

# 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/SB 2178

SPONSOR: Children and Families Committee and Senator Peaden

SUBJECT: Public Meetings and Public Records

DATE: April 11, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

CS/SB 2178 provides that portions of certain meetings relating to the implementation of the Temporary Assistance for Needy Families (TANF) programs which identify individuals who have applied for or are receiving temporary 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 bill provides that information which identifies individuals who have applied for or are receiving temporary assistance in records held by or acquired by certain entities pursuant to the implementation of the TANF programs is 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 bill provides for release of this information for specific purposes, provides procedures for release of such information, and states the public necessity that such information be confidential and exempt from the public meetings and public records laws.

This bill creates section 414.295 of the Florida Statutes.

**II. Present Situation:**

**Public Records**

Section 24 of Article I of the Florida Constitution provides the right of access to public records by stating that 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 [s. 119.07(1), F.S.]. 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 [s. 119.15(4)(b), F.S.]. 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), Article I, Florida Constitution, provides for all meetings where public business is discussed and transacted or official acts 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), Article I, Florida 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.

### **Other Provisions Related to the Public Records and Public Meeting Laws**

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

## Temporary Assistance to Needy Families

As part of the transfer of responsibility for establishing welfare programs from the federal government to the states, s. 205.50 of Title 45 C.F.R., which provided for confidentiality of records of recipients of public assistance, was repealed. 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. (42 U.S.C. s. 602.)

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 (s. 414.045, F.S.), diversion program for victims of domestic violence (s. 414.157, F.S.), diversion program for families at risk of welfare dependency due to substance abuse or mental illness (s. 414.1585, F.S.), emergency assistance program (s. 414.16, F.S.), teen parent and pregnancy prevention diversion program (s. 445.019, F.S.), Retention Incentive Training Accounts (s. 445.022, F.S.), and transitional medical benefits (s. 445.029).

During the 1999 session, the Legislature passed SB 256 (ch. 99-241, L.O.F.), 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. [s. 414.29(1), F.S. (1997)]. The only limitation placed upon disclosure of this information was that the lists could not be used for commercial or political purposes [s. 414.29(2), F.S. (1997)].

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, which continue to have federal confidentiality restrictions.

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:

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 for individuals who have applied for and are receiving temporary assistance funded with TANF grant funds.

The bill creates s. 414.295, F.S., to provide that those portions of a meeting held by the Department of Children and Family Services, Agency for Workforce Innovation, the Department of Management Services, the Department of Health, the Department of Revenue, Workforce Florida, Inc., regional workforce boards, or service providers under contract with any of these entities, pursuant to the implementation of the TANF programs<sup>1</sup>, at which information is discussed that identifies individuals who have applied for or are receiving temporary assistance, are exempt from the requirements of s. 286.011, F.S., and s. 24(b), Art. I of the Florida Constitution. This section provides that this exemption is not subject to repeal under

<sup>1</sup> Specifically, implementation of the TANF program includes the provisions under s. 414.045, F.S., Cash assistance program; s. 414.065, F.S., Noncompliance with work requirements; s. 414.0655, F.S., Medical incapacity due to substance abuse or mental health impairment; s. 414.075, F.S., Resource eligibility standards; s. 414.085, F.S., Income eligibility standards; s. 414.095, F.S., Determining eligibility for temporary cash assistance; 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. 414.122, F.S., Withholding of payments based on evidence of fraud; s. 414.125, F.S., Learnfare program; s. 414.13, F.S., Immunizations; s. 414.157, F.S., Diversion program for victims of domestic violence; s. 414.158, F.S., Diversion program to prevent or reduce child abuse and neglect; s. 414.1585, F.S., Diversion program for families at risk of welfare dependency due to substance abuse or mental illness; s. 414.1599, F.S., Diversion programs; s. 414.16, F.S., Emergency assistance program; s. 414.24, F.S., Integrated welfare reform and child welfare services; s. 414.26, F.S., Court-appointed guardian unnecessary; 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. 414.391, F.S., Automated fingerprint imaging; s. 414.392, F.S., Applicant screening; s. 414.70, F.S., Drug-screening and drug-testing program; s. 445.004, F.S., Workforce Florida, Inc.; s. 445.05, F.S., First Jobs/First Wages, Better Jobs/Better Wages, and High Skills/High Wages Council of Workforce Florida, Inc.; s. 445.006, F.S., Strategic plans for workforce development; s. 445.007, F.S., Regional workforce boards; s. 445.008, F.S., Workforce Training Institute; s. 445.009, F.S., One-stop delivery system; s. 445.010, F.S., Workforce system information technology; s. 445.011, F.S., Workforce information systems; s. 445.012, F.S., Careers for Florida's Future Incentive Grant Program; s. 445.013, F.S., Challenge grants in support of welfare-to-work initiatives; s. 445.016, F.S., Untried Worker Placement and Employment Incentive Act; s. 445.017, F.S., Diversion; s. 445.018, F.S., Diversion Program to Strengthen Florida's Families; s. 445.019, F.S., Teen parent and pregnancy prevention diversion program; s. 445.020, F.S., Diversion programs; s. 445.021, F.S., Relocation assistance program; s. 445.022, F.S., Retention Incentive Training Accounts; s. 445.023, F.S., Program for dependent care for families with children with special needs; s. 445.024, F.S., Work requirements; s. 445.025, F.S., Other support services; s. 445.026, F.S., Cash assistance severance benefit; s. 445.028, F.S., Transitional benefits and services; s. 445.029, F.S., Transitional medical benefits; s. 445.030, F.S., Transitional education and training; s. 445.031, F.S., Transitional transportation; s. 445.032, F.S., Transitional child care.

s. 119.15, F.S., since it is 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). The bill exempts from the Public Meetings Laws those portions of a meeting held by specified entities which identify individuals who have applied for or are receiving temporary assistance.

Information which identifies individuals who have applied for or are receiving temporary assistance in records held by or acquired by the Department of Children and Family Services, the Agency for Workforce Innovation, the Department of Management Services, the Department of Health, the Department of Revenue, Workforce Florida, Inc., regional workforce boards or service providers under contract with any of these entities pursuant to the implementation of the TANF programs<sup>2</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 this exemption is not subject to repeal under s. 119.15, F.S., since it is 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.).

Temporary assistance is defined for the purposes of this bill and includes any cash or services provided with TANF funding.

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

- The administration of the state plans under Title IV-A (TANF), 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;
- The administration of the unemployment compensation program;
- The reporting to the appropriate official of suspected physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child or elderly person receiving assistance; and
- The administration of services to elderly persons.

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<sup>2</sup> Id

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. The bill prohibits disclosure or publication of any information or lists that identify by name or address any program applicant or recipient to any federal, state, or local committee or legislative body other than in connection with any activity specified in the bill. In addition, except under court order, the release or use of information concerning individuals receiving temporary 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.

The bill expounds the public necessity that the records and meetings held pursuant to the implementation of the TANF programs be held confidential and exempt from the public meetings and public records laws.

The bill 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 bill. The bill relates only to exemptions, includes a statement of the public necessity that justifies the exemptions and is no broader than necessary to accomplish the stated purpose of the state law which is to maintain the confidentiality of information as it relates to applicants for or recipients of TANF programs. Consequently, as it relates to this exemption, the bill 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:**

The Department of Children and Family Services reports that there will be no fiscal impact in implementing this legislation. However, the department also notes that federal funding from TANF is currently jeopardized because the state is not in compliance with federal

requirements. 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.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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