

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1556

SPONSOR: Senator Clary

SUBJECT: Public Records and Meetings; WAGES Program

DATE: March 15, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Robinson Pierce</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides that portions of certain meetings relating to the implementation of the WAGES Program which identify individuals who have applied for or are receiving temporary cash assistance are exempt from the public meeting requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution.

The bill provides that information which identifies individuals in records held by or acquired by certain entities pursuant to the implementation of the WAGES Program is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

The bill provides for release of this information for specific purposes, provides procedures for release of such information, and states the public necessity that such information be confidential and exempt from the public meetings and public records laws.

This bill creates section 414.295, Florida Statutes.

II. Present Situation:

Public Records Law

Florida began its long history of providing public access to the records of governmental and other public entities in 1909. In 1992, s. 24, Article I, of the Florida Constitution was amended to grant a statutory right of public access to public records. The section provides that:

- (a) 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 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.

In addition to the Florida Constitution, ch. 119, F.S., the Public Records Law, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires that:

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 record or the custodian's designee.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. For purposes of ch. 119, F.S., an "agency" includes any state department or board created or established by law. (s. 119.011(2), F.S.) The term "public record" is broadly defined 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.

(s. 119.011(1), F.S.)

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. (*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).) All such materials are open for public inspection unless made exempt, regardless of whether they are in final form. (*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).)

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Section 24, Article I, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject. (Art. I, s. 24(c), Fla. Const.)

Public Meetings Law

Section 24(b), Article I, Florida Constitution, expresses Florida's public policy regarding access to public meetings. This section provides that:

[a]ll 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

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 24(c), Article I, Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in s. 24(b) if such law states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated purpose of the law.

Other Provisions Related to the Public Records and Public Meetings Laws

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 if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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 three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

(s. 119.15(4)(b), F.S.)

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a five-year cycle ending October 2nd of the fifth 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.

Section 23, Article I, of the Florida Constitution also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into the person's 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.

WAGES and Temporary Assistance to Needy Families

As part of the transfer of responsibility for establishing welfare programs from the federal government to the states, s. 205.50 of Title 45 C.F.R., which provided for confidentiality of records of recipients of public assistance, was repealed. Under the Temporary Assistance for Needy Families (TANF) block grant, Florida's state plan for federal funding is required to show how it intends to take such reasonable steps as the state deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under TANF attributable to funds provided by the federal government. (42 U.S.C. s. 602.)

In Florida, the WAGES program, codified in ch. 414, F.S., is the program certified under the TANF block grant to provide temporary cash assistance. (s. 414.0252(13), F.S.) During the 1999 session, the Legislature passed SB 256 (ch. 99-241, L.O.F.), repealing s. 414.29, F.S. (1997), which provided that the lists of names of all persons who have received payments of temporary cash assistance and the amounts of such payments were a matter of public record. The statute further provided that such lists were available for inspection at the local offices in the counties where the recipients of the payments resided. (s. 414.29(1), F.S. (1997).) The only limitation placed upon disclosure of this information was that the lists could not be used for commercial or political purposes. (s. 414.29(2), F.S. (1997).)

Consideration of decisions regarding eligibility for cash assistance, hardship exemption, extension of time limits and other provisions of the program may require information from many sources. Decisions on WAGES benefits, exemptions, and intervention programs often review sensitive personal information in order to help recipients deal with problems such as illiteracy, substance abuse, and mental health. Much of the information obtained from applicants and recipients is also used to determine eligibility for Food Stamps and Medicaid, which continue to have federal confidentiality restrictions. The federal regulation regarding the use or disclosure of information relating to Food Stamps is limited to information obtained from food stamp applicant or recipient households. (7 C.F.R. s. 272.1.) The exception is that the state agency may withhold confidential information about individuals who have disclosed information about the household without the household's knowledge or the nature or status of pending criminal prosecutions. (7 C.F.R. s. 272.1.) However, the federal regulations relating to Medicaid require the state plan to include, under a state statute that imposes legal sanctions, safeguards on information relating to Medicaid applicants and recipients by restricting the purposes of use and disclosure of such information to purposes directly connected with administration of the state plan. (42 C.F.R. 431.300.) Florida law provides limited exemptions relating to these federal government programs. Section

381.0022, F.S., allows the Department of Health to share confidential information or information exempt from disclosure under ch. 119, F.S., on any individual who is or has been a Medicaid recipient or is or was the subject of a program within the department's jurisdiction for the purpose of requesting, receiving, or auditing payment for services. Section 409.2579, F.S., makes confidential and exempt from the provisions of s. 119.07(1), F.S., information concerning applicants for or recipients of Title IV-D child support services and states that use or disclosure of such information by the Title IV-D program is limited to purposes directly connected with those purposes stated in the statute.

