

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1314

SPONSOR: Senator Saunders

SUBJECT: Public Records Exemption

DATE: April 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	Rhea	Wilson	GO	Fav/2amendments
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill amends an existing exemption from ch. 119, F.S., relating to the Public Records Law, and Section 24(a), Article I, Fla. Const., contained in s. 383.51, F.S., for the identity of a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S., to also include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S. The bill provides findings of public necessity to justify the creation of the exemption. This bill is tied to substantive changes contained in Senate Bill 1312.

This bill amends s. 383.51, Florida Statutes, and creates one undesignated section of law.

II. Present Situation:

Public Records Law - The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const., governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Art. I, s. 24 of the State Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Open Government Sunset Review Act - Chapter 95-217, L.O.F., repealed the Open Government Sunset Review Act, contained in s. 119.14, F.S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle begins in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Newborn Abandoned Infants - Last year, the Legislature enacted ch. 2000-188, L.O.F., to provide an expedited process for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption in cases of unclaimed abandoned newborn infants in the absence of actual or suspected child abuse or neglect. Section 383.50, F.S., allows a parent to abandon a newborn infant anonymously at a fire station or at a hospital and with limited amnesty from criminal prosecution unless there is actual or suspected child abuse or neglect. Section 383.50, F.S., authorizes full-time firefighters or emergency medical technicians to accept and provide emergency treatment to abandoned newborn infants.

Chapter 2000-188, L.O.F., set forth the responsibilities and duties for fire stations, hospitals, licensed child-placing agencies, and the Department of Children and Families in the process for handling an abandoned newborn infant. Under s. 39.201, F.S., relating to mandatory reporting requirements of child abuse and neglect, the statewide central abuse hotline is required to document reports of abandoned newborn infants left at fire stations or hospitals. The hotline is also required to provide to the hospital the names of licensed child-placing agencies on a rotating list that are eligible and required to accept custody of abandoned newborn infants who were left at a fire station or hospital. In cases of actual or suspected child abuse or neglected, the hotline must accept the call as a report of abuse, abandonment or neglect.

Section 63.0423, F.S., provides procedures with respect to abandoned newborns. If a licensed child-placing agency accepts the newborn infant from the hospital or fire station, the agency is responsible for all medical costs of the newborn infant, must take physical custody of the newborn infant and must obtain an emergency custody order from the court. The licensed child-placing agency must initiate a diligent search within 7 days after receiving physical custody of the newborn infant to notify and to obtain consent from a parent who has left a newborn infant at a fire station or hospital in accordance with s. 383.50, F.S.

Section 827.035, F.S., creates an affirmative defense to the offense of abandonment of a newborn infant in accordance with s. 383.50, F.S. A parent who proves that a newborn infant was left at a fire station or hospital in accordance with s. 383.50, F.S., and there is no other actual or suspected child abuse or neglect, may assert an affirmative defense if a criminal prosecution is brought against the parent under ch. 827, F.S., for abuse or neglect.

Chapter 2000-213, L.O.F.,¹ created an exemption from the public records disclosure requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for the identity of

¹ Chapter 2000-213, L.O.F., is codified at s. 383.51, F.S.

a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S. The identity of a parent leaving a child must be disclosed to a person claiming to be a parent of the newborn infant. Section 383.51, F.S., is subject to the Open Government Sunset Review Act of 1995 and stands repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

III. Effect of Proposed Changes:

Section 1. Amends s. 383.51, F.S., to revise an existing exemption to the public records disclosure requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for the identity of a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S., to also include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S.

Section 2. The bill provides findings and a statement of public necessity for the existing exemption to the Public Records Law as amended by the bill to include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S. The section specifies that the Legislature finds that preservation of anonymity and confidentiality of parents who leave newborn infants at emergency medical services stations is a public necessity in order to encourage parents to leave infants safely and thus protect the life and health of those infants. The Legislature further finds that the public policy provided for in the creation of s. 383.50, F.S., will be served if the anonymity of parents who leave newborns at emergency medical services stations is maintained.

Section 3. The bill provides an effective date of the same date that an unspecified Senate Bill or similar legislation takes effect if it is adopted in the same legislative session and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill amends an existing exemption from ch. 119, F.S., relating to the Public Records Law, and Section 24(a), Article I, Fla. Const., contained in s. 383.51, F.S., for the identity of a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S., to also include the identity of a parent who leaves a newborn infant at an emergency medical services station in accordance with s. 383.50, F.S. The bill provides findings of public necessity to justify the creation of the exemption. This bill is tied to substantive changes contained in Senate Bill 1312.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," establishes a review and repeal process for exemptions to public records or meeting requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature acts to reenact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or

substantially amends an existing exemption to state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. Section 119.15(5)(b), F.S., provides that an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Accordingly, the repeal date of October 2, 2005, contained in s. 383.51, F.S., should be amended so that the exemption will stand repealed on October 2, 2006, in accordance with s. 119.15, F.S.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On page 2, line 7, the bill refers to an unspecified Senate Bill, which should correctly refer to Senate Bill 1312.

VII. Related Issues:

At first blush, it may seem oxymoronic to make the identity of a parent who drops a child off anonymously confidential and exempt information since anonymity would appear to result in confidentiality. It should be noted, however, that especially in small towns, employees at designated drop-off locations may recognize the parent and could identify the parent in a report. In other cases, employees may obtain information about the parent through the parent. As a result, while the statute provides for anonymity, there may be instances when a public records exemption is necessary to ensure anonymity.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:
Technical amendment changing repeal date.

#2 by Governmental Oversight and Productivity:
Technical amendment to effective date.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
