

STORAGE NAME: h0025a.go

DATE: January 7, 1999

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

BILL #: HB 25

RELATING TO: Public Records/DOC Personnel

SPONSOR(S): Representative Harrington

COMPANION BILL(S): None

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

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

I. SUMMARY:

HB 25 provides a public record exemption for certain personal information relating to the Department of Corrections' licensed or certified health care clinicians and the department's certified educational personnel, their spouses and children.

This bill does not have a fiscal impact.

This bill provides a public necessity statement for the exemptions, as is required by Article I, section 24, Florida Constitution.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

[e]very 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, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public 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 public policy of open government and that such purpose 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.

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., 1998 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., 1998 Supp.

Department of Corrections' Health Care Clinicians

The Department of Corrections employs over a thousand 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., 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 approximately 250 certified teachers throughout the state.

Section 231.17, F.S., 1998 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:

HB 25 provides a public records exemption for personal information relating to certain Department of Corrections' employees, their spouses and children.

Section 119.07(3)(i), F.S., 1998 Supp., would be amended to provide the following exemptions from the public records requirements established in s. 119.07(1), F.S., 1998 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., 1998 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, 2004, 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.

This bill provides a public necessity statement for the exemptions, as is required by Article I, section 24, 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?

This bill would require certain agencies, such as ACHA and DOE, to restrict access to public records containing personal information about certain DOC employees upon request by the employee or DOC.

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

This bill would restrict public access to certain personal information relating to DOC's licensed or certified health care clinicians and certified teachers, their spouses and children, which is currently available under the Public Records Law.

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

An agency 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?

This bill would restrict public access to certain personal information relating to DOC's licensed or certified health care clinicians and certified teachers, their spouses and children.

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

The beneficiaries of this legislation are those specified DOC employees and their spouses and children who would have certain personal information exempted from the Public Records Law. They will not pay any costs relating to the implementation of this legislation.

4. Individual Freedom:

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

The public record exemption of certain personal information would protect these 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?

This bill would restrict public access to personal information about certain DOC personnel not currently exempted from the Public Records Law.

5. Family Empowerment:

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

This 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:

This bill would not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 119.07, F.S., 1998 Supp.

E. 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:

This bill would not require the counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill would not restrict the authority of counties or municipalities to raise revenue.

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

This bill would not reduce the percentage of state sales tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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