

STORAGE NAME: h4385s1a.ed

DATE: April 2, 1998

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

BILL #: CS/HB 4385

RELATING TO: Public Records/Confidentiality

SPONSOR(S): Representative Chestnut

COMPANION BILL(S): None

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

- (1) CHILDREN & FAMILY EMPOWERMENT YEAS 6 NAYS 3
 - (2) EDUCATION APPROPRIATIONS YEAS 11 NAYS 5
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates a public records exemption for certain information obtained by the Florida Partnership for Children First, Inc. (Children First), a non-profit corporation responsible for statewide coordination of school readiness policies and programs. Specifically, Children First shall have access to federal, state and local agency records regarding participating children and any identifying information in records relating to children who are eligible for programs under the corporation's jurisdiction shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

House Bill 4385 is a companion to CS/HB 683, relating to school readiness.

Pursuant to section 24, Article I of the State Constitution, this bill also provides a statement of public necessity for the exemption which focuses on the privacy rights of families as well as the best interests of the children. The exemption is also made subject to the Open Government Sunset Review Act of 1995 and will automatically repeal on October 2, 2003, unless reviewed and reenacted by the Legislature.

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., 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.

Current Exemptions for Selected Entities

Because the Florida Partnership for Children First, Inc. has not yet been established, it does not currently hold any public records. However, there are existing entities serving children and "at risk" populations which presently possess records and are exempt from public disclosure.

One group who will be served by Children First are those children currently enrolled in the Florida Healthy Kids Corporation which helps provide health insurance to low income children. Section 624.91(6), F.S., shields from public disclosure any identifying information concerning its participants, including medical records and family financial information obtained by the Florida Healthy Kids Corporation.

Section 402.22, F.S., relating to education programs for students who reside in residential care facilities operated by the Department of Children and Family Services contains a public records exemption. Section 233.068, F.S., regarding job-related vocational instruction, provides an exemption for identifying information contained in program assessments. Also, information about certain "at risk" juveniles is exempt from public record inspection in s. 985.08, F.S., dealing with information systems.

Other "at risk" individuals or persons with special needs who are protected by public record exemptions include clients of the Division of Blind Services (s. 413.011 and s. 413.012, F.S.); disabled adults receiving home care services and community care (s. 410.037 and s. 410.605, F.S.) and elderly persons receiving home care services and community care (s. 430.608 and s. 430.207, F.S.).

B. EFFECT OF PROPOSED CHANGES:

This bill allows the Florida Partnership for Children First Inc. to access federal, state and local agency records regarding a child with permission from a parent or guardian. Also, any identifying information in records relating to children who are eligible for programs under the jurisdiction of Children First will be confidential and exempt from public disclosure. Such information may not be released to anyone except upon written consent of the child's parent or guardian.

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?

N/A

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

Only to the extent that governmental agencies will have to provide access to the Florida Partnership for Children First, Inc.

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

N/A

b. If an agency or program is 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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

a. If the bill purports 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?

N/A

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

119.07(1) and s. 411.01, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 411.01(4), F.S., to create a public records exemption for identifying information about children served by the Florida Partnership for Children First, Inc. The Florida Partnership for Children First, Inc., created by CS/HB 683 will coordinate the implementation of school readiness policies and programs throughout Florida. Pursuant to this section, Children First is authorized to access federal, state and local agency records regarding a child upon permission from a parent or guardian. Any identifying information in records relating to children who are eligible for programs under the jurisdiction of the Children First Partnership is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Moreover, any information received that is otherwise confidential and exempt must remain confidential. Children First may not release any confidential information except upon written consent of the parent or guardian. This section also provides for its own repeal on October 2, 2003, unless reviewed and reenacted by the Legislature.

Section 2. This provides a statement of public necessity justifying the exemption provided in the bill. This section finds that it is a public necessity that any identifying information in records relating to children who are eligible for the program under the jurisdiction of the Florida Partnership for Children First, Inc. be held confidential and exempt from public disclosure. This finding is predicated on the "at risk" nature of many of the children who are eligible for programs under the jurisdiction of Children First and the potential discrimination they might face if certain private and confidential information was disclosed.

Section 3. This provides an effective date contingent upon the passage of its companion bill, CS/HB 683, or similar legislation creating s. 411.01, F.S.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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 spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill, as originally filed, contained a public records exemption for any identifying information about the child or the child's family obtained by the Children First Partnership from governmental agencies. On March 31, 1998, the Committee on Children and Family Empowerment amended the bill to make confidential and exempt any identifying information in records relating to participating children.

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILY EMPOWERMENT:

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