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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 1385
RELATING TO: Public Meetings & Public Records
SPONSOR(S): Committee on State Administration, Representative(s) Joyner and others
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) WORKFORCE & TECHNICAL SKILLS
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

In Florida, a number of different programs are funded through the Temporary Assistance for Needy Families (TANF) grant. States are allowed to use TANF funding for programs that

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on governmental benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

Under the TANF block grant, Florida's state plan for federal funding is required to show how it intends to take such reasonable steps as the state deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under TANF.

In order to comply with this federal requirement, this committee substitute creates public meetings exemptions as well as a public records exemption. Any meeting or portion of a meeting held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee is closed to the public if personal identifying information is discussed regarding a participant in the temporary cash assistance program, a participant's family, or a participant's family or household member. Additionally, personal identifying information contained in records regarding temporary cash assistance, that identifies a participant, a participant's family, or a participant's family or household member held by certain agencies is exempt from the public record requirements. This committee substitute provides exceptions to the public records exemption.

This committee substitute provides a statement of public necessity. In addition, it provides for future review and repeal pursuant to the Open Government Sunset Review Act of 1995.

This committee substitute does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., 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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

In regard to public meetings, Article I, s. 24(b), Florida Constitution, provides that

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.

Additionally, s. 286.011, F.S., provides that

[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records and meetings from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that 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 following 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:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. 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.

Temporary Assistance to Needy Families

Under the federal "Block Grants to States for Temporary Assistance for Needy Families" (TANF) program, a state must submit a plan to the federal government which includes "reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under" TANF.¹

In Florida, a number of different programs are funded through the TANF grant. Title 42, U.S.C. 601,

¹ See 42 U.S.C. § 602.

allows states to use TANF funding for programs that

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on governmental benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

Examples of the programs and services offered in Florida to achieve these purposes using TANF funds include cash assistance programs,² diversion programs for victims of domestic violence,³ diversion programs for families at risk of welfare dependency due to substance abuse or mental illness,⁴ emergency assistance programs,⁵ teen parent and pregnancy prevention diversion programs,⁶ Retention Incentive Training Accounts,⁷ and transitional medical benefits.⁸

Consideration of decisions regarding eligibility for cash assistance, hardship exemption, extension of time limits, and other provisions of the programs and services funded by TANF, may require information from many sources. In making decisions on benefits, exemptions, and intervention programs, sensitive personal information is often reviewed in order to help recipients deal with problems such as illiteracy, substance abuse, and mental health. Much of the information obtained from applicants and recipients is also used to determine eligibility for Food Stamps and Medicaid, which continue to have federal confidentiality restrictions.

Florida law provides limited exemptions relating to these federal government programs. Section 381.0022, F.S., allows the Department of Health to share confidential information or information exempt from disclosure on any individual who is or has been a Medicaid recipient or who is or has been the subject of a program within the Department of Health's jurisdiction for the purpose of requesting, receiving, or auditing payment for services. Section 409.2579, F.S., makes confidential and exempt information concerning applicants for or recipients of Title IV-D child support services and states that use or disclosure of such information by the Title IV-D program is limited to purposes directly connected with those purposes stated in the statute. Information about individuals receiving service through domestic violence centers is also confidential and exempt pursuant to s. 39.908, F.S. Moreover, ss. 381.0022 and 402.115, F.S., allow the Department of Children and Family Services and the Department of Health to share confidential and exempt information.

² See s. 414.045, F.S.

³ See s. 414.157, F.S.

⁴ See s. 414.1585, F.S.

⁵ See s. 414.16, F.S.

⁶ See s. 445.019, F.S.

⁷ See s. 445.022, F.S.

⁸ See s. 445.029, F.S.

C. EFFECT OF PROPOSED CHANGES:

This committee substitute creates a public meetings exemption for “[a]ny meeting or portion of a meeting” held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee⁹ at which “personal identifying information contained in records relating to temporary cash assistance”¹⁰ is discussed which identifies a participant,¹¹ a participant’s family,¹² or a participant’s family or household member.¹³ This public meetings exemption is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2006, unless reviewed and reenacted by the Legislature.

In addition, this committee substitute creates a public records exemption for personal identifying information contained in records relating to temporary cash assistance which identifies a participant, a participant’s family, or a participant’s family or household member held by the Department of Children and Family Services, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, the Department of Health, the Department of Revenue, the Department of Education, a regional workforce board or local committee, or service providers under contract with any of these entities. This does not include information identifying a noncustodial parent.

