

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1695      PCB PKT 05-02      Public Records Exemption for the Voluntary Prekindergarten Education Program

**SPONSOR(S):** PreK-12 Committee, Arza

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: PreK-12 Committee	9 Y, 0 N	Hunt	Mizereck
1) Governmental Operations Committee	7 Y, 0 N	Williamson	Everhart
2) Education Council		Hunt	Cobb
3)			
4)			
5)			

## SUMMARY ANALYSIS

This bill creates a public records exemption for the individual records of a child enrolled in the Voluntary Prekindergarten (VPK) Education Program. Records made confidential and exempt include the assessment data, health data, records of teacher observations, and personal identifying information of an enrolled child and his or her parent. The exemption applies to records held by an early learning coalition, the Agency for Workforce Innovation, or a VPK Education Program provider before, on, or after the effective date of the exemption.

The bill provides a parent the right to inspect, review and obtain a copy of the individual VPK Education Program record of his or her child.

The bill allows the release of confidential and exempt records for certain purposes to specified parties. The receiving party is required to protect the records in a manner that does not permit the identification of an enrolled child or his or her parent by persons not authorized to receive the records.

The bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill appears to have a minimal fiscal impact on state government, local governments, and the private sector. Please see the FISCAL COMMENTS section of the analysis for more details.

**This bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases public access to Voluntary Prekindergarten Education Program records.

**Safeguard individual liberty** – The bill prevents the release of sensitive, personal information regarding the children enrolled in the Voluntary Prekindergarten Education Program and their parents.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

As part of administering and operating the Voluntary Prekindergarten (VPK) Education Program, early learning coalitions, the Agency for Workforce Innovation (AWI) and providers may need to collect observational, assessment, health, and personally identifying data on the children participating in the program.

##### **Effect of Bill**

This bill creates a public records exemption for the individual records of a child enrolled in the VPK Education Program. Records made confidential and exempt include:

- Assessment data,
- Health data,
- Records of teacher observations, and
- Personal identifying information of an enrolled child and his or her parent.

The exemption applies to records held by an early learning coalition, AWI, or a VPK Education Program provider before, on, or after the effective date of this exemption.

The bill provides a parent the right to inspect, review, and obtain a copy of the individual VPK Education Program record of his or her child.

The bill authorizes release of the confidential and exempt records to:

- The U.S. Secretary of Education, the U.S. Secretary of Health and Human Services, and the Comptroller General of the U.S., for the purpose of federal audits.
- Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or to improve instruction.
- Accrediting organizations in order to carry out their accreditation functions.
- Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child or other individuals.
- The Auditor General in connection with his or her official functions.
- A court of competent jurisdiction in compliance with an order of that court pursuant to a lawfully issued subpoena.
- Parties to an interagency agreement among early learning coalitions, local governmental agencies, VPK Education Program providers, or state agencies for the purpose of implementing the VPK Education Program.

The bill requires the receiving agency, organization, or individual to protect the records in a manner that does not permit the personal identification of an enrolled child or his or her parent by persons not authorized to receive the records.

The bill provides for future review and repeal of the exemption on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 1002.72, F.S., creating a public records exemption for records of children enrolled in the VPK Education Program.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date of “upon becoming a law.”

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

Unknown and likely minimal. Please see FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Unknown and likely minimal. Please see FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown and likely minimal. Please see FISCAL COMMENTS.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in spending. Employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact resulting from a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists. Because these records may be held by the early learning coalitions, the Agency for Workforce Innovation, or the VPK Education Program providers, who may be school districts or private entities, the costs from this review process apply to state and local governments and to the private sector.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

##### 2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>1</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 8, 2005 meeting, the PreK-12 Committee adopted three amendments to the PCB that added the Agency for Workforce Innovation to the entities that can hold confidential and exempt records under this bill. The 3 amendments were engrossed and the PCB was reported favorably.

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<sup>1</sup> Section 119.15, F.S.