

**STORAGE NAME:** h1561s1.ge.doc  
**DATE:** April 10, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GENERAL EDUCATION  
ANALYSIS**

**BILL #:** CS/HB 1561

**RELATING TO:** Public records

**SPONSOR(S):** Committee on General Education and Representative Harrell

**TIED BILL(S):** CS/HB 1015

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

- (1) GENERAL EDUCATION YEAS 8 NAYS 0
  - (2) STATE ADMINISTRATION
  - (3) COUNCIL FOR LIFELONG LEARNING
  - (4)
  - (5)
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**I. SUMMARY:**

This Committee Substitute (CS) creates a public records exemption for personally identifiable information in children's record's at a Learning Gateway Center. The Learning Gateway Project is established in HB 1015, which is linked to this CS.

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:

**Constitutional Access to Public Records and Meetings**

Article I, s. 24 of the State Constitution provides every person with 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. The section specifically includes the legislative, executive, and judicial branches, as well as each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution.

The term public records has been defined by the Legislature in s. 119.011(1), F.S., 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.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge. Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.

The State Constitution authorizes exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records. A law enacting an exemption:

1. Must state with specificity the public necessity justifying the exemption;
2. Must be no broader than necessary to accomplish the stated purpose of the law;
3. Must relate to one subject;
4. Must contain only exemptions to public records or meetings requirements; and
5. May contain provisions governing enforcement.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida's citizens to discover the actions of their government.

The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.

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

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a non-criminal infraction, punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure. For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant. The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records.

### **The Open Government Sunset Review Act of 1995**

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 meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. 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. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without 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; or
- 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.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

### **CS/HB 1015**

This Committee Substitute creates the Learning Gateway Project. This project provides grants to eligible universities to establish an integrated approach for health care providers and parents to lessen the effects of learning disabilities for children. The selected universities shall form a statewide consortium, and shall select a university with a medical program as its lead university. Parental consent shall be required for all services provided pursuant to the Learning Gateway Project. The project shall be administered by the Department of Education (DOE), and shall:

- Use the expertise, resources, faculty, and students of the participating universities;
- Work with state and local agencies and private projects to develop a list of regional providers;
- Identify the factors that interfere with or inhibit normal learning;
- Establish guidelines for screening;
- Develop a checklist for physicians and others, in order to implement more effective screening;
- Develop a model system of care, through establishment of Learning Gateway Centers;
- Develop a brochure and website to distribute information; and
- Develop a network of all available services within each identified service area.

Each participating university may, with the Learning Gateway Project funds, expand the current services provided by the university to set up clinics on-site or at other locations to serve areas of the state where no services currently exist.

Each Learning Gateway Center shall serve as a single point of access for screening, assessment, integration of services, linkages of providers, referrals, related information, and other services to assist

parents and professionals in determining the physical, emotional, nutritional, environmental, and mental factors that may be interfering with learning and normal development.

Staff at the Learning Gateway Center must be knowledgeable in the appropriate areas, and the center shall make available a variety of screening, planning, referral, educational, and therapy services, if such services do not already exist.

**C. EFFECT OF PROPOSED CHANGES:**

The bill creates an exemption for individually identifiable information contained in records of children served by a Learning Gateway Center when that record is held in the possession of the center. A parent or guardian may inspect and review the individual program records of his or her child and may obtain a copy of that record.

The bill provides the provisions in the bill shall stand repealed on October 2, 2006, in accordance with s. 119.15, F.S., unless reenacted.

The bill also contains a statement of public necessity to make confidential and exempt personally identifiable information held by such a center. It provides that these types of records are necessary to be protected because if children are identified as being served by such a center, they may be labeled and stigmatized and, as a result, their parents may not permit them to use the services provided by the center.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1. Creates an exemption for personally identifiable information contained in records of children utilizing the services of a Learning Gateway Center when that record is held in the possession of the center. Personally identifiable information is stipulated to specifically include, but not be limited to, a child's parents, or legal guardian's name, address, telephone number, or Social Security Number. A parent or guardian may inspect and review the individual program records of his or her child and may obtain a copy of that record.

Section 2. Establishes a statement of public necessity to make confidential and exempt personally identifiable information held by such a center. It provides that these types of records are necessary to be protected because if children are identified as being served by such a center, they may be labeled and stigmatized and, as a result, their parents may not permit them to use the services provided by the center.

Section 3. Provides that the bill shall take effect "on the date CS/HB 1015 or similar legislation takes effect," and shall not take effect if such legislation does not take effect.

**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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 10, 2001, the House General Education Committee passed a strike-everything amendment, and a technical amendment to the amendment, which removed the substance of the original bill, replacing it with the substance of the present bill. The changes; (1) Narrowed the exemptions from the entire record (as in HB 1015, as filed), to just the personally identifiable information (pursuant to a

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constitutional requirement that the exemption be crafted as narrowly as possible to allow the bill's justifiable purpose to be accomplished); and (2) Conformed the language from Learning Gateway *program* (terminology used in the original bill) to Learning Gateway *Center* or *project*, as appropriate (terminology used in the CS).

VII. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Staff Director:

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Gip Arthur

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Ouida Ashworth