

STORAGE NAME: h1575a.go

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1575 (PCB CF 99-04)

RELATING TO: WAGES Public Records

SPONSOR(S): Committee on Children & Families and Representative Murman

COMPANION BILL(S): SB 2470 (similar)

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

- (1) CHILDREN & FAMILIES YEAS 6 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

As part of the transfer of responsibility for establishing welfare programs from the federal government to the states, Sec. 205.50 of Title 45, U.S.C., was repealed. This section provided for confidentiality of records of recipients of public assistance. 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. In addition, decisions on WAGES benefits, exemptions and intervention programs often involve sensitive personal information in order to help recipients deal with problems such as illiteracy, substance abuse, and mental health. Accordingly, the WAGES Program State Board of Directors has recommended that this confidentiality be maintained.

This bill provides for exemptions to the public records provisions of s. 119.07(1), F.S., and Art. I, s. 24 (a), Fla. Const., and the public meeting requirements of s. 286.011, F. S., and Art. I, s. 24 (b), Fla. Const.

The bill continues current practice and has no fiscal impact.

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 Meetings Law

Article I, section 24(b), Florida Constitution, expresses Florida's public policy regarding access to public meetings. This section 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....

Article I, section 24(c), Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in section 24(b) if such law states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated 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 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.

WAGES and Temporary Assistance to Needy Families

As part of the transfer of responsibility for establishing welfare programs from the federal government to the states, Section 205.50 of Title 45 U.S.C., was repealed. This section provided for confidentiality of records of recipients of public assistance.

Consideration of decisions regarding eligibility for cash assistance, hardship exemption, extension of time limits and other provisions of the program may require information from many sources. 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. In addition, decisions on WAGES benefits, exemptions and intervention programs often review sensitive personal information in order to help recipients deal with problems such as illiteracy, substance abuse, and mental health.

The fear of public disclosure of personal information by participants in temporary cash assistance programs and by their children may constitute a significant disincentive for their full participation in programs. The fear of public disclosure of personal information may make more difficult the development of a sense of self-worth that is essential to the process of moving towards independence. Children of families receiving cash assistance and participating in related intervention programs might be traumatized by public disclosure of personal, family information.

Based on these considerations, the WAGES Program State Board of Directors has recommended that confidentiality provisions be maintained in the WAGES program.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for exemptions to the public records provisions of s. 119.07(1), F.S., and s. 24 (a), Art. I of the Florida Constitution and the public meeting requirements of s. 286.011, F. S., and s. 24 (b), Art. I of the Florida Constitution.

Section 1 of the bill provides that records that contain any identifying information acquired by the Department of Children and Family Services, the Department of Labor and Employment Security, the Department of Health, the Department of Revenue, the WAGES State Board of Directors, local WAGES Coalitions, and service providers under contract to any of these entities pursuant to the implementation of the WAGES program are confidential and exempt from the public records provisions of s. 119.07(1) and s. 24 (a), Art. I of the Florida Constitution. The bill also provides that any meeting or portion of meeting held by these agencies at which information restricted under the bill is discussed is made exempt from the requirements of s. 286.011, F. S., and 24 (b), Art. I of the Florida Constitution. These exemptions are not subject to repeal under s. 119.15, F. S., since they are made in accordance with the requirements of federal law under sec. 402 of the Social Security Act, as amended (42 U.S.C. 602, TANF state plan requirements).

The bill provides that information may be released for purposes directly connected with:

1. The administration of the plan of the state approved under title IV-A of the Social Security Act, as amended (the TANF title, formerly AFDC), the plan or program of the state under title IV-B (child welfare), IV-D (Child Support Enforcement), or IV-E (Foster Care) of the Social Security Act, as amended or under title I (Old Age Assistance), X (Aid to the Blind), XIV (Aid to the

Permanently Disabled), XVI (Supplemental Security Income-SSI), XIX (Medicaid), XX (Social Services), or XXI (State Child Health Insurance) of the Social Security Act, as amended. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

2. Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs. The department has authority to disclose the current address of a recipient to a federal, state or local law enforcement officer who provides the name of the recipient and satisfactorily demonstrates that criteria specified in the bill are met.
3. The administration of any other state, federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.
4. Any audit or similar activity such as a review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.
5. The administration of the unemployment compensation program.
6. The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

Subsection (4) of the bill provides conditions for the release of information. The bill provides that, except under court order, the release or use of information concerning individuals applying for or receiving temporary cash assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the Department of Children and Family Services. The state agencies charged by law to implement the WAGES Program are authorized to receive the information.

In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning information on an applicant or recipient rendered confidential by this section, the court may make such provisions as it finds necessary to maintain appropriate confidentiality.

The bill provides that in the event that information is obtained through an integrated eligibility process such that the requirements of more than one state or federal program apply to the information, the requirements of the program which is the provider of the information shall prevail.

The bill provides a statement of public necessity that the records and meetings held pursuant to the implementation of the WAGES program be held confidential and exempt from the public records and public meetings laws.

The bill provides that the act shall take effect upon becoming law.

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?

N/A

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

N/A

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

N/A

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

An agency or program is not eliminated or reduced.

- (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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. By exempting the public records and public meetings regarding identifying information of applicants and recipients of TANF benefits, such individuals will not suffer a disincentive to participate in programs offering assistance for illiteracy, substance abuse, mental health, domestic abuse, or financial hardship.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

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, but it does provide exemption from public access to the records and meetings of recipients and applicants of TANF services to families and 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?

N/A

- 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 does not create or change a program providing services to families or children, but it does provide exemption from public access to the records and meetings of recipients and applicants of TANF services to families and children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 414.295, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See effect of proposed changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The bill continues current practice and has no fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

The bill as drafted could be interpreted to exempt from the public meetings law an entire meeting even if only a small portion of the meeting is devoted to discussion which would identify certain TANF individuals. Such an interpretation would likely render the exemption invalid as being overbroad.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the Committee on Governmental Operations adopted an amendment which clarifies some of the language used regarding public meeting and public record exemptions. The amendment addresses the concerns expressed in the Comments section above, provides that the public records exemption is also not subject to repeal under s. 119.15, F.S., and clarifies the public necessity language.

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

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