

STORAGE NAME: h0193c.bdt

DATE: March 3, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
ANALYSIS**

BILL #: HB 193

RELATING TO: Public Records/Collective Bargaining

SPONSOR(S): Representative Lawson

COMPANION BILL(S): None

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 1
 - (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 1
 - (3) JUDICIARY
 - (4)
 - (5)
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I. SUMMARY:

This bill provides that an address, telephone number, or social security number of a public employee which is exempt from the Public Records Law must be disclosed to the public employee's certified bargaining agent under certain conditions. This bill provides that the bargaining agent maintain the confidential status of the information.

The fiscal impact of this bill is indeterminate at this time.

The bill would be effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

[e]very 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.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, 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.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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.

Public Records Exemption--Law Enforcement Personnel

The Legislature has already allowed certain personal identifying information associated with various classes of public employees to be exempt from public disclosure. Section 119.07(3)(l) F.S., 1998 Supp., provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, and certain personnel of the Department of Children and Family Services and the Department of Revenue. Certain identifying information about the spouses and children of law enforcement personnel is also exempt.

In Rule 33-4.001, Florida Administrative Code, the Department of Corrections classifies the following employees as law enforcement officers: Secretary; Deputy Secretary; Assistant

Secretary and Deputy Secretary for operations; Regional Directors; Correctional Security Administrator; Superintendents of all institutions and community facilities; staff of all institutions and community facilities, excluding clerical staff and secretaries; Probation and Parole Regional Administrators; Correctional Probation Administrators; Supervisors and Officers; Inspector General; Deputy Inspector General; and Correctional Inspectors.

According to the department, classifying such a large percentage of department employees as law enforcement officers allows the department to protect personal identifying information relating to those employees and their family members. The department is concerned, however, about the personal information about certain correctional employees being released by other state agencies. Personal information relating to correctional personnel who hold professional licenses and certificates is available from the agencies that license or certify the professionals.

Agencies that are the custodians of personal information which is exempt, but that are not the employing agency of the person about whom the personal information pertains, are required to keep such information confidential only if the employing agency of the person submits a written request for confidentiality. s. 119.07(3)(l)2., F.S., 1998 Supp.

Collective Bargaining

Generally, certified collective bargaining agents for public employees have ready access to the names, addresses, and social security numbers of the public employees they represent. Recent exemptions to the Public Records Law for certain personal information of certain public employees, such as law enforcement or correctional officers, have made it difficult for bargaining agents to communicate with the employees they represent. This situation frustrates the obligations of the bargaining agent to the public employee as well as frustrates the right of the public employee to effective bargaining representation.

B. EFFECT OF PROPOSED CHANGES:

This bill provides that an address, telephone number, or social security number of a public employee which is exempt from the Public Records Law, such as law enforcement or correctional officers, must be disclosed to the public employee's certified bargaining agent under certain conditions. This bill provides that the bargaining agent maintain the confidentiality of the personal information.

Access to this personal information will facilitate the necessary communication between the bargaining agent and the represented public employee without jeopardizing the confidential status of the information.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

No.

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

Yes. An agency would have to disclose certain personal information of a public employee to a certified bargaining agent upon written request and proof of certification.

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

Yes. Certified bargaining agents would have access to certain personal information about public employees they are certified to represent which are currently exempt from the Public Records Law under certain circumstances.

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

This bill would not eliminate or reduce an agency or program.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

Yes. Certain personal information about public employees which are currently exempt from the Public Records Law would be available to their certified bargaining agents under certain circumstances.

- 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?

Yes. The bill would allow a certified bargaining agent of certain public employees to have greater access to personal information about those employees which are currently exempt from the Public Records Law for purposes directly relating to that bargaining agent's representation of those employees.

- 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:

The bill does not purport to provide services to families or children.

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

- 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:

The bill would not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 447.605, F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

There would be some cost associated with printing and mailing lists of public employees depending upon the size of the request.

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 would not require the counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill would not restrict the authority of the counties or municipalities to raise revenue.

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

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

V. COMMENTS:

Representatives of both the Florida Public Employer Labor Relations Association and the Florida Public Personnel Association, organizations comprised of local government professional human resource managers and contract negotiators, have raised a number of concerns with respect to public records exemption, employee security, and liability.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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