

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases the amount of confidential and exempt information contained in a parental report of taking a child.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1974, the Legislature passed a law that created a third-degree felony for the offense of “interference with custody.” Any person who, “without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice” a child 17 years of age or younger or any incompetent person, from the custody of:

- His or her parent,
- His or her guardian,
- A public agency having the lawful charge, or
- Any other lawful custodian

commits the offense of “interference with custody.”¹

It is not a third-degree felony if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.²

In order to avoid prosecution, the person fleeing must file a report with the sheriff’s office or the state attorney’s office of the county where the child resided at the time he or she was taken. The report must be filed within 10 days of taking the child and is required to contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.³ The person must also, within a reasonable time, commence a custody proceeding.⁴ Such requirements do not appear to apply to a person who flees with an incompetent person for the aforementioned reasons. Furthermore, the subsection pertains to a fleeing spouse; however, the reporting requirements refer to a “person” creating language inconsistencies within the subsection.

Current law provides a public records exemption for the information provided by the fleeing person to the sheriff or state attorney. Pursuant to the Open Government Sunset Review Act of 1995 (Act), the exemption will repeal on October 2, 2005, unless reenacted by the Legislature.⁵ The exemption protects identifying and contact information along with the reasons for committing the act of interference with custody. The public necessity statement provided as part of the creation of the exemption provides that the exemption is necessary in order to protect individuals who are “under threat of physical and psychological harm if their whereabouts is revealed”;⁶ however, it is unclear how

¹ Section 787.03(1), F.S.

² Section 787.03(6)(a), F.S.

³ The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.

⁴ Section 787.03(6)(b), F.S.

⁵ Section 787.03(6)(c), F.S.

⁶ Chapter 2000-357, s. 2, L.O.F.

release of the reasons for committing the act of interference with custody could cause physical and psychological harm to such individuals if their name and location are protected.

Effect of Bill

The bill narrows the public records exemption by only making confidential and exempt the name of the person fleeing with a child and the current address and telephone number of such person and child.

It appears that the interference with custody section, less the public records exemption, contains substantive language inconsistencies that cannot be addressed as part of this Open Government Sunset Review bill. As such, the repeal date has been extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language. Furthermore, the bill directs the Division of Statutory Revision to certify the section, in its entirety, in the list of Open Government Sunset Review exemptions to be certified by June 1, 2005.

C. SECTION DIRECTORY:

Section 1 amends s. 787.03(6), F.S., to narrow the public records exemption and extend the repeal date by one year.

Section 2 provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending a public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass or if the exemption is amended, as employees would have to be informed that formerly exempt records are now open or additional information is either now made public or is made exempt from public disclosure. Because the bill narrows the public records

exemption, employee training activities will be required thus causing a minimal nonrecurring increase in expenditures.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁷ 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.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Governmental Operations Committee adopted an amendment to PCB GO 05-06 and reported the PCB favorably with one amendment. The amendment directs the Division of Statutory Revision to certify s. 787.03, F.S., in the list of Open Government Sunset Review exemptions to be certified by June 1, 2005. It also changed the effective date from October 1, 2005, to "upon becoming a law."

⁷ Section 119.15, F.S.