

STORAGE NAME: h1167s1.cor

DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1167

RELATING TO: Public Records/DOC Personnel

SPONSOR(S): Representative Harrington

STATUTE(S) AFFECTED: s. 119.07, F.S.

COMPANION BILL(S): SB 1322 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CORRECTIONS YEAS 6 NAYS 0
- (2) GOVERNMENTAL OPERATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

Committee Substitute for House Bill 1167 provides a public records exemption for certain personal information relating to the Department of Corrections' licensed or certified health care clinicians and the department's certified educational personnel.

The bill does not appear to have a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

The Florida Constitution grants state citizens the right to access records made or received by a public body or public official in connection with official business. Art. I, sec. 24, Fla. Const. The constitution also provides that the Legislature may exempt records from the requirement that they be open to public inspection. Exemptions must be provided by general law, state a public necessity justifying the exemption, and be no broader than necessary to accomplish the stated purpose of the law. A bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records exemptions that are created or substantially amended in 1996 and after that year. The law states that an exemption may be created or expanded only if 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 (emphasis supplied); or
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that 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.

Public Records Exemption--Law Enforcement Personnel

The Legislature has already allowed certain personal identifying information associated with various classes of public employees to be exempt from public disclosure. Section 119.07(3)(i) F.S., 1996 Supp., provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, and certain personnel of the Department of Children and Family Services and the Department of Revenue. Certain identifying information about the spouses and children of law enforcement personnel is also exempt.

In Rule 33-4.001, Florida Administrative Code, the Department of Corrections classifies the following employees as law enforcement officers: Secretary; Deputy Secretary; Assistant Secretary and Deputy Secretary for operations; Regional Directors; Correctional Security Administrator; Superintendents of all institutions and community facilities; staff of all institutions and community facilities, excluding clerical staff and

secretaries; Probation and Parole Regional Administrators; Correctional Probation Administrators; Supervisors and Officers; Inspector General; Deputy Inspector General; and Correctional Inspectors.

According to the department, classifying such a large percentage of department employees as law enforcement officers allows the department to protect personal identifying information relating to those employees and their family members. The department is concerned, however, about the personal information about certain correctional employees being released by other state agencies. Personal information relating to correctional personnel who hold professional licenses and certificates is available from the agencies that license or certify the professionals.

Agencies that are the custodians of personal information which is exempt, but that are not the employing agency of the person about whom the personal information pertains, are required to keep such information confidential only if the employing agency of the person submits a written request for confidentiality. s. 119.07(3)(i)2., F.S., 1996 Supp.

Department of Corrections' Health Care Clinicians

The Department of Corrections employs 1,288 licensed clinicians to provide health and mental health services to the inmates housed by the department. The licensed clinicians include physicians, nurses, psychologists, dentists, and physician assistants. The Agency for Health Care Administration currently licenses the clinicians employed by the department. Most of the certification and licensure records of licensed medical and mental health practitioners are open for public inspection.

Department of Corrections' Educational Personnel

Section 944.801, F.S., 1996 Supp., relates to education for state prisoners. The Correctional Education Program is created within the Department of Corrections to operate the education program within the prison system. The department currently employs 257 certified teachers throughout the state.

Section 231.17, F.S., 1996 Supp., outlines the certification process for public school teachers. The Department of Education (DOE) has administrative responsibility to certify school teachers in the state, including teachers employed by the Department of Corrections to teach inmates. Under current law, most of the information and records associated with teacher certification are open for public inspection.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 1167 provides a public records exemption for personal information relating to certain Department of Corrections' employees.

Section 119.07(3)(i), F.S., 1996 Supp., would be amended to provide the following exemptions from the public records requirements established in s. 119.07(1), F.S., 1996 Supp., and article I, section 24 of the Florida Constitution:

- home addresses, telephone numbers, social security numbers, and photographs of Department of Corrections' health care clinicians licensed or certified under

chapters 458 (physicians), 459 (osteopaths), 464 (nurses), 465 (pharmacists), 466 (dentists and dental assistants), and 490 (psychologists), F.S;

- home addresses, telephone numbers, social security numbers, and photographs of the Department of Corrections' educational personnel certified by the Department of Education pursuant to s. 231.17, F.S, 1996 Supp;
- home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of the licensed or certified clinicians and certified educational personnel; and
- the names and locations of schools and day care facilities attended by the children of these persons.

All exemptions would be made subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

Based on the public records exemptions provided in this bill, the Department of Corrections would, under current law, be able to request other agencies, such as the Department of Education and the Agency for Health Care Administration, to maintain the confidentiality of the specified personal information contained in their records.

The bill provides a public necessity statement for the exemptions, as is required by Article I, section 24 of the Florida Constitution. This statement provides, in part, that exemption of the personal information "would minimize the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill will require the Agency for Health Care Administration and the Department of Education to restrict public access to records containing personal information about certain public employees, upon request by the Department of Corrections.

- (3) any entitlement to a government service or benefit?

The bill reduces the public's access to certain personal information about the Department of Corrections' licensed or certified health care clinicians and certified teachers.

- b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

The bill reduces the public's access to certain personal information about the Department of Corrections' licensed or certified health care clinicians and certified teachers.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The beneficiaries of the legislation are the public employees about whom certain personal information will now be exempt from the public records law. They will not pay any costs relating to implementation and operation.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Public records exemptions of certain personal information arguably protects persons from potential harassment by individuals, such as inmates, who may desire the personal information for that purpose.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill restricts the public's access to personal information about certain public employees that is currently not exempt under the Public Records Law.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute eliminates the proposed public records exemption for all records of the Agency for Health Care Administration as well as an exemption for certain personal information pertaining to all certified teachers in the state of Florida.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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