

STORAGE NAME: h1849s2.go

DATE: February 18, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1849

RELATING TO: Public records and foster care

SPONSOR(S): Committees on Governmental Operations and Children and Family Empowerment, Representative Murman & others

COMPANION BILL(S): SB 108(s)

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

- (1) CHILDREN AND FAMILY EMPOWERMENT YEAS 6 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 3 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

A family foster home licensing file held by the Department of Children and Family Services is a public record. CS/CS HB 1849 creates a public records exemption for certain information contained in a family foster home licensing file. This bill includes a statement of public necessity justifying the public records exemption. A statement of public necessity is required pursuant to s. 24(c), Art. I, Fla. Const.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records 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.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. 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.

Foster Care

A family foster home is a home for the temporary placement of children adjudicated dependent. There are approximately 4,000 family foster homes. Children stay in foster homes until they are reunited with their family or are adopted. In March of 1997 there were 5,033 children in foster care with the goal of returning home. The average length of stay in foster care for children with a goal of reunification was 20.5 months. In March of 1997 there were 2,983 in foster homes with the goal of adoption. The average length of stay in foster homes for children with a goal of adoption was 45 months.

Section 409.175, F.S., requires family foster homes to be licensed by the Department of Children and Family Services, and the file that is maintained as part of the licensure process is open to the public. Included in the file is identifying information about the foster parents, their spouses, their children, and other household members. Additionally, information such as the floor plan of the foster parents' home, references from neighbors, as well as other sensitive information is contained in the licensure file.

According to the Department of Children and Family Services, foster families report that they are occasionally contacted inappropriately by persons who pose a threat to their safety as a result of the release of information in the licensure file.

The Department of Children and Family Services reports that the Florida State Foster Parent Association has had discussions with them for several years on the need to provide added protection for foster parents. The department also reports that public access to identifying any personal information about foster parents discourages potential foster parents from applying for licensure.

B. EFFECT OF PROPOSED CHANGES:

Family foster home licensing files held by the Department of Children and Family Services are currently considered public record. CS/CS/HB 1849 creates a public records exemption for the following information contained in such a file:

- the home, business, work, childcare, or school addresses, telephone numbers, social security numbers, birthdates and photographs of persons who are licensed to be family foster parents, and such information regarding their spouses, their minor children, and other adult household members; [note this exemption does not run to adult children or other minors who are household members, e.g., grandchildren, other foster children, relatives who are minors]
- identifying information about such persons in neighbor references;
- the floor plan of the foster home; and

- any identifying information about such persons contained in similar sensitive, personal information that is provided to the department by such persons.

Additionally, this bill makes the exemption subject to the Open Government Sunset Review Act of 1995. The exemption will repeal on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

Finally, this bill provides a public necessity statement for the public records exemption. The statement centers around the need for the exemption for safety reasons, as well as for the need to get people to participate in the program, which is hampered by the disclosure of the sensitive, identifying information that must be acquired in order to effectively run the program.

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?

Requires the Department of Children and Family Services to keep certain information exempt from public disclosure.

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

No.

- 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?

No.

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

No.

4. Individual Freedom:

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

The exemption may result in more willing participation in the foster care program.

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

Yes. Certain information now available to the public would no longer be available to the public.

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 or children.

- (1) parents and guardians?

N/A

STORAGE NAME: h1849s2.go

DATE: February 18, 1998

PAGE 7

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 409.175.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates subsection (15) in s. 409.175, F.S. This new subsection creates a public records exemption for certain information in foster parent licensure files held by the Department of Children and Family Services.

Section 2. Provides a public necessity statement for the exemption described in section 1 above.

Section 3. Provides an effective date.

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.

STORAGE NAME: h1849s2.go

DATE: February 18, 1998

PAGE 8

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:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Children and Family Empowerment. The first amendment clarified that the exemption applies to foster parents and individuals who were foster parents and became adoptive parents. The second amendment changed the repeal date from 2002 to 2003. The Committee passed HB 1849 as a Committee Substitute.

One amendment was adopted by the Committee on Governmental Operations. That amendment revised the public necessity statement in support of the exemption. The Committee passed CS/HB 1849 as a Committee Substitute.

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

J. Marleen Ahearn, Ph.D., J.D.

Jimmy O. Helms