

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2470

SPONSOR: Commerce and Economic Opportunities Committee and Senator Kirkpatrick

SUBJECT: Public records and meetings

DATE: March 31, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute provides that portions of certain meetings relating to the implementation of the WAGES Program, which identify individuals who receive temporary cash assistance, are exempt from the public meeting requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution.

The committee substitute provides that records which identify individuals who receive temporary cash assistance, acquired by certain entities pursuant to the implementation of the WAGES Program, are confidential and exempt from the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

The committee substitute provides for release of this information for specific purposes, and provides for procedures for release of such information.

This committee substitute creates section 414.295, and repeals section 414.29, Florida Statutes.

## II. Present Situation:

### Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.<sup>1</sup>

Article I, s. 24, Florida Constitution, provides:

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<sup>1</sup>Article I, s. 24 of the Florida Constitution.

- (a) Every person has 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, 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.

In addition to the Florida Constitution, the Public Records Law<sup>2</sup> specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., 1998 Supp., requires:

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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

The Public Records Law states that, unless specifically exempted, all agency<sup>3</sup> records are to be available for public inspection. The term "public record" is broadly defined to mean:

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.<sup>4</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>5</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>6</sup>

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the

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<sup>2</sup>Chapter 119, F.S.

<sup>3</sup>The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>4</sup>Section 119.011(1), F.S.

<sup>5</sup>*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>6</sup>*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

The Open Government Sunset Review Act of 1995<sup>8</sup> states that an exemption may be created or expanded 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 identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>9</sup>

Article I, s. 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

### **Public Meetings Law**

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<sup>7</sup>Art. I, s. 24(c) of the Florida Constitution.

<sup>8</sup>Section 119.15, F.S., 1998 Supp.

<sup>9</sup>Section 119.15(4)(b), F.S., 1998 Supp.

Article I, s. 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, s. 24(c), Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in s. 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.

The state's plan for federal funding under the Temporary Assistance for Needy Families block grant is required to show how the state will take such reasonable steps as the state deems necessary to restrict the use and disclosure of information about individuals and families receiving temporary cash assistance (42 U.S.C. S. 602).

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 WAGES Program State Board of Directors at its January 27, 1999, meeting in Tallahassee approved numerous legislative recommendations. The board reports that these recommendations were reached after careful evaluation and discussion, and reflect broad-based input from local coalitions, WAGES partners, and board members. Contained in these recommendations was the recommendation that confidentiality provisions be maintained in the WAGES Program.

Section 414.29, F.S., provides that the lists of names of all persons who have received payments of temporary cash assistance and the amounts of such payments are a matter of public record.

### III. Effect of Proposed Changes:

This committee substitute 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** creates s. 414.295, F.S., to provide that those portions of a meeting held 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,<sup>10</sup> at which information is discussed which identifies individuals who receive temporary cash assistance, is exempt from the requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. This section provides that 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 s. 402 of the Social Security Act, as amended (42 U.S.C. s. 602, TANF state plan requirements).

Records that contain any identifying information about individuals who receive temporary cash assistance 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<sup>11</sup> are confidential and exempt from the public records provisions of s. 119.07(1) and s. 24(a), Art. I of the Florida Constitution. This section provides that 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 s. 402 of the Social Security Act, as amended (42 U.S.C. s. 602, TANF state plan requirements).

Information exempted from the public records requirement may be released for purposes directly connected with:

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<sup>10</sup> Specifically, implementation of the WAGES Program includes the provisions under s. 414.027, F.S., WAGES Program statewide implementation plan; s. 414.028, F.S., Local WAGES coalitions; s. 414.030, F.S., WAGES Program Employment Projects; s. 414.055, F.S., One-stop career centers; s. 414.065, F.S., Work requirements; s. 414.075, F.S., Resource eligibility standards; s. 414.085, F.S., Income eligibility standards; s. 414.095, F.S., Determining eligibility for the WAGES Program; s. 414.105, F.S., Time limitations of temporary cash assistance; s. 414.115, F.S., Limited temporary cash assistance for children born to families receiving temporary cash assistance; s. 414.125, F.S., Learnfare program; s. 414.13, F.S., Immunizations; s. 414.15, F.S., Diversion; s. 414.155, F.S., Relocation assistance program; s. 414.16, F.S., Emergency assistance program; s. 414.20, F.S., Other support services; s. 414.21, F.S., Transitional medical benefits; s. 414.22, F.S., Transitional education and training; s. 414.225, F.S., Transitional transportation; s. 414.23, F.S., Evaluation; s. 414.24, F.S., Integrated welfare reform and child welfare services; s. 414.27, F.S., Temporary cash assistance; payment on death; s. 414.32, F.S., Prohibitions and restrictions with respect to food stamps; s. 414.35, F.S., Emergency relief; s. 414.38, F.S., Pilot work experience and job training for noncustodial parents program; s. 414.391, F.S., Automated fingerprint imaging; s. 414.392, F.S., Applicant screening; s. 414.44, F.S., Data collection and reporting; and s. 414.70, F.S., Drug-testing and drug-screening program.

<sup>11</sup> Id.

- 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;
- Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs. Under certain circumstances, the department has authority to disclose the current address of a recipient to a federal, state, or local law enforcement officer;
- 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;
- 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;
- The administration of the unemployment compensation program; and
- 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.

Procedures for the release of information when the information is obtained through an integrated eligibility process, or in the event of issuance of a subpoena, are established. In addition, except under court order, the release or use of information concerning individuals receiving temporary cash assistance may be made only under a protocol that maintains standards of confidentiality which are comparable to those of the Department of Children and Family Services.

**Section 2** of the committee substitute expounds the 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.

**Section 3** of the committee substitute repeals s. 414.29, F.S., which provides that the lists of names of all persons who have received payments of temporary cash assistance and the amounts of such payments are a matter of public record.

**Section 4** of the committee substitute provides that the act shall take effect upon becoming law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

A public meetings and public records exemption would be created by the committee substitute. The committee substitute relates only to exemptions and it includes a statement of the public necessity that justifies the exemptions. For these reasons, the committee substitute appears to comply with the provisions of s. 24(c), Art. I, Florida Constitution.

## 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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.