

# 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.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SPB 7032

SPONSOR: Committee on Commerce and Consumer Services

SUBJECT: Open Government Sunset Review

DATE: November 8, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper		<b>Pre-meeting</b>
2.				
3.				
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## I. Summary:

This proposed committee bill is based on an Open Government Sunset Review of the public records and meetings exemptions in ss. 414.106, 414.295 and 445.007(9), F.S. Each exemption prevents public disclosure of personal identifying information of recipients of temporary cash assistance (TCA) provided through the Temporary Assistance to Needy Families (TANF) program. The proposed committee bill clarifies the current exemptions and reenacts them.

This proposed committee bill amends the following sections of the Florida Statutes: 414.106, 414.295 and 445.007(9).

## II. Present Situation:

### Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every 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, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each

constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law<sup>1</sup> specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge....”<sup>2</sup>

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995<sup>3</sup> establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”<sup>4</sup>

Section 119.15(6)(a), F.S.,<sup>5</sup> requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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<sup>1</sup> Chapter 119, F.S.

<sup>2</sup> *Shevin v. Byron, Hairless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(3)(b), F.S.

<sup>5</sup> Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.” Is the record or meeting protected by another exemption?
- The exemption “[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”<sup>6</sup>

### **Temporary Cash Assistance**

The federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to engender increased self-sufficiency among welfare recipients. The act required welfare recipients to begin working two years after beginning assistance; provided funding to states to establish and maintain work transition programs; increased funding for child care and medical coverage to foster the welfare to work transition; and granted states increased flexibility in managing their welfare programs. The federal act ended entitlement to welfare assistance for eligible families (Aid to Families with Dependent Children) and replaced it with Temporary Assistance to Needy Families (TANF).

The federal TANF program provides funding for “a wide variety of employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job and improve their economic circumstances.”<sup>7</sup> More specifically, the TANF program is designed to do the following:

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

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<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance. *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families through the TANF Program*, p.4. <http://www.acf.dhhs.gov/programs/ofa/funds2.htm>. 31 August 2005.

- Encourage the formation and maintenance of two-parent families.<sup>8</sup>

To qualify for TANF block grants, states must impose work requirements on welfare recipients and establish time limits on the receipt of TANF cash assistance, also known as temporary cash assistance (TCA).

In response to the passage of the federal legislation, the Florida Legislature created the Work and Gain Economic Self-sufficiency (WAGES) program in 1996. In 2000, the Workforce Innovation Act (WIA), replaced the WAGES Program with a new Welfare Transition Program that streamlined welfare delivery in the state by combining functions of the Department of Children and Families with the workforce development system. TCA is one of the programs now administered under WIA.

The federal TANF law expressly includes cash payments as one form of assistance to families. More specifically, 45 CFR Section 260.31(a)(1) states:

The term ‘assistance’ includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

The TCA program provides cash assistance to families with children under the age of 18 (or under age 19, if full-time secondary school students), that meet the technical, income and asset requirements of the program. More specifically, TCA is available to families whose income falls below 185 percent of the federal poverty level.<sup>9</sup> Such cash assistance does not include short term non-recurrent benefits to meet a crisis situation or support services that are provided to the employed.

### **Personally Identifying Information**

Federal law, 42 U.S.C. Section 602(a)(1)(A)(iv), requires that states:

Take such reasonable steps as [they deem] necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

Consequently, federal regulation, 45 CFR Section 205.50, requires that states provide, *by state statute*, safeguards to protect personal identifying information of applicants and recipients and other information further detailed in the federal regulation.<sup>10</sup> Florida statute incorporates these federal requirements.

Chapter 414, F.S., which outlines Florida’s family self-sufficiency measures, and ch. 445, F.S., which outlines the related workforce requirements, incorporate the federal directives. Section

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<sup>8</sup> 45 CFR Section 260.20.

<sup>9</sup> Section 414.085, F.S.

<sup>10</sup> *See also*, Staff Analysis to HB 1385 (2001).

414.106, F.S., and s. 445.007(9), F.S., implement the required public meeting exemptions, and s. 414.295, F.S., specifies the required public records exemption.

### **Senate Interim Project**

During the 2005-2006 interim, the Senate Committee on Commerce and Consumer Services conducted a review of the TCA records and meetings exemptions and issued an interim project report.<sup>11</sup> This report reviewed the public meetings exemptions in ss. 414.106 and 445.007(9), F.S., as well as the public records exemption in s. 414.295, F.S. The report found that the records of individuals who receive TCA contain sensitive personal information. The report also found that meetings where TCA recipient cases are discussed could potentially expose personal information to the public. Survey responses also indicate that, in regard to all three exemptions, personal identifying information includes, but is not limited to, names, social security numbers, home and mailing addresses, demographic descriptions, employment addresses, school addresses and telephone numbers.

In enacting the original exemptions, the Legislature recognized, in s. 4, ch. 2001-160, L.O.F., that the fear of public disclosure could be a “significant disincentive” to individuals and families attempting to attain self-sufficiency. The original law expressly provides that the state has a compelling interest to:

- ensure that in meetings concerning assistance cases, the parties present are able to fully consider pertinent facts related to potential recipients’ eligibility;
- protect recipients and their family or household members from the type of trauma that may result from public disclosure of their financial situations; and
- protect participants who may be victims of domestic violence.

The survey responses support these concerns. The survey responses concur that release of TCA recipient information would threaten the protection and safety of individuals and families while hampering the ability of state entities to deliver services to clients.

Survey responses also show that interagency functions would be adversely affected if the state entities charged with assisting TCA recipients could not share information as needed to properly serve those clients.

Furthermore, several responses indicate that the federal TANF law requires states to provide confidentiality safeguards for client records. Failure to do so could place Florida TANF funding at risk.

The report recommended that the Legislature maintain the public meetings exemption in ss. 414.106, F.S., and 445.007(9), F.S., as written. The report also recommended that the Legislature revise the public records exemption in s. 414.295, F.S., to include only those state agencies that possess or may be required to possess records of temporary cash assistance recipients.

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<sup>11</sup> Florida Senate, *Open Government Sunset Review of ss. 414.106, 414.295 and 445.007(9), F.S., Temporary Cash Assistance Records Exemptions*, Report No. 2006-206 (Oct. 2005).

### III. Effect of Proposed Changes:

**Section 1** of the proposed committee bill reenacts the exemption in s. 414.106, F.S., and removes the sunset review and repeal provision required by the Open Government Sunset Review Act.

Currently, s. 414.106, F.S., allows the Department of Children and Families (DCF), Workforce Florida, Inc. (WFI), and regional workforce boards or their local committees to close a portion of a meeting or an entire meeting to the public if personal identifying information contained in records of TCA recipients is discussed.

**Section 2** of the proposed committee bill amends and reenacts the exemption in s. 414.295, F.S., and removes the sunset review and repeal provision required by the Open Government Sunset Review Act.

Currently, s. 414.295, F.S., declares personal identifying information of temporary cash assistance recipients confidential and exempt. This protection applies to information contained in records held by DCF, the Agency for Workforce Innovation (AWI), WFI, the Department of Health (DOH), the Department of Revenue (DOR), the Department of Education (DOE), a regional workforce board or one of its local committees.

All but one of the state agencies and twenty-four (24) regional workforce boards named in s. 414.295, F.S., and surveyed indicated that this exemption is necessary to protect TCA recipient information. Survey responses also indicate that interagency functions would be adversely affected if the state entities charged with assisting TCA recipients could not share information as needed to properly serve those clients.

In its survey response, however, DMS indicated that it neither maintains nor shares any records protected by s. 414.295, F.S., (or any of the statutes that were reviewed in the Senate Interim Report). That agency also stated it should be removed as a covered agency under this statute.

Section 414.295, F.S., also permits the release of TCA-related records under certain limited circumstances, including administration of the state's TANF plan. Specifically, paragraph 414.295(1)(a), F.S., protects disclosure of information within and among DCF, AWI, WFI, DMS, DOH, DOR, DOE and regional workforce boards or their local committees to facilitate administration of the state plan. Survey responses and information obtained subsequent to the publication of the Senate Interim Project indicate that two state entities that currently receive and share information about TCA recipients are not mentioned in the statute.

The survey response from DOE indicated that school districts share information with DCF through the Learnfare program. This program, which is outlined in s. 414.1251, F.S., is designed to curtail truancy and requires school districts to share the names of truant students who are TCA recipients with DCF. DCF then reduces the amount of benefits the students receive.

DCF also shares the names of children who receive TCA with the Department of Military Affairs (DMA) for its Forward March and About Face programs. Both programs provide academic and extracurricular enrichment to children who are TCA recipients. Although it receives this information, DMA is not named in the statute.

The proposed committee bill deletes the limited list of state entities in paragraph 414.295(1)(a), F.S., to which the exemption would extend if DCF, AWI, WFI, DOH, DOR, DOE, regional workforce boards and any of its local committees share information within or among themselves. This change ensures that TCA information remains confidential and exempt when shared within and among state entities generally as part of TANF administration so as to include, for example, school districts and DMA.

**Section 3** of the proposed committee bill reenacts the exemption in s. 445.007, F.S., and removes the sunset review and repeal provision required by the Open Government Sunset Review Act.

Currently, s. 445.007(9), F.S., allows WFI, and regional workforce boards or their local committees to close a portion of a meeting or an entire meeting from the public if personal identifying information contained in records of temporary cash assistance recipients is discussed.

**Section 4** of the proposed committee bill provides an effective date of October 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This proposed committee bill amends and reenacts two public meetings exemptions, ss. 414.106 and 445.007(9), F.S., and one public records exemption, s. 414.295, F.S. Each exemption protects information related to recipients of temporary cash assistance from public disclosure.

C. Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Information that is covered by these exemptions will continue to be confidential and exempt from open government provisions. Costs for maintaining these exemptions will continue to be borne by state and local agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

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

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