

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1861 PCB GO 05-04 Review Under The Open Government Sunset Review Act
SPONSOR(S): Governmental Operations Committee, Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Everhart
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for the individual records of a child enrolled in a school readiness program, which will repeal on October 2, 2005, if this bill does not become law. It also makes editorial and conforming changes.

The bill may have a minimal non-recurring positive fiscal impact on state government expenditures. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1999, the Legislature enacted the School Readiness Act, which consolidated the state's early childhood education and child care programs into one integrated program of school readiness services.¹ The act provides that school readiness programs are administered by local school readiness coalitions at the county level and are coordinated by the Florida Partnership for School Readiness at the state level.

The Agency for Workforce Innovation administers the school readiness funds, plans, and policies pursuant to a contract with the Florida Partnership for School Readiness. The agency prepares and submits a unified budget request for the school readiness program.

School readiness programs are generally provided for children who are economically disadvantaged; who have disabilities; or who are at risk of abuse, neglect, or abandonment. School readiness records usually include information supporting a child's eligibility for services, health information, age-appropriate assessments of a child's development, and a pretest and posttest for purposes of measuring a child's improvement.

Current law provides a public records exemption for the individual records of children enrolled in school readiness programs that are held by an early learning coalition or the Agency for Workforce Innovation. For purposes of the exemption, such records include assessment data, health data, records of teacher observations, and information identifying a child participant, including the child's social security number. A parent or guardian has the right to inspect the records of his or her child, and to obtain a copy of such records. Confidential and exempt school readiness program records may be provided to:

- The United States Secretary of Education, Secretary of Health and Human Services, and the Comptroller General for the purpose of federal audits.
- Individuals or organizations conducting certain studies.
- Accrediting organizations in order to carry out their accrediting functions.
- Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child enrollee.
- The Auditor General in connection with his or her official functions.
- A court in compliance with an order of that court pursuant to a subpoena.
- Parties to an interagency agreement among school readiness coalitions, local governmental agencies, providers of school readiness programs, state agencies, and the Florida Partnership for School Readiness.

The receiving agencies, organizations, or individuals must protect the data in a manner that will not permit the identification of the child enrollee or the parent of such child.

¹ Chapter 99-357, L.O.F.; s. 411.01, F.S.

Pursuant to the Open Government Sunset Review Act of 1995, the exemption will repeal on October 2, 2005, unless reenacted by the Legislature.²

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial and conforming changes.

C. SECTION DIRECTORY:

Section 1 amends s. 411.011, F.S., to make editorial and conforming changes, and to remove the October 2, 2005, repeal date.

Section 2 provides an October 1, 2005, effective date.

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:

The bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending 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, as employees would have to be informed that formerly exempt records are now open. Because the bill eliminates the repeal, employee training activities will be avoided, and state government may recognize a minimal nonrecurring decrease in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. The bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

None.

² Section 411.011, F.S.

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 1995,³ 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

None.

³ Section 119.15, F.S.