

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SPB 7024

INTRODUCER: For consideration by the Community Affairs Committee

SUBJECT: OGSR/Information that identifies a child participating in a government-sponsored recreation program

DATE: January 22, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 119.071(5)(c), F.S., provides that any information that identifies or helps to locate a child participating in a government-sponsored recreation program or camp, or information that identifies or helps to locate the parents or guardians of such a child, is exempt from the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution. The exemption is subject to the Open Government Sunset Review Act¹ and is repealed October 2, 2009 unless reviewed and reenacted by the Legislature.

This proposed committee bill substantially amends s. 119.071(5)(c), F.S., to expand the existing exemption and to provide that the expanded exemption is subject to review and repeal on October 2, 2014, unless reviewed and reenacted by the Legislature as required under the Open Government Sunset Review Act.

II. Present Situation:

Florida's 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 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

¹ See s. 119.15, F.S.

Section 24(a), Art. I, of the State Constitution, provides that:

Every person has the right to inspect or copy any public records 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 is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record² must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency³ records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public record” 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 to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁴ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁵

Only the Legislature is authorized to create exemptions to open government requirements.⁶ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption⁸ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁹

² s. 119.011(1), F.S., defines “public record” to include “all documents, papers, letters, maps, books, tapes, photographs, film, 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.”

³ s. 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁴ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁶ Article I, s. 24(c) of the State Constitution.

⁷ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁸ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁹ Article 1, s. 24(c) of the State Constitution

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.¹⁰ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

Open Government Sunset Review Act (s. 119.15, F.S.) - The Open Government Sunset Review Act (act) establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created, expanded, or maintained only if: (1) it serves an identifiable public purpose; and (2) if it is not broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three statutory purposes and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory purposes are:

- If the exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- If the exemption protects 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.
- If the exemption protects 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.

Public Records Exemption for information that identifies or helps to locate certain children - The 2004 Legislature enacted chapter 2004-32, Laws of Florida,¹² to create a public records exemption for information that would identify or help locate a child participating in a government sponsored recreation program or camp. The exemption was enacted in response to a parental custodial issue in Palm Beach County when the non-custodial parent submitted a public

¹⁰ Attorney General Opinion 85-62, August 1, 1985.

¹¹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

¹² s. 119.071(5)(c), F.S.

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

The exemption covers the participating child's name, home address, photograph, telephone and social security numbers, and the name and location of the school attended by the child. To provide further protection, the name, home address, telephone number, and social security number of the participating child's parent or guardian is also exempt. The exemption was created to reduce the opportunity for stalking, harassment, abduction or abuse of children participating in these programs.

2009 Open Government Sunset Review (Interim Report 2009-205) - The Senate Community Affairs Committee, in its review of Interim Report 2009-205, accepted the recommendations contained in the report that the exemption be retained but expanded to ensure that the protection afforded to children participating in government-sponsored recreation programs or camps be equally applied by state agencies and local governments that sponsor such programs. The expansion of the exemption would correct two areas of conflict within the existing exemption:

- Section 119.071(5)(c), F.S., provides that identifying information is exempt from public records requirements yet restricts the manner in which the protected information may be released. A restriction on the release of protected information is generally applied to information that is "confidential and exempt" while information that is generally exempt may be disclosed as determined by an agency.
- The current exemption does not provide a definition for a "government-sponsored recreation program or camp" or a "child" which creates disparity in the level of protection applied to children participating in the programs.

III. Effect of Proposed Changes:

This proposed committee bill modifies and expands the existing public records exemption for information that identifies or helps to locate a child participating in a government-sponsored recreation program or camp, and information that identifies or helps to locate the parent or guardian of such child, by providing the following:

- "Government-sponsored recreation program" is defined to include, but not be limited to, after-school programs, athletic programs, nature programs, camps, or other recreational programs for which an agency assumes responsibility for a child participating in the program.
- "Child" is defined as any person younger than 18 years of age, including persons declared emancipated by a court of competent jurisdiction.
- Information that would identify or help to locate a child participating in a government-sponsored recreation program, or the parent or guardian of such child, is made confidential and exempt.

The proposed committee bill further provides that the expanded exemption is subject to the provisions of the Open Government Sunset Review Act and will stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

Finally, the proposed committee bill contains a statement of public necessity as required in s. 24, Art. I, of the State Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In accordance with a review conducted under the Open Government Sunset Review Act, this proposed committee bill repeals section 2 of chapter 2004-32, Laws of Florida, and expands the existing exemption to provide that identifying information is confidential and exempt. The expanded exemption is subject to review under the Open Government Sunset Review Act and will stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 24, Art. I, of the State Constitution, provides that a bill creating a public records exemption must be enacted by a two-thirds vote of each house of the Legislature, providing that such law must state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed committee bill provides an equal standard of protection for children who participate in government-sponsored recreation programs and the parents or guardians of such children.

C. Government Sector Impact:

The proposed committee bill eliminates confusion among state agencies and local governments responsible for implementing the public records exemption as government-sponsors of recreation programs for children.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2003, the Florida Attorney General issued Advisory Legal Opinion 2003-18 in re: vote necessary to readopt exemptions from open government laws:

“.....I am therefore of the opinion that this State’s strong public policy of open government expressed in section 119.15, Florida Statutes, and Article I, section 24, Florida Constitution, and the language before the voters in 2002 for amending this constitutional provision, requires that the two-thirds majority vote apply to any attempt by the Legislature to restrict the public’s access to executive branch governmental records and meetings whether through the initial creation of an exemption or the re-adoption of such exemption.”

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.