

STORAGE NAME: h2289.flc

DATE: April 5, 2000

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

BILL #: HB 2289

RELATING TO: Public Records

SPONSOR(S): Committee on Family Law and Children, Representative Roberts, and Others

TIED BILL(S):

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

(1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0

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I. SUMMARY:

This bill provides an exemption from the public records requirements for personal information relating to employees of the Department of Children and Family Services, who provide services to abused, neglected, abandoned, or exploited children, disabled adults, and elderly persons and their families. The information that would be exempted from disclosure includes home addresses, telephone numbers, social security numbers, photographs, places of employment of spouses and children, and the names and locations of day care programs or schools attended by the children of the employees.

This bill provides for the release of the Department of Children and Family Services' investigative records, in certain cases involving the serious bodily injury or death of a child, disabled adult, or elderly person.

Pursuant to s. 24 of Article I of the State Constitution, this bill provides a statement of public necessity for the exemption which finds that disclosure of personal information would compromise the health, safety, and welfare of the employees, and would impede the effective and efficient administration of the Department of Children and Family Services. This bill would take effect upon becoming law.

This bill should not have any fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

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.

Access to government meetings is addressed in the Florida Statutes as well. Section 286.011, F.S., states:

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 119.15, F.S., provides that an exemption to the public records and meeting requirements 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.

Under subsection (3) of s. 119.15, F.S., the Open Government Sunset Review Act of 1995, a new exemption or a substantial amendment of an existing exemption must be repealed on October 2nd of the fifth year of enactment, unless reviewed and reenacted by the Legislature. Any law taking effect after 1995, that enacts a new exemption or substantially amends an existing exemption must state within the law that the exemption is subject to repeal in five years, and that the law must be reviewed by the Legislature prior to this date.

Currently, s. 119.07(3)(l)(1), F.S., provides that the home addresses, telephone numbers, social security numbers, photographs, of certain classes of professionals be held confidential and exempt from public disclosure. Those professionals listed include: active or former law enforcement officers, including correctional and correctional probation officers; personnel of the Department of Children and Family Services **whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities**; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement. The exemption from disclosure also includes the home addresses, telephone numbers, social security numbers, photographs, places of employment of spouses and children of such professionals, and the names and locations of schools and day care facilities attended by the children of such professionals.

Under s. 119.07(7)(b)(I), F.S., the Department of Children and Family Services may petition the court of an order for the immediate public release of records held by the Department pertaining to the investigation of abuse, neglect, abandonment, or exploitation of a child, disabled adult, or elderly person, in the event of serious bodily injury, to that child, disabled adult, or elderly person. The petition must be personally served upon the child, the disabled adult, or elderly person.

C. EFFECT OF PROPOSED CHANGES:

Under this bill, personal information relating to employees of the Department of Children and Family Services, who **provide services** to abused, neglected, abandoned, or exploited children, disabled adults, and elderly persons and their families, would be confidential and exempt from public disclosure. The information that would be exempted from disclosure includes home addresses, telephone numbers, social security numbers, photographs, places of employment of spouses and children of the employees, and the names and locations of schools and day care facilities attended by the children of the employees.

In addition, the Department of Children and Family Services would be able to petition the court for an order for the immediate public release of investigative records, in the event of: serious bodily injury to a child, disabled adult, or elderly person; the death of a child, disabled adult, or elderly person, not yet determined to be the result of abuse, abandonment, or neglect; or the death of a child, disabled adult, or elderly person, determined not to be the result of abuse, abandonment, or neglect. The department would be required to personally serve the petition upon the child, disabled adult, or elderly person, if that person was still living. This would give the department a statutory means to provide an expedited response to the public in regard to the death of a child, disabled adult or elderly person.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends paragraph (I) of subsection (3) of s. 119.07, F.S., relating to inspection, examination, and duplication of records, and exemptions, to provide that personal information relating to employees of the Department of Children and Family Services, who provide services to abused, neglected, abandoned, or exploited children, disabled adults, and elderly persons and their families, would be confidential and exempt from public disclosure. The exemption would also apply to the places of employment of spouses and children of the employees, and the names and locations of schools and day care facilities attended by the children of the employees. This section also amends paragraph (b) of subsection (7), to provide that the Department may petition the court for the immediate public release of investigative records, in the event of a serious injury, or death not yet determined to be a result of abuse, abandonment, or neglect, or deaths that have been determined not to be the result of abuse, abandonment, or neglect.

Section 2. Provides legislative findings as to the public necessity for this public records exemption. The Legislature finds that the personal information of the employees of the Department, who provide services to abused, neglected, abandoned, or exploited children, disabled adults, and elderly persons, and their families, should be exempt from disclosure because of the circumstances surrounding the involvement of the Department of Children and Family Services, and the fact that individuals dealing with the Department might be upset, angry, or violent. The Legislature finds that this exemption is necessary to protect the health, safety, and welfare of the employees and their families. Also, if such personal information is not protected, the Department may be unable to obtain qualified employees

due to safety concerns. This would impede the effective and efficient administration of the Department.

Section 3. Provides that the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" Section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By expanding the events in which the Department of Children and Family Services may petition the court for the immediate public release of investigative records, it is possible that the number of court filings may increase, although the number of such potential filings is indeterminate at this time. This potential increase may expend additional court resources.

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 take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of five years, and that the exemption must be reviewed by the Legislature before the scheduled repeal date. This bill provides for a new exemption, but does not state that the exemption is repealed at the end of five years, or that the exemption must be reviewed by the Legislature.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2000, the Committee on Family Law and Children adopted a strike everything amendment which made two substantive changes to the bill. First, it deleted the section relating to the ability of the Department of Children and Family Services to petition the court to release departmental records pertaining to the departmental investigations under certain circumstances. Second, it provided for review and repeal under the Open Government Sunset Review Act of 1995 of the records exemption created by the bill.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol Preston

Carol Preston