III. Effect of Proposed Changes:

This bill provides for exemptions to the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution and the public meeting requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution.

The bill creates s. 414.295, F.S., to provide that those portions of a meeting held by the Department of Children and Family Services, the Department of Labor and Employment Security, the Department of Management Services, the Department of Health, the Department of Revenue, the WAGES State Board of Directors, local WAGES coalitions, or service providers under contract to any of these entities, pursuant to the implementation of the WAGES program,¹ at which information is discussed which identifies individuals who have applied for or are receiving temporary assistance, are exempt from the requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. This section provides that this exemption is not subject to repeal under s. 119.15, F.S., since it is made in accordance with the requirements of federal law under s. 402 of the Social Security Act, as amended (42 U.S.C. s. 602). The bill exempts from the Public Meetings Laws those portions of a meeting held by specified entities which identify individuals who have applied for or are receiving temporary assistance. Section 402 of the federal Social Security Act, as amended, requires the state plan to outline how the state intends to restrict the use and disclosure of information about individuals and families receiving assistance under TANF.

¹ Specifically, implementation of the WAGES Program includes the provisions under s. 414.027, F.S., WAGES Program annual statewide program plan; s. 414.028, F.S., Local WAGES coalitions; s. 414.030, F.S., WAGES Program Employment Projects; s. 414.045, F.S., Cash assistance program; s. 414.055, F.S., One-stop career centers; s. 414.065, F.S., Work requirements; s. 414.0655, F.S., Medical incapacity due to substance abuse or mental health impairment; s. 414.075, F.S., Resource eligibility standards; s. 414.085, F.S., Income eligibility standards; s. 414.095, F.S., Determining eligibility for the WAGES Program; s. 414.105, F.S., Time limitations of temporary cash assistance; s. 414.115, F.S., Limited temporary cash assistance for children born to families receiving temporary cash assistance; s. 414.122, F.S., Withholding of payments based on evidence of fraud; s. 414.125, F.S., Learnfare program; s. 414.13, F.S., Immunizations; s. 414.15, F.S., Diversion; s. 414.1525, F.S., WAGES early exit diversion program; s. 414.155, F.S., Relocation assistance program; s. 414.157, F.S., Diversion program for victims of domestic violence; s. 414.158, F.S., Diversion program to strengthen Florida's families; s. 414.1585, F.S., Diversion program for families at risk of welfare dependency due to substance abuse or mental illness; s. 414.159, F.S., Teen parent and pregnancy prevention diversion program; eligibility for services; s. 414.16, F.S., Emergency assistance program; s. 414.18, F.S., Program for dependent care for families with children with special needs; s. 414.20, F.S., Other support services; s. 414.21, F.S., Transitional medical benefits; s. 414.22, F.S., Transitional education and training; s. 414.223, F.S., Retention Incentive Training Accounts; s. 414.225, F.S., Transitional transportation; s. 414.23, F.S., Evaluation; s. 414.24, F.S., Integrated welfare reform and child welfare services; s. 414.27, F.S., Temporary cash assistance; payment on death; s. 414.32, F.S., Prohibitions and restrictions with respect to food stamps; s. 414.35, F.S., Emergency relief; s. 414.38, F.S., Pilot work experience and job training for noncustodial parents program; s. 414.391, F.S., Automated fingerprint imaging; s. 414.392, F.S., Applicant screening; s. 414.44, F.S., Data collection and reporting; or s. 414.70, F.S., Drug-testing and drug-screening program; procedures.

This exemption from the state Public Meetings Laws appears to be broader than what the federal law requires Florida to include in its state plan. That is, the bill also exempts from the Public Meetings Laws portions of a meeting by the specified entities at which information is discussed which identifies the individuals who have applied for temporary assistance under the WAGES program.

