

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.)

Prepared By: Education Committee

BILL: SB 2066

INTRODUCER: Education Committee

SUBJECT: Byrd Alzheimer's Center/OGSR

DATE: April 3, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	Favorable
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for the reenactment of the public records exemption currently provided to the Johnnie B. Byrd, Sr., Alzheimer’s Center and Research Institute (“Center”).

The bill narrows the exemption that currently applies to entire medical and health records to capturing only that information which can be used to personally identify patients contained in those records that are created or received by the Center.

This bill substantially amends section 1004.445 of the Florida Statutes.

II. Present Situation:

Public Records Law, Generally

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Article I, s. 24(a) of the State Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and

judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

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.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used “to perpetuate, communicate, or formalize knowledge.”² Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.³

Under Article I, s. 24(c) of the State Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁴

Under s. 119.15(2), F.S., an exemption may be maintained only if it meets one of the following:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

¹ Chapter 119, F.S.

² *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³ *See Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

⁴ s. 119.15(3)(b), F.S.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- 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.”
- The exemption protects “information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption protects “information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”⁵

Johnnie B. Byrd, Sr., Alzheimer’s Center and Research Institute

The Legislature initially created the Alzheimer’s Center and Research Institute at the University of South Florida in 2002, and renamed it the Johnnie B. Byrd, Sr., Alzheimer’s Center and Research Institute (“Center”) in 2004.⁶ The Legislature established the Center as a not-for-profit corporation, classified as an instrumentality of the state but not as a state agency.⁷ The Center is authorized to create both not-for-profit, and for-profit subsidiaries, upon approval of the State Board of Education.⁸ The State Board of Education assumes full governance and facility operation of the Center if the agreement between the Center and the State Board of Education terminates for any reason.⁹

⁵ s. 119.15(4)(b), F.S.

⁶ Chapters 2002-387 and 2002-389, L.O.F. and Chapter 2004-2, L.O.F.

⁷ s. 1004.445(2)(a) and (8), F.S.

⁸ s. 1004.445(2)(a), F.S.

⁹ s. 1004.445(5), F.S.

A State Board of Education chair or designee holds a seat on the Center's Board of Directors.¹⁰ The board of directors is required to establish a council of scientific advisers to the chief executive officer, to include researchers, physicians, and scientists.¹¹ Additionally, the chief executive officer of the Center is required to create programs that implement the mission of the Center in the areas of Alzheimer's research, education, treatment, prevention, and early detection.¹² According to the Center, its mission is to "collaborate with researchers throughout the State of Florida and the wider global research community to develop treatment to cure and prevent this disease [Alzheimer's]." ¹³

The Legislature enacted a public records exemption in 2002 for certain information received and maintained by the Center.¹⁴ Pursuant to the exemption, the following information is confidential and exempt:

- Client personal identification information which is maintained by the Center, the University of South Florida, the State Board of Education, or others who provide services through a contract with the Center;
- All patient medical and health records created or received by the Center;
- Materials that relate to manufacturing or production processes, potential or actual trade secrets, potentially patentable material, or proprietary information received, generated, or discovered during research by or through the Center and its business transactions;
- Identification information of a donor or prospective donor who requests anonymity;
- Any information received by the Center in the performance of its duties which is otherwise confidential and exempt by law; and
- Any information received by the Center from a person from another state, nation, or the Federal Government which is made confidential or exempt by the laws of that state, nation, or under Federal law.¹⁵

The exemption authorizes access to governmental entities that demonstrate a need to have the exempt information and requires them to keep the information confidential and exempt.¹⁶

The Legislature's statement of public necessity provides the following as justification for making specified information confidential and exempt:

- Personal, medical, or health information about clients or patients: Access would otherwise constitute an unjustified invasion of a client's or patient's right to privacy, and the misuse of this information could harm the client's or patient's health, safety, or welfare;
- Manufacture of production methods information, actual or potential trade secrets, business transactions, and proprietary information: Disclosure would hinder the effective

¹⁰ s. 1004.445(2)(b), F.S.

¹¹ s. 1004.445(7), F.S.

¹² s. 1004.445(6)(a), F.S.

¹³ See generally the Center's website at: www.byrdinstitute.org/htm_pages_OLD/about_intro.htm; last checked February 8, 2006.

¹⁴ Chapter 2002-396, L.O.F.

¹⁵ s. 1004.445(9)(a) through (f), F.S.

¹⁶ s. 1004.445(9), F.S.

operation of the Center and potentially create an unfair competitive advantage for those receiving the information;

- Donor or potential donor identification information: In instances where anonymity is preferred, the ability of the Center to solicit donations would otherwise be impeded, causing a chilling effect on donation flow; and
- Information shared with the institute by entities who are not subject to this state's laws and for whom the information is confidential and exempt: Otherwise others would be discouraged from sharing information with the Center, which would impede the efficacy of the Center.¹⁷

This public records exemption is subject to the Open Government Sunset Review Act of 1995, and is repealed on October 2, 2006, unless reviewed and reenacted by the Legislature before that date.

III. Effect of Proposed Changes:

This bill reenacts the public records exemption currently provided to the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute ("Center").

This bill narrows the current exemption, which applies to all medical and health records, to only that information contained in patient records which constitutes personal identifying information.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Pursuant to Article I, s. 24(c) of the State Constitution, records may be exempted from open government requirements only where the exemption is no broader than necessary to accomplish the stated purpose of the law. In the public necessity statement creating the exemption, the Legislature indicated that personal, medical, or health information regarding clients or patients should be made confidential and exempt from disclosure as access to the information:

Would be an unwarranted invasion of a client or patient's right to privacy and because the misuse of such sensitive personal, medical, or health information could be detrimental to the health, safety, or welfare of the client or patient.¹⁸

Section 119.15(6)(b)2., F.S., provides that where the identifiable public purpose is the protection of information of a sensitive personal nature pertaining to individuals, "only information which would actually identify the individuals may be exempted . . ."

¹⁷ Chapter 2002-396, L.O.F.

¹⁸ Chapter 2002-396, L.O.F.

Therefore, narrowing the public records exemption for patient records to the personal identifying information contained in those records satisfies the identifiable public purpose, while, at the same time, complies with constitutional and statutory standards regarding the permissible scope of public records exemptions.

A law creating an exemption must contain only exemptions for the public records and meetings requirements and provisions governing enforcement and must relate to one subject. This bill appears to relate to one subject and revising the exemption is consistent with this constitutional provision.

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:

The Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute can continue to keep confidential and exempt personal identifying information contained in patient records, so that the privacy and health of patients of the Center will not be compromised. Indeterminate costs related to copying of records, and time spent redacting identifying information, may result, however.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
