

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2704

SPONSOR: Governmental Oversight and Productivity Committee, Children and Families Committee and Senator Atwater

SUBJECT: Identity of Child/ Public Records

DATE: April 19, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.	Dugger	Cannon	CJ	Fav/1 amendment
3.	Rhea	Wilson	GO	Fav/CS
4.			RC	
5.				
6.				

I. Summary:

The Committee Substitute for Committee Substitute for SB 2704 amends s. 119.07(3), F.S., to create a public records exemption for personal identifying information of a child or the child's parent or guardian, held by a children's service council, juvenile welfare board, or other similar entity created under s. 125.901, F.S., or by special law, or held by a service provider or researcher under contract with such entity. The exemption is retroactive in effect. The exemption is repealed effective October 2, 2009, unless reviewed and reenacted by the Legislature.

This bill must be enacted by a two-thirds vote of each house of the Legislature.

This bill substantially amends section 119.07 of the Florida Statutes.

II. Present Situation:

Public Records

Section 24 of Article I of the Florida Constitution provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee [s. 119.07(1), F.S.]. Chapter 119, F.S., also provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose, and it must be no broader than necessary to meet the public purpose it serves [s. 119.15(4)(b), F.S.]. The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose cannot be accomplished without the exemption and satisfies one of the following three criteria relating to the sensitivity and confidentiality of the information:

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.

The Open Government Sunset Review Act of 1995 provides for the automatic five-year review and repeal of an exemption under the Public Records Act, unless the Legislature acts upon it to re-enact the exemption [s. 119.15(3)(a), F.S.].

Children's Services Councils

In 1986 the Legislature provided each county with the authority to create in ordinance an independent special district governed by a council that would provide funding for children's services [ch. 86-197, L.O.F.]. Services are to be funded through an ad valorem property tax of not more than .50 mill, subject to the approval of the voters and pursuant to the procedures for levying millages provided in s. 200.065, F.S., [s. 125.901(1) and (3)(b), F.S.]. Once the millage is approved by the electorate, approval in subsequent years to levy the millage is not required. Section 125.901, F.S., provides for financial and budget procedure requirements for councils. Counties may establish children's services councils that are not funded by the ad valorem tax but instead are supported by appropriations from the governing body of the county.

Currently, there are 15 children's services councils in Florida. Of these councils, 13 were created pursuant to s. 125.901, F.S., and two were established as a result of separate legislative acts. Specifically, the Juvenile Welfare Board of Pinellas County was created in 1945 by ch. 23483, L.O.F.,¹ and has had a similar purpose and function as described in s. 125.901, F.S., but with a maximum millage rate of \$1.00 for each \$1,000 assessed valuation of property.

¹ House of Representatives Local Bill Staff Analysis for HB 355, March 27, 2003.

Chapter 2003-320, L.O.F., codified all prior special acts relating to the Juvenile Welfare Board. The Children's Services Council of Broward County was created with ch. 2000-461, L.O.F., and also has a similar purpose and function as described in s. 125.901, F.S.

Section 125.901, F.S., which sets forth the provisions for these children's services councils, ascribes the following functions to the councils: to provide preventive, developmental, treatment, rehabilitative, and other services for children; to provide funds to other agencies operating for the benefit of children; to conduct research and collect data to assist in determining the needs of the children in the county; and to coordinate with providers of children's services to prevent duplication of services. As the funder, service provider, or researcher of children's issues and children's services, the children's services councils receive specific information on individual children and their families, including names, addresses, telephone numbers, social security numbers, and photographs, as do the service providers and researchers they often contract with to directly perform these functions. Disclosure of information that would identify particular children could result in the information being used to locate and potentially harm a child. While some of the information received may carry the initial public records exemption provided to the information, such as information from child abuse records which continues to be exempt from public disclosure when provided to a contract provider for child protective services [s. 39.202, F.S.], other information regarding children is being received without any ability to protect its release.

III. Effect of Proposed Changes:

The Committee Substitute for Committee Substitute for SB 2704 amends s. 119.07(3), F.S., to create a public records exemption for personal identifying information of a child or the child's parent or guardian, held by a children's service council, juvenile welfare board, or other similar entity created under s. 125.901, F.S., or by special law, or held by a service provider or researcher under contract with such entity. The exemption is retroactive in effect. Non-identifying information regarding the child would not be exempted from disclosure by this bill. This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Examples of other similar public records exemptions include the following: s. 409.821, F.S., which provides an exemption for any information identifying a Florida Kidcare applicant or enrollee; s. 411.011, F.S., which provides individual records of children enrolled in school readiness programs with an exemption; s. 414.295, F.S., which provides an exemption for personal identifying information of recipients of Temporary Assistance for Needy Families (TANF), their families, or other household members; and s. 430.105 F.S., which provides an exemption for personal identifying information relating to an individual's receipt of health related, elder care, or long term care services from the Department of Elderly Affairs.

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.