

STORAGE NAME: h3887.go

DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3887

RELATING TO: Public Records

SPONSOR(S): Representative Lynn

COMPANION BILL(S): HB 3883(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS (W/D)
 - (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a public records exemption for records and reports regarding child abandonment held by the Department of Children and Family Services. In addition, this bill provides access to the confidential and exempt records and reports by specified individuals and agencies. Furthermore, it sets forth certain record keeping and preservation requirements for department records relating to child abuse, abandonment, and neglect.

This bill also provides a public necessity statement for the exemption, as is required by s. 24, Art. I of the State Constitution; and, in addition, provides for future review and repeal of the exemption.

This bill results in no fiscal impact on state or local government or on the private sector.

Comments by the Committee on Governmental Operations:

*Section 39.202(2)(h) of this bill (formerly s. 415.51(2)(h), F.S.,) was amended to add "exploitation" to "child abuse, abandonment, or neglect" cases administered by the department. No such categorization of case exists. Additionally, "abandonment" was added to "abuse, neglect, or exploitation of a disabled adult or elderly person" cases administered by the department. No such categorization of case exists. **The sponsor of this bill has drafted an amendment to be filed on the floor which corrects these errors.***

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapters 39 and 415, Florida Statutes, provide for the reporting and investigation of alleged occurrences of child abuse and neglect. There are also provisions for sheltering a child, adjudicating dependency and providing alternative placements for a child removed from his or her home. The chapters also provide for case planning, judicial reviews, and termination of parental rights.

Both the State Constitution and the Florida Statutes address the individual right of privacy as well as access to public records.

Article I, section 23, of the Florida Constitution states:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Article 1, section 24, of the Florida Constitution states:

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

In addition, section 119.07(1)(a), Florida Statutes, provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records or the custodian's designee.

The term "public record" is defined in s. 119.011 (1), Florida Statutes, to mean 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. "Agency" is defined as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for purposes of chapter 119, Florida Statutes, 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.

The Open Government Sunset Review Act of 1995, s. 119.15, Florida Statutes, relating to legislative review of exemptions from public meeting and public records requirement, defines the term "exemption" to mean a provision of the Florida Statutes which creates an exception to s. 119.07(1) or s. 286.011, Florida Statutes, and which applies to the

STORAGE NAME: h3887.go

DATE: March 25, 1998

PAGE 3

executive branch of state government or to local government, but it does not include any provision of a special or local law.

The Act provides that it is the intent of the Legislature that exemptions to ss. 119.07(1) and 286.011, Florida Statutes, shall be created or maintained only if:

(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;

(b) The exemption is necessary for the effective and efficient administration of a governmental program; or

(c) The exemption affects confidential information concerning an entity.

An exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the specified purposes and 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 Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2, of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. 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.

B. EFFECT OF PROPOSED CHANGES:

An exemption is created from the Public Records law as provided under s. 119.07, Florida Statutes. Current statutory exemptions to records and reports of child abuse and neglect maintained by the Department of Children and Family Services are applied to records and reports relating to cases of child abandonment.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

This section is not applicable to this bill.

(1) any authority to make rules or adjudicate disputes?

No.

STORAGE NAME: h3887.go

DATE: March 25, 1998

PAGE 4

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

This section is not applicable to this bill.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Not applicable.

b. Does the bill require or authorize an increase in any fees?

Not applicable.

c. Does the bill reduce total taxes, both rates and revenues?

Not applicable.

d. Does the bill reduce total fees, both rates and revenues?

Not applicable.

e. Does the bill authorize any fee or tax increase by any local government?

Not applicable.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This section is not applicable to this bill.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This section is not applicable to this bill.

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Section 415.51 is amended and renumbered s. 39.202

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends and renumbers s. 415.51, Florida Statutes, as s. 39.202, Florida Statutes, to provide that:

- Cases of abandonment are added to the types of reports and records held by the Department of Children and Family Services that shall be confidential and exempt from the provisions of s. 119.07(1).
- In addition to those persons, officials, or agencies already having access to such records, access shall be extended to:
 - contract providers of the department, the Department of Health or county agencies responsible for providing Healthy Start services and licensure of child care facilities, family day care homes and informal day care providers who receive subsidized child care funding.
 - the caregiver, the child and their attorney.
 - any person engaged in the use of such records for statistical purposes. Requests for records or information shall require the individual or entity making the request to enter into a privacy and security agreement which

requires compliance with all rules and laws governing the use of such records and information.

- employees or agents of the Department of Revenue responsible for child support enforcement activities.
- The department shall make and keep records and reports of all cases under this chapter relating to child abuse, abandonment, and neglect and preserve those records until 7 years after the last entry was made or until the child is 18 years of age, whichever occurs first. The records may then be destroyed. These records may only be inspected upon order of the court or as otherwise provided for in this section.

Section 2. Provides that the exemption from public records requirements provided by s. 39.202, Florida Statutes, for reports and records of cases of child abandonment held by the Department of Children and Family Services is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2003, unless reviewed and reenacted by the Legislature.

Section 3. Provides for a statement of public necessity relating to the confidentiality and public records exemption of reports and records of cases of child abandonment held by the Department of Children and Family Services.

Section 4. Amends s. 119.07, Florida Statutes, to reflect the correct title of the Department of Children and Family Services and to correct statutory references. The section also adds cases of abandonment to those of abuse and neglect for which protection of the name of any person reporting is provided.

Section 5. Provides for an effective date on the same date as HB 3883 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension of that session.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

STORAGE NAME: h3887.go

DATE: March 25, 1998

PAGE 9

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. **COMMENTS:**

None.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On March 19, 1998, one amendment was adopted by the Committee on Family Law and Children. The amendment provides a cross-reference, in the effective date, to House bill number 3883. The effective date of HB 3887 is tied to when HB 3883, or similar legislation, takes effect.

VII. **SIGNATURES:**

COMMITTEE ON FAMILY LAW AND CHILDREN:

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