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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1078

INTRODUCER: Governmental Oversight and Productivity Committee and Children and Families Committee

SUBJECT: Open Government Sunset Review of Section 61.1827, F.S.

DATE: February 8, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	**Favorable**
2.	Rhea	Wilson	GO	**Fav/CS**
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill re-enacts s. 61.1827, F.S., following review pursuant to the Open Government Sunset Review Act of 1995, and removes the requirement for further routine Open Government Sunset Review of the statute.

Section 61.1827, F.S., makes confidential and exempt from public disclosure any information that reveals the identify of applicants for or recipients of child support services, including the name, address, and telephone number of such persons, held by a non-Title IV-D county child support agency.

The section defines “non-Title IV-D county child support agency,” as a department, division, or other agency of a county government which is operated by the county, excluding local depositories pursuant to s. 61.181, F.S., operated by the clerk of the court, to provide child support enforcement and depository services to county residents.

The section authorizes disclosure of the information in specified circumstances, primarily relating to law enforcement activities.

This exemption was made subject to s. 119.15, F.S., the Open Government Sunset Review Act of 1995, and will expire October 2, 2006, unless it is reviewed by the Legislature and saved from repeal. The exemption was reviewed pursuant to the standards of the Open Government Sunset Review Act, and retention of the exemption is recommended.

This bill amends section 61.1827, Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the records of governmental and other public entities. Currently, s. 24(a) of Article I of the Florida Constitution, provides the right of access to public records, stipulating that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state." 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.[1]

Pursuant to s. 24(c) of Article I of the Florida Constitution, exemptions may be provided by general law enacted by the Legislature which are based on an expressed statement of public necessity justifying the exemption and which are no broader than necessary to accomplish the purpose of the law.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a process to create and maintain exemptions to the requirements relating to access to public records. The process sets forth criteria that must be met and considered in a legislative review to be sufficiently significant to override the public policy of access to executive branch government records. In addition, exemptions granted pursuant to s. 119.15, F.S., are repealed on October 2nd of the fifth year after enactment of the exemption, unless the Legislature re-enacts the exemption.

Public Disclosure Exemption for Non-Title IV-D County Child Support Agencies

Child support enforcement (CSE) services are provided state-wide by the Department of Revenue (DOR or the Department). In a few counties, DOR has contracted with local governmental entities to provide the services.[2] As the designated statewide CSE agency, DOR is required by federal law to provide its services to anyone who requests the services, regardless of whether the child support obligation arises through public assistance or through private action.[3] The CSE services provided by DOR statewide include establishment of paternity and the establishment, modification, or enforcement of child support obligations. All CSE services provided by DOR are considered "Title IV-D" services.[4] Effective October 1, 2005, these services are provided free of charge. (Prior to this date, persons who were not public assistance recipients were charged $25.00 for the services.)

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[1] Section 119.07(1), F.S.
[2] In Manatee and Leon Counties, the clerk's office; in Dade County, the State Attorney's office.
[3] 42 CFR 654.
[4] This refers to the fact that the services are funded in large part through Title IV-D of the federal Social Security Act.

The DOR CSE program is funded by a combination of state and federal dollars, with the federal government paying 66 per cent of all administrative costs.[5] In FY 2004-2005, the Legislature appropriated $255.5 million and 2,334 staff positions to administer the program. Of this, approximately $46.9 million was General Revenue.

Federal law requires that information concerning applicants for or recipients of Title IV-D child support services be protected from disclosure when a domestic violence protective order has been entered or when the Title IV-D agency has other reason to believe that releasing the information may result in physical or emotional harm to the applicant, recipient, or child.[6] Florida has codified this requirement of federal law in s. 409.2579, F.S. This section of Florida law also contains a provision prohibiting disclosure of identifying information to any state, local, or federal legislative body or committee thereof. It also makes a violation of the confidentiality provision a first degree misdemeanor.

