provided.

C. SECTION DIRECTORY:

Section 1 amends s. 1004.43(8)(b), F.S., expanding a current public records exemption for the H. Lee Moffitt Cancer Center and Research Institute.

Section 2 provides a statement of public necessity.

Section 3 amends s. 1004.445, F.S., expanding the public records exemption for the Alzheimer's Center public records exemption by conforming it to the Cancer Center's exemption, and creating a public meetings exemption for the Alzheimer's Center.

Section 4 provides a statement of public necessity.

Section 5 provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. HB 147 with CS does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. HB 147 with CS does not affect local governments.

2. Expenditures:

None. HB 147 with CS does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. HB 147 with CS does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. HB 147 with CS does not affect municipal or county government.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, HB 147 with CS requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings is also 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, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995⁷ 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 CHANGES

On February 16, 2004, the Committee on State Administration adopted an amendment to HB 147 and reported the bill favorably with CS. The bill as filed expanded the current public records exemption for the Cancer Center. HB 147 with CS provides the Alzheimer's Center with the same public records exemption afforded the other research institutes throughout the state. The bill with CS also creates a public meetings exemption for portions of meetings of the governing board of the Florida Alzheimer's Center and Research Institute wherein confidential and exempt information is discussed.

⁷ Section 119.15, F.S.