

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background

The court may order either or both parents who owe a duty of support to a child to pay support, based on guidelines provided in law.¹ The State of Florida, through the Department of Revenue (DOR) and through the Dade County State Attorney's Office (for cases in Miami-Dade County) and the Manatee County Clerk of Court (for cases in Manatee County) under contract with the DOR, offers child support enforcement services to certain individuals who receive or believe they are entitled to receive child support. These are "Title IV-D" services provided in accordance with Title IV-D of the Social Security Act. Such services provided by the DOR and its contractors include:

- Establishment of paternity;
- Establishment of a support order;
- Modification of support orders;
- Collection of child support; and
- Enforcement of support orders.

Parents applying for or receiving public assistance must use Title IV-D child support enforcement services. Custodial parents of children who are not receiving public assistance may choose to avail themselves of the DOR's child support enforcement services. Information that identifies individuals using DOR's child support enforcement services is confidential and exempt from public records requirements;² this is required under federal law.

Broward County offers a more limited array of child support enforcement services for parents who are not required to use Title IV-D services but wish to receive similar services and who meet certain requirements.³ These services are "non-Title IV-D" services.⁴ In particular, Broward County collects child support and enforces support orders.

Current law provides a public records exemption for information that identifies individuals using non-Title IV-D county child support enforcement services.⁵ Information made confidential and exempt⁶ includes "any information that reveals the identity of applicants for or recipients of child support services, including the name, address, and telephone number of such persons, in the possession of a non-Title IV-D county child support enforcement agency . . ." The statute permits disclosure of the

¹ Section 61.13(1)(a), F.S.

² Section 409.2579, F.S.

³ According to Broward County Support Unit staff, a support order must already have been entered, both parties must live in Florida, and at least one of the parties must live in Broward County. Additionally, the party seeking support must not have retained a private attorney to collect the support.

⁴ Counties' Clerks of Court may provide depository services; however, this is not child support enforcement. Records relating to depository services administered by a Clerk of Court are specifically excluded from the definition of "non-Title IV-D county child support enforcement agency".

⁵ Section 61.1827, F.S.

⁶ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

information under limited circumstances, such as during investigations, prosecutions, or criminal or civil proceedings connected with the administration of the non-Title IV-D county child support enforcement program and when required by certain state or federal laws. The non-Title IV-D county child support enforcement agency, however, cannot disclose the name, address, or whereabouts of an applicant, recipient, or child to a person against whom a protective order has been entered if the county agency has reason to believe that the release of information to such person could harm the applicant, recipient, or child.⁷

Pursuant to the Open Government Sunset Review Act,⁸ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

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

C. SECTION DIRECTORY:

Section 1 amends s. 61.1827, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁷ Section 61.1827(2), F.S.

⁸ Section 119.15, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This 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

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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 purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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,
- Protecting trade or business secrets.

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 and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), 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 and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.