

STORAGE NAME: h1879.flc

DATE: March 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1879

RELATING TO: Public Records and Meetings

SPONSOR(S): Representative Murman

COMPANION BILL(S): SB 928

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

(1) Family Law and Children

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill creates s. 383.410, Florida Statutes, to retain the exemptive status from the Public Records law pursuant to s. 119.07, Florida Statutes for:

- all confidential or exempt information that is obtained by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or local committee; and
- all confidential or exempt information obtained by a hospital or health care practitioner from those committees.

The bill provides for an exemption from the Public Records law pursuant to s. 119.07, Florida Statutes, for certain specified information in reports or records created by the death review committees or panels or committees assembled by the committees.

The bill provides for an exemption from the public meetings requirements pursuant to s. 286.011, Florida Statutes, for that portion of those meetings and proceedings relating to the discussion of specific persons and incidents associated with child fatalities under review by the child abuse death committees.

Information and records acquired by the state and local committees are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

The bill also provides for a penalty for violation of the provisions of the bill, provides for future review and repeal and provides a statement of public necessity.

The bill results in no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 39, Florida Statutes, provides for the reporting and investigation of alleged occurrences of child abuse, abandonment, and neglect. There are no provisions in current law requiring a review of the deaths of children who die as a result of child abuse or neglect. The Department of Children and Family Services has an internal death review procedure governing the review of all child deaths resulting from alleged abuse or neglect and of all children who die while in the custody of or while receiving services from one of the department's child welfare programs, whether or not there are allegations of death due to abuse or neglect. This child death review process is coordinated with the community-based child fatality review teams, where available, under the Children's Medical Services Medical Foster Care Program.

Both the State Constitution and the Florida Statutes address the individual right of privacy as well as access to public records and public meetings.

Article I, section 23, of the Florida Constitution states:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Article I, section 24, of the Florida Constitution states:

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

Article I, section 24, of the Florida Constitution also states:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public

In addition, section 119.07(1)(a), Florida Statutes, 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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records or the custodian's designee.

The term "public record" is defined in s. 119.011 (1), Florida Statutes, to mean 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. "Agency" is defined as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for purposes of chapter 119, Florida Statutes, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Section 286.011, Florida Statutes, specifies that:

All meetings of any board or commission of any state agency at which official acts are taken must be open to the public.

The Open Government Sunset Review Act of 1995, s. 119.15, Florida Statutes, relating to legislative review of exemptions from public meeting and public records requirement, defines the term

“exemption” to mean a provision of the Florida Statutes which creates an exception to s. 119.07(1) or s. 286.011, Florida Statutes, and which applies to the executive branch of state government or to local government, but it does not include any provision of a special or local law.

The Act provides that it is the intent of the Legislature that exemptions to ss. 119.07(1) and 286.011, Florida Statutes, shall be created or maintained only if:

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

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 specified 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.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2, of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

B. EFFECT OF PROPOSED CHANGES:

The bill creates an exemption from the public records law as provided under s. 119.07, Florida Statutes and the public meetings requirements under s. 286.011, Florida Statutes, for:

- certain specified information in reports or records created by the death review committees or panels or committees assembled by the committees in which specific persons or incidents are discussed; and
- that portion of those meetings and proceedings relating to the discussion of specific persons and incidents associated with child fatalities under review by the child abuse death committees.

The bill retains exemptive status for:

- all confidential or exempt information that is obtained by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or local committee; and
- all confidential or exempt information obtained by a hospital or health care practitioner from those committees.

The bill provides that information and records acquired by the State Committee or a local committee are confidential and not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceedings. Records reviewed by a committee that are available from other sources are not immune from subpoena, discovery, or introduction into evidence.

The bill provides a penalty for violation of these provisions and also requires a Sunset Review and possible appeal if not reenacted by the Florida Legislature. The bill includes a statement of public necessity.

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?

N/A

(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:

Creates s. 383.410, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 383.410, Florida Statutes , to provide that:

- all information that is confidential or exempt from public records requirements that is obtained by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or local committee pursuant to s. 383.402, F.S. **shall retain that status;**
- all information that is confidential or exempt from public records requirements that is obtained by a hospital or a health care practitioner as defined in s. 455.501, F.S., from the State Child Abuse Death Review Committee or a local committee or a panel or committee assembled by the state or local committee pursuant to s. 383.402, F.S. **shall retain that status;** and
- certain specified information in reports and records of the State Child Abuse Death Committee or a local committee, or a panel or committee assembled by the state or local committee relating to child fatalities in which specific persons or incidents are discussed are exempt from s. 119.07(1), Florida Statutes.

The section also provides that the portion of the meetings or proceedings of the State Child Abuse Death Review Committee or a local committee or panel assembled by the state committee or a local committee relating to child fatalities in which specific persons or incidents are discussed is exempt from s. 286.11, F.S., and S. 24(b), Art. I of the State Constitution. The state committee or a local committee may hold periodic public meetings to discuss nonconfidential information or issues.

Information and records acquired by the State Committee or a local committee are confidential and not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceedings. Records reviewed by a committee that are available from other sources are not immune from subpoena, discovery, or introduction into evidence.

A penalty for violation of these provisions is provided and a Sunset Review and possible repeal if not reenacted by the Florida Legislature is included in the provisions of the section.

Section 2. Provides a statement of public necessity related to the confidentiality of records and portions of meetings accessed or held by the child abuse death review committees or panels or committees assembled by these death review committees.

Section 3. Provides for an effective date as the same date that HB 481 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

III. FISCAL ANALYSIS & 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:

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

STORAGE NAME: h1879.flc

DATE: March 16, 1999

PAGE 8

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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Staff Director:

Carol E. Preston

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