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DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 773

RELATING TO: Public Records / Paternity Registry

SPONSOR(S): Representative(s) Mahon

TIED BILL(S): HB 775

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

- (1) STATE ADMINISTRATION
 - (2) CHILD & FAMILY SECURITY
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

HB 775, introduced this session, creates a paternity registry within the Office of Vital Statistics of the Department of Health. The paternity registry allows a man to register with the department if he believes that he is, or could be, the father of a child born outside of marriage.

This bill creates a public records exemption for all information contained in that paternity registry, except that certificates attesting to the results of a search of such registry may be disclosed. A man registering with the paternity registry must provide the department with: the name and the last known address of the mother of the minor; the name of the minor, and the location and date of the birth of that minor, if known, or the probable month and year of the expected birth of the minor; the man's name, address, and driver's license number; and a statement claiming he is the father of the named minor. The bill does not address who maintains such registry, therefore it is unclear as to whom the exemption applies.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that the public records exemption is "good public policy to encourage putative fathers to grasp both the responsibility and the opportunity to be made legally aware of petitions and hearings to terminate their parental rights pending an adoption." Because the paternity registry reveals the occurrence of intimate sexual encounters, disclosure of such information would probably have a negative effect on the likelihood that putative fathers will register.

The effective date of this bill is linked to the passage of "House Bill ____ or similar legislation". The effective date needs to be amended to provide the correct bill number. *The sponsor has filed a strike-all amendment that addresses this issue.*

This bill provides for future review and repeal of the public records exemption.

This bill does not appear to have a fiscal impact on state or local governments.

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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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Paternity Registry

HB 775, introduced this session, creates a paternity registry within the Office of Vital Statistics of the Department of Health. The paternity registry allows a man to register with the department if he believes that he is, or could be, the "father of a child born outside of marriage or adoption." A man registering with the paternity registry must provide in writing:

- The name and the last known address of the mother of the minor;
- The name of the minor, and the location and date of birth of the minor, if known, or the probable month and year of the expected birth of the minor;
- The man's name, address, and driver's license number; and
- A statement in which the man claims to be the father of the named minor.

A man who has properly registered with the paternity registry is entitled to receive a termination of parental rights notice if that man has been found to be the "father of a child born outside of marriage or adoption."

Additionally, the Department of Health, upon request, must furnish a certificate attesting to the results of a search of the paternity registry to a court, the birth mother, or an adoption entity. The department may charge a reasonable fee for processing a search of the paternity registry.

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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(c), 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 must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, 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.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for all information¹ contained in the paternity registry², except that certificates³ attesting to the results of a search of such registry may be disclosed. The

¹ A man registering with the paternity registry must provide such registry with the following information: the name and the last known address of the mother of the minor; the name of the minor, and the location and date of the birth of that minor, if known, or the

bill does not address who maintains such registry, therefore it is unclear as to whom the exemption applies.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the public records exemption is "good public policy to encourage putative fathers to grasp both the responsibility and the opportunity to be made legally aware of petitions and hearings to terminate their parental rights pending an adoption." Because the paternity registry reveals the occurrence of intimate sexual encounters, disclosure of such information would probably have a negative effect on the likelihood that putative fathers will register.

The effective date of this bill is linked to the passage of "House Bill _____ or similar legislation". The House Bill number is not listed in the effective date, so it is unclear as to which bill this public records exemption is linked.

Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

probable month and year of the expected birth of the minor; the man's name, address, and driver's license number; and a statement in which the man claims to be the father of the named minor.

² HB 775, introduced this session by Representative Mahon, creates the paternity registry within the Department of Children and Families. On February 4, 2002, the House Committee on Child and Family Security adopted an amendment that moves the registry from the Department of Children and Families to the Department of Health.

³ The Department of Health, upon request, must furnish a certificate attesting to the results of a search of the paternity registry to a court, the birth mother, or an adoption entity.

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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