Information which identifies individuals in records held by or acquired by the Department of Children and Family Services, the Department of Labor and Employment Security, the Department of Management Services, the Department of Health, the Department of Revenue, the WAGES State Board of Directors, local WAGES coalitions, or service providers under contract to any of these entities pursuant to the implementation of the WAGES program² are confidential and exempt from the public records provisions of s. 119.07(1) and s. 24(a), Art. I of the Florida Constitution. This section provides that this exemption is not subject to repeal under s. 119.15, F.S., since it is made in accordance with the requirements of federal law under s. 402 of the Social Security Act, as amended (42 U.S.C. s. 602.). The bill exempts from the Public Records Laws information which identifies individuals in records held by or acquired by specified entities implementing the WAGES program. Section 402 of the federal Social Security Act, as amended, requires the state plan to outline how the state intends to restrict the use and disclosure of information about individuals and families receiving assistance under TANF. This exemption from the state Public Records Laws appears to be broader than what the federal law requires Florida to include in its state plan in that the bill also exempts from disclosure information in records of the specified entities which identifies individuals other than those individuals receiving assistance under the WAGES program. The Department of Revenue has indicated that this provision poses a potential conflict with s. 409.2579, F.S., because the statute protects only information regarding applicants for or recipients of child support enforcement services and the bill could be read to include, among other things, information on non-custodial parents in Title IV-D cases.

Information exempted from the public records requirement may be released for purposes directly connected with:

- The administration of the plan of the state approved under Title IV-A of the Social Security Act, as amended (the TANF block grant, formerly AFDC), the plan or program of the state under Title IV-B (child welfare), IV-D (Child Support Enforcement), or IV-E (Foster Care) of the Social Security Act, as amended or under Title I (Old Age Assistance), X (Aid to the Blind), XIV (Aid to the Permanently Disabled), XVI (Supplemental Security Income-SSI), XIX (Medicaid), XX (Social Services), or XXI (State Child Health Insurance) of the Social Security Act, as amended;
- Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs. Under certain circumstances, the department has authority to disclose the current address of a recipient to a federal, state, or local law enforcement officer;

² Id.

- The administration of any other state, federal, or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- Any audit or similar activity such as a review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity;
- The administration of the unemployment compensation program; and
- The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

Procedures for the release of information when the information is obtained through an integrated eligibility process, or in the event of issuance of a subpoena, are established. The bill prohibits disclosure or publication of any information or lists that identify by name or address any program applicant or recipient, to any federal, state, or local committee or legislative body other than in connection with any activity specified in the bill. In addition, except under court order, the release or use of information concerning individuals receiving temporary cash assistance may be made only under a protocol that maintains standards of confidentiality which are comparable to those of the Department of Children and Family Services.

The bill expounds the public necessity that the records and meetings held pursuant to the implementation of the WAGES Program be held confidential and exempt from the public meetings and public records laws.

The bill provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A public meetings and public records exemption would be created by the bill. Regarding the public meetings exemption, the bill relates only to exemptions; includes a statement of the public necessity that justifies the exemptions; and is no broader than necessary to accomplish the stated purpose of the state law, which is to maintain the confidentiality of information as it relates to applicants for or recipients of WAGES program services. Consequently, as it relates to this exemption, the bill appears to comply with the provisions of s. 24(c), Art. I, Florida Constitution. Because the exemption to public records requirements relates to information which identifies "individuals" in records held by or acquired by the various entities, and does not specify or characterize the types of individuals who are the basis for

exemption, this exemption may be construed as being broader than necessary to accomplish the stated purpose of the state law, and, therefore, may not comply with the provisions of s. 24(c), Art. I, Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The affected agencies may experience minimal costs associated with maintaining the confidentiality of exempted meetings and records.

VI. Technical Deficiencies:

The bill refers to “temporary cash assistance,” “temporary assistance,” and “cash assistance.” Potential confusion or uncertainty may be remedied by consistently using one of the terms, if applicable, throughout the bill.

VII. Related Issues:

Florida case law indicates that, generally, records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records; a state would clearly be subject to the provisions of the federal statute under the Supremacy Clause of the United States Constitution, Art. VI, requiring the state to keep the records confidential. (*See State ex rel. Cummer v. Pace*, 159 So. 679 (Fla.1935) (requiring the City of Jacksonville to permit inspection of city records by competitor pertaining to municipal docks, reasoning that certain provisions of the federal Interstate Commerce Act relating to disclosure or solicitation of information concerning shipments were not controlling).) While there are federal regulations which appear to restrict the use and disclosure of information concerning Medicaid applicants and recipients, the regulations relating to the Food Stamp program are not as restrictive. A Florida court could construe the federal regulation relating to the Food Stamp program as not protecting information obtained by some other means than directly from an applicant or recipient household. (*See State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935) and AGO 90-102 (opinion that copyrighted computer software licensed by a county from a private company and used for compiling county data was a public record which must be available for examination and inspection under s. 119.07(3)(r), F.S.,

but could not be reproduced or have copies distributed in compliance with federal copyright law).)

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
