

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: CS/CS/SB 2178

SPONSOR: Governmental Oversight & Productivity and Children & Families Committee and Senator Peadar

SUBJECT: Public Meetings and Public Records

DATE: April 23, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Rhea	Wilson	GO	Favorable/CS
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/CS/SB 2178 provides that 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 at which personal identifying information contained in records relating to temporary cash assistance is discussed is exempt from the public meeting requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution, if the information identifies a participant, a participant's family, or a participant's family or household member.

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, except for information identifying a noncustodial parent, and which is 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 those entities, is made confidential and exempt. Exceptions to the exemption are provided.

This bill creates sections 414.106 and 414.295 of the Florida Statutes.

The bill amends section 445.007 of the Florida Statutes.

II. Present Situation:

Public Records - Section 24 of Art. I of the State Constitution creates a right of access to public records. Every person has the right to inspect or copy any public records made or received in

connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law based on an expressed statement of public necessity which justifies the exemption that can be no broader than necessary to accomplish the purpose of the law.

The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee.¹ Chapter 119, F.S., also provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose, and it must be no broader than necessary to meet the public purpose it serves.² The public purpose must be sufficiently compelling to override the strong public policy of open government such that the public purpose cannot be accomplished without the exemption and satisfies one of three other criteria relating to the sensitivity and confidentiality of the information.

Public Meeting Laws - Section 24(b), Art. I of the State Constitution requires that meetings where public business is discussed and transacted or official acts are taken to be open and noticed to the public. This right to open and noticed meetings applies to meetings of any collegial public body of the executive branch of the state government or of any collegial public body of a county, municipality, school district, or special district. Section 24(c), Art. I of the State Constitution also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement if such law states with specificity the public necessity justifying the exemption and the exemption is not broader than necessary to accomplish the state purpose of the law.

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of 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 meetings. The board or commission must provide reasonable notice of all such meetings.

Open Government Sunset Review Act - Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained to the public records requirements in s. 119.07(1), F.S. and the public meeting requirements in s. 286.011, F.S., only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An automatic 5-year review and repeal of an exemption from the Public Records Act and Public Meeting Law is provided, unless the Legislature acts upon it to

¹ Section 119.07(1), F.S.

² Section 119.15(4)(b), F.S.

re-enact the exemption.³ Section 119.15(3)(f), F.S., excludes from this repeal requirement exemptions that are required by federal law.

Temporary Assistance to Needy Families - Under the Temporary Assistance for Needy Families (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 attributable to funds provided by the federal government.⁴

In Florida, a number of different programs are funded through the TANF grant. Title 42, U.S.C. 601 allows states to use TANF funding for programs that address one of the following purposes: 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 program,⁵ diversion program for victims of domestic violence,⁶ diversion program for families at risk of welfare dependency due to substance abuse or mental illness,⁷ emergency assistance program,⁸ teen parent and pregnancy prevention diversion program,⁹ Retention Incentive Training Accounts,¹⁰ and transitional medical benefits.¹¹

During the 1999 session, the Legislature passed SB 256,¹² repealing s. 414.29, F.S. (1997), which provided that the lists of names of all persons who have received payments of temporary cash assistance and the amounts of such payments were a matter of public record. The statute further provided that such lists were available for inspection at the local offices in the counties where the recipients of the payments resided.¹³ The only limitation placed upon disclosure of this information was that the lists could not be used for commercial or political purposes.¹⁴

Consideration of decisions regarding eligibility for cash assistance, hardship exemption, extension of time limits and other provisions of the programs and services 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.

³ Section 119.15, F.S.

⁴ 42 U.S.C. s. 602.

⁵ Section 414.045, F.S.

⁶ Section 414.157, F.S.

⁷ Section 414.1585, F.S.

⁸ Section 414.16, F.S.

⁹ Section 445.019, F.S.

¹⁰ Section 455.022, F.S.

¹¹ Section 445.029, F.S.

¹² Ch. 99-241, L.O.F.

¹³ Section 414.29(1), F.S. (1977).

¹⁴ Section 414.29(2), F.S. (1997).

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 under ch. 119, F.S., on any individual who is or has been a Medicaid recipient or is or was the subject of a program within the department's jurisdiction for the purpose of requesting, receiving, or auditing payment for services. Section 409.2579, F.S., makes confidential and exempt from the provisions of s. 119.07(1), F.S., 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 are provided with confidentiality and public records exemption, pursuant to s. 39.908, F.S. Further, ss. 381.0022 and 402.115, F.S., allow for the Department of Children and Family Services and the Department of Health to share confidential and information exempt from disclosure under ch. 119, F.S.

III. Effect of Proposed Changes:

CS/CS/SB 2178 provides that 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 at which personal identifying information contained in records relating to temporary cash assistance is discussed is exempt from the public meeting requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution, if the information identifies a participant, a participant's family, or a participant's family or household member.

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The bill contains a statement of public necessity to support the public records and meetings exemptions. The state has a compelling interest to ensure that 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. The fear of public disclosure of personal identifying information at such meetings and contained in such records constitutes a significant disincentive for their full participation in the programs.

The bill provides that the act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

The Department of Children and Family Services reports that there will be no fiscal impact in implementing this legislation. However, the department has advised that federal funding from TANF is currently jeopardized because the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) mandates that all states must provide procedures for safeguarding the confidentiality of client records. The Governor is required to certify in the TANF State Plan that the state has in effect safeguards, applicable to all confidential information handled by the state agency, that are designed to protect the privacy rights of the parties as required under 45 CFR Part 205, section 205.50. 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.