

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7019 PCB GAP 09-06 OGSR/Government-Sponsored Recreation Programs
SPONSOR(S): Economic Development & Community Affairs Policy Council, Governmental Affairs Policy Committee and Braynon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1824

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	10 Y, 0 N	Williamson	Williamson
1)	Economic Development & Community Affairs Policy Council	13 Y, 0 N, As CS	Williamson	Tinker
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

Current law provides a public record exemption for information that would identify or locate a child participating in a government sponsored recreation program or camp or that would identify or locate the child’s parent or guardian. The information may be disclosed upon a showing of good cause.

The bill reenacts the public record exemption, which will repeal on October 2, 2009, if this bill does not become law. It also reorganizes the exemption, creates definitions for “child” and “government-sponsored recreation program”, and makes editorial changes.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting 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 record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects 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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption under Review

In 2004, the Legislature created a public record exemption for information that would identify or locate a child participating in a government sponsored recreation program or camp.⁴ The exemption was enacted in response to a parental custodial issue in Palm Beach County when the non-custodial parent

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 119.071(5)(c), F.S.; Chapter 2004-32, L.O.F.

submitted a public records request using the child's name. Identifying information was released to the non-custodial parent who then attempted to abduct the child.⁵

The exemption protects the participating child's name, home address, photograph, telephone number, social security number, and the name and location of the school attended by the child. In addition, the name, home address, telephone number, and social security number of the participating child's parent or guardian is exempt.⁶ The exempt information may be disclosed by court order upon a showing of good cause. However, this authorization for disclosure is unnecessary as the information is merely exempt.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the exemption, makes editorial changes, and removes unnecessary language.

For purposes of the exemption, the bill defines "child" to mean "any person younger than 18 years of age." It also defines "government-sponsored recreation program" to mean "a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after school programs, athletic programs, nature programs, summer camps, or other recreational programs."

B. SECTION DIRECTORY:

Section 1 amends s. 119.071(5)(c), F.S., to reenact the public record exemption for identification and location information of a child who participates in a government-sponsored recreation program and the child's parent or guardian.

Section 2 repeals s. 2 of chapter 2004-32, L.O.F., which provides for repeal of the exemption.

Section 3 provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁵ See Senate Bill Analysis and Fiscal Impact Statement for SPB 7024, Senate Community Affairs Committee, January 22, 2009.

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 14, 2009, the Economic Development & Community Affairs Policy Council adopted an amendment to HB 7019 and reported the bill favorably with Council Substitute. The amendment removed the provision authorizing the release of exempt information pursuant to a court order. This provision is unnecessary because the information is exempt only.