This committee substitute provides that such confidential and exempt information may be released for purposes that include

- The administration of the temporary assistance for needy families plan under Title IV-A of the Social Security Act, as amended;
- The administration of the state’s plan or program approved under Titles IV-B, IV-D, or IV-E of the Social Security Act, as amended, or under Titles I, X, XIV, XVI, XIX, XX, or XXI of the Social Security Act, as amended;
- Any investigation, prosecution, or any criminal, civil, or administrative proceeding conducted in connection with the administration of the temporary assistance for needy families plan or the state’s plan or program approved under Titles IV-B, IV-D, or IV-E of the Social Security Act, as amended, or under Titles I, X, XIV, XVI, XIX, XX, or XXI of the Social Security Act, as amended;

⁹ A regional workforce board or local committee is created pursuant to s. 445.007, F.S.

¹⁰ Section 414.0252(12), F.S., defines “temporary cash assistance” as “cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.”

¹¹ Section 414.0252(9), F.S., defines “participant” as “an individual who has applied for or receives temporary cash assistance.”

¹² Section 414.0252(5), F.S., defines “family” as “the assistance group or the individuals whose needs, resources, and income are considered when determining eligibility for temporary assistance. The family for purposes of temporary assistance includes the minor child, custodian parent, or caretaker relative who resides in the same house or living unit. The family may also include individuals whose income and resources are considered in whole or in part in determining eligibility for temporary assistance but whose needs, due to federal or state restrictions, are not considered. These individuals include, but are not limited to, ineligible noncitizens or sanctioned individuals.”

¹³ Section 414.0252(6), F.S., defines “family or household member” as “spouses, former spouses, noncohabitating partners, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.”

- The administration of any other state, federal, or federally assisted program that provides assistance or services on the basis of need, in cash or in kind, directly to a participant; or
- The administration of services to elderly persons.

This committee substitute provides that if a subpoena is received for any records made confidential and exempt, then the “public record or part thereof in question” must be submitted to the court for an inspection “in camera.”¹⁴

This committee substitute provides that information obtained from a “participant through an integrated eligibility process so that the requirements of more than one state or federal program apply to the information, the requirements of the program that is the provider of the information shall prevail.” If the Department of Children and Family Services cannot determine which program is the provider of the information, then the requirements of each applicable state or federal program must be met.

This public records exemption is subject to the Open Government Sunset Review Act of 1995 and will be repealed on October 2, 2006, unless reviewed and reenacted by the Legislature.

This committee substitute provides a public necessity statement for both the public meetings exemptions and the public records exemption. The public necessity statement states, in part, that the exemptions created are a public necessity because

the state has a compelling interest to ensure that such participants, family, or family and household members fully participate in welfare transition programs in order to assist them in attaining self-sufficiency, including programs to deal with problems such as illiteracy, substance abuse, and mental health.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. 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.

¹⁴ Black’s Law Dictionary defines “in camera” as “[i]n chambers; in private.” (1990, page 760).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services reports that federal funding from TANF is currently jeopardized because the state plan is not in compliance with federal requirements: The state plan must include "reasonable steps . . . to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government." Failure to enact legislation to provide the confidentiality safeguards not only places current and future funding at risk, it could also result in penalties imposed on the state from 1997-2000. **For federal fiscal year 2001, TANF funding to the state was \$643,599,779.**¹⁵

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

¹⁵ Senate Staff Analysis and Economic Impact Statement by the Committee on Children and Families, April 11, 2001.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 23, 2001, the Committee on State Administration reported HB 1385 favorably as a committee substitute.

The committee substitute narrows the public meetings exemptions to only apply to the applicable agencies and committees that conduct public meetings wherein personal identifying information regarding a temporary cash assistance program participant or a family or household member is discussed. The bill applied the public meetings exemption to the "Department of Children and Family Services, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, the Department of Health, the Department of Revenue, the Department of Education, or a regional workforce board, or service providers under contract to any of these entities," whether or not the exemption was applicable. The committee substitute also removes the list of statutory cites found in the public meetings and public records exemptions and in the public necessity statement of the bill and substituted the appropriate narrative. The bill created a new section of law for the public records and public meetings exemptions. The committee substitute creates a new section of law for the public records exemption, s. 414.295, F.S., Temporary assistance programs; public records exemption. It also creates a new section of law for one of the public meetings exemption regarding meetings held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee. The committee substitute appropriately places one of the public meetings exemptions regarding meetings held by Workforce Florida, Inc., or a regional workforce board or a local committee in s. 445.007, F.S., Regional workforce boards. In addition, the committee substitute adds needed cross-references.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

J. Marleen Ahearn, Ph.D., J.D.