Despite the requirement that DOR provide CSE services free of charge statewide to anyone who requests them, some counties have chosen to provide support enforcement services. Only Broward County provides more than a limited array of services, however, and Broward provides enforcement services only. According to Broward County Support Unit officials, in order to receive services from the Broward Support Unit, a support order must already have been entered, both parties must live in Florida, and one of the parties must live in Broward County. Broward provides enforcement services not only for child support cases meeting these criteria but for alimony cases as well. The Broward County program is completely county-funded.

The Broward County Support Unit reports that the agency represents more than 22,000 custodial parents and receives approximately 20 requests monthly for information from the support files.

In the 2001 legislative session, Broward County officials were successful in advocating that applicants and recipients using their Support Enforcement program (and any others which counties might develop without Title IV-D funding) should receive privacy protections similar to those afforded persons using the DOR program.[7] It is this provision of law, s. 61.1827, F.S., which is the subject of this review.

Both s. 409.2579(1), F.S., and s. 61.1827(1), F.S., while making information concerning applicants or recipients of support enforcement services confidential and exempt, at the same time allow release of the protected information to identified agencies (such as, among others, those who investigate or prosecute criminal cases connected with the administration of child support enforcement programs). Each statutory provision contains one or more additional paragraphs (s. 409.2579(3) and (4), F.S.; and s. 61.1827(2), F.S.) specifically prohibiting the disclosure of information identifying the whereabouts of parties or children when a protective order has been entered on their behalf or when the agency has reason to believe that disclosure of the information could result in physical or emotional harm to the party or child. The prohibition is limited to the release of information to the person who is the subject of the protective order or who is identified as likely to cause the harm. According to DOR, this additional layer of

[5] *Child Support,* Florida Government Accountability Report, Florida Office of Program Policy Analysis and Government Accountability (OPPAGA), August 26, 2004, p. 3.
[6] 42 USC 654(26).
[7] Ch. 2001-131, L.O.F.

protection is necessary so that the location of a party who may be endangered cannot be revealed to a person who may harm them, even when release of the general information about the case is authorized by the provisions of s. 409.2579(1) F.S., or s. 61.1827(1), F.S.

Despite addressing the same privacy concerns as s. 409.2579, F.S., which protects information concerning applicants and recipients of child support enforcement services provided by DOR, the provisions of s. 61.1827, F.S., differ from the provisions of s. 409.2579, F.S., in several ways:

- Section 61.1827, F.S., is more narrowly drawn than s. 409.2579, F.S., in its description of the information that is protected. Section 409.2579, F.S., exempts "information concerning applicants or recipients of…" services while s. 61.1827, F.S., limits the exemption to "any information that reveals the identity of applicants for or recipients of…." services;
- The list of acceptable uses of the information is different, recognizing that the counties are not approved programs under the federal law;
- The county exemption does not contain the prohibition against revealing information to legislative bodies;
- The county exemption does not contain provisions relating to criminal penalties for violating the provisions of the section.[8]

Senate Interim Project Report 2006-204

As part of an open government sunset review, staff of the Senate Committee on Children and Families reviewed the exemptions to the public records requirements in s. 61.1827, F.S.[9] Staff found that the exemptions provided for in s. 61.1827, F.S., have provided the necessary protection for persons seeking county-based non-Title IV-D support services. The report recommends that the exemptions to the public records and public meetings requirements in s. 61.1827, F.S., be re-enacted without modification.

III. Effect of Proposed Changes:

The bill re-enacts the provisions of s. 61.1827, F.S., with some grammatical changes that do not substantively change the exemption. The bill also removes the repeal of the exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] This paragraph is unnecessary, since criminal penalties are already provided for in s. 119.07, F.S.
[9] The Florida Senate, Committee on Children and Families, *Open Government Sunset Review of s. 1827, F.S., Child Support Services,* Interim Project Report 2006-204 (September 2005).

B. Public Records/Open Meetings Issues:

The existing public records and open meeting exemptions are continued unchanged by the bill. This reenactment removes the requirement for further review under the Open Government Sunset Review Act.

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.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.