

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: PCS/SB 886(538548)

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Open Government Sunset Review/Insurance Claim Data Exchange System

DATE: March 5, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Favorable
2.	Fournier	McKee	FT	Favorable
3.	Naf	Wilson	GO	Pre-meeting
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill is the result of the Children, Families, and Elder Affairs Committee’s Open Government Sunset Review of a public-records exemption for specified records obtained by the Department of Revenue for the purpose of operating an insurance claim data exchange system.

Current law requires the Department of Revenue (DOR or “the department”) to develop and operate an insurance claim data exchange system in which an insurer may voluntarily provide the department with the name, address, and, if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent who has a claim with the insurer and who owes past-due child support.¹

Current law also provides that specified information regarding a noncustodial parent who owes past-due child support, collected by the department pursuant to the insurance claim data exchange system, is confidential and exempt from the public-records requirements of s. 119.07(1), F.S., and s. 24(a), art. I of the State Constitution.² This exemption is subject to the

¹ Section 409.25659, F.S.

² Section 409.25661, F.S.

Open Government Sunset Review Act³ and will stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature. This bill extends the repeal date of the exemption from October 2, 2010, to October 2, 2012, thereby reenacting the exemption. This extension provides the department with additional time to determine the success of a similar federal program.

Because this bill does not expand or create a public-records exemption, it does not require a two-thirds vote of each house of the Legislature for passage.

This bill amends s. 409.25661, F.S.

II. Present Situation:

Florida's Public-Records Laws

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.⁴ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act⁵ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁶ records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, . . . tapes, photographