

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

The state receives federal funding under the Temporary Assistance to Needy Families (TANF) block grant program. The state may use the funds for employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job, and improve their economic circumstances.¹ Chapter 414, F.S., authorizes the use of such funds to provide temporary cash assistance to certain eligible families. Temporary cash assistance payments meet the definition of “assistance” under federal law and, thus, subject the state to federal requirements 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.”² As such, the 2001 Legislature created public records and public meetings exemptions to protect the identity of a person receiving temporary cash assistance.³

Information that identifies a temporary cash assistance program participant, a participant’s family, or a participant’s family or household member is confidential and exempt⁴ from public records requirements.⁵ The exemption does not apply to information identifying a noncustodial parent. The custodians of such information include the Department of Children and Family Services, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, the Department of Health, the Department of Revenue, the Department of Education, and a regional workforce board or local committee.

Such information may be released for purposes including:

- The administration of the temporary assistance for needy families plan under Title IV-A of the Social Security Act;
- The administration of the state’s plan;
- Any investigation or prosecution or any criminal, civil, or administrative proceeding conducted in connection with the administration of the temporary assistance for needy families plan or the state’s plan;
- The administration of any other state, federal, or federally assisted program that provides assistance or services on the basis of need;
- An audit conducted in connection with the administration of the federal or state plan;
- The administration of the unemployment compensation program;

¹ 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>.

² 42 USC s. 602(a)(1)(iv).

³ Chapter 2001-160, L.O.F.; codified as ss. 414.295, 414.106, and 445.007(9), F.S.

⁴ 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).

⁵ Section 414.295(1), F.S.

- The reporting of abuse to the appropriate agency; or
- The administration of services to elderly persons.⁶

If a subpoena is received for such information, then the information must be submitted to the court for an inspection in camera. The receiving entities must maintain the confidential and exempt status of the information.⁷ This provision is superfluous because the court already has the authority to require an inspection in camera and to require the receiving parties to maintain the confidential and exempt status of the information.

Current law provides two public meetings exemptions for any portion of a meeting held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee at which such information is discussed.⁸ These public meetings exemptions are nearly identical in their substance except that one exemption lists the Department of Children and Family Services⁹ while the other does not.¹⁰

Pursuant to the Open Government Sunset Review Act,¹¹ the public records and public meetings exemptions will repeal on October 2, 2006, unless reenacted by the Legislature. House staff reviewed the public records and public meetings exemptions pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemptions meet the requirements for reenactment.¹²

The public records exemption should be amended to exclude the Department of Management Services (DMS) as a custodian of such information because DMS, in its survey response, indicated that it neither maintains nor shares the protected information. The public records exemption should be amended further to authorize access to such confidential and exempt information by school districts and the Department of Military Affairs (DMA). In its survey response, the Department of Education indicated that school districts share information with the Department of Children and Family Services (DCFS) through the Learnfare program.¹³ The program is designed to curtail truancy and requires school districts to share with DCFS the names of truant students who are temporary cash assistance recipients. In turn, DCFS reduces the amount of benefits the truant students receive. DCFS also shares with DMA the names of children who receive temporary cash assistance for its Forward March and About Face programs. Both programs provide academic and extracurricular enrichment to children who are recipients.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions regarding temporary cash assistance participants. It also makes editorial changes.

The bill narrows the exemption by eliminating the Department of Management Services as a records custodians. It further narrows the exemption by authorizing access to the confidential and exempt information by school districts and the DMA.

The bill removes the provision authorizing a person to subpoena such information and allowing the court to provide for an inspection in camera. The court already has the authority to issue a subpoena and provide for such inspection.

⁶ Paragraphs (a) – (h) of s. 414.295, F.S.

⁷ Section 414.295(2), F.S.

⁸ Sections 414.106 and 445.007(9), F.S.

⁹ Section 414.106, F.S.

¹⁰ Section 445.007(9), F.S.

¹¹ Section 119.15, F.S.

¹² Staff surveyed affected agencies.

¹³ The program is outlined in s. 414.1251, F.S.

The bill removes the public meetings exemption found in s. 445.007, F.S., because it is duplicative of the public meetings exemption provided in s. 414.106, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 414.106, F.S., to remove the repeal date.

Section 2 amends s. 414.295, F.S., to remove the repeal date.

Section 3 amends s. 445.007, F.S., to remove a duplicative public meetings exemption.

Section 4 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and regional workforce board expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because 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, the state and regional workforce boards may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

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.