

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7039 PCB GAP 09-13 OGSR/Insurance Claim Data Exchange Information

SPONSOR(S): Governmental Affairs Policy Committee and Stargel

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 750

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Governmental Affairs Policy Committee</u>	<u>10 Y, 0 N</u>	<u>Williamson</u>	<u>Williamson</u>
1)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u>Williamson</u>	<u>Tinker</u>
2)	<u></u>	<u></u>	<u></u>	<u></u>
3)	<u></u>	<u></u>	<u></u>	<u></u>
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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.

In 2004, the Legislature directed the Department of Revenue to develop and operate a data match system that would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide the Department with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim. The data provided can be used only for purposes of child support enforcement.

The Department currently does not match data files with insurance companies under the insurance claim data exchange statute. In February 2006, the Deficit Reduction Act of 2005 was enacted by Congress. The Act amended federal law to authorize the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allowed HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.

The Department began participating in the federal program in the fall of 2008. The Department reports it should be able to determine the success of the federal program by January 2010.

Current law provides that information obtained by the Department pursuant to the insurance claim data exchange is confidential and exempt from public records requirements until the Department determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.

The bill extends the repeal date from October 2, 2009, to October 2, 2010, thereby reenacting the public record exemption for information obtained by the Department pursuant to the insurance claim data exchange. This extension should provide the Department with ample time to determine the success of the federal program.

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.

Insurance Claim Data Exchange

As of May 2008, 466,231 noncustodial parents in Florida owed past-due child support. Statewide, almost 59 percent of child support cases are being paid in arrears.⁴

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 Senate Bill Analysis and Fiscal Impact Statement for SB 750 by the Committee on Children, Families, and Elder Affairs, February 12, 2009, at 3.

The Department of Revenue is authorized to levy any credit or personal property of an obligor for any past-due child support.⁵ This includes bank accounts, vehicles, and insurance claim payments.

In 2004, the Legislature directed the Department to develop and operate a data match system that would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer.⁶ This process allows insurers to voluntarily provide the Department with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim.⁷ The data provided can be used only for purposes of child support enforcement.⁸

An insurer may provide the Department with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to the Department electronically so it can conduct a data match;
- An insurer may receive or access data from the Department and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to the Department; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.⁹

Due to the variety of data submission methods provided within the system, it is possible for the Department to receive information on individuals who have a claim with an insurer and who do *not* owe child support.

Public Record Exemption under Review

Current law provides that information obtained by the Department pursuant to the insurance claim data exchange is confidential and exempt¹⁰ from public records requirements until the Department determines if a match exists.¹¹ If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is *not* made, then the nonmatch information must be destroyed.¹²

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

Implementation of the Insurance Claim Data Exchange

The Department currently does not match data files with insurance companies using the insurance claim data exchange statute. According to the Department, it took steps to implement the statute by contacting most of the top 25 insurers in the State. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, the Department decided to postpone working on the insurance claim data exchange initiative at the request of those insurers. The Department did not re-initiate contact with the insurers and attempt to resume implementation activities due to its resources being otherwise dedicated to the statewide

⁵ Section 409.25656, F.S.

⁶ Chapter 2004-334, L.O.F.; codified as s. 409.25659, F.S.

⁷ Section 409.25659(2), F.S.

⁸ Section 409.25659(5), F.S.

⁹ Section 409.25659(2)(a)-(c), F.S.

¹⁰ 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)

¹¹ Section 409.25661(1), F.S.

¹² *Id.*

implementation of Phase I of the Child Support Enforcement Automated Management System (CAMS).¹³

In February 2006, the Deficit Reduction Act of 2005 was enacted by Congress. The Act amended federal law to authorize the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allowed HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.¹⁴

Rather than re-engage insurers in the implementation of insurance claim data exchange, the Department chose to monitor the results of a federal workgroup charged with implementing the nationwide insurance data match program in other states before implementing the federal program in Florida.¹⁵ The Department submitted the participation form to the Federal Office of Child Support Enforcement on September 8, 2008 and began receiving matches on October 10, 2008. As of December 4, 2008, the Department had received 530 matches from the new program. Approximately 47 percent of these matches already had been received by the Department through other means.¹⁶

The Department reports it should be able to determine the success of the federal program by January 2010.¹⁷

EFFECT OF BILL

The bill extends the repeal date from October 2, 2009, to October 2, 2010, thereby reenacting the public record exemption for information obtained by the Department pursuant to the insurance claim data exchange. This extension should provide the Department with ample time to determine the success of the federal program.

B. SECTION DIRECTORY:

Section 1 amends s. 409.25661, F.S., to extend the repeal date from October 2, 2009, to October 2, 2010.

Section 2 provides an effective date of upon becoming a law.

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.

¹³ Email from Debbie Thomas, Staff, Department of Revenue, (Aug. 25, 2008)(on file with the Governmental Affairs Policy Committee); follow-up telephone call with Debbie Thomas (March 9, 2009).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Senate Bill Analysis and Fiscal Impact Statement for SB 750 by the Committee on Children, Families, and Elder Affairs, February 12, 2009, at 5.

¹⁷ Telephone call with Debbie Thomas, Staff, Department of Revenue (March 9, 2009).

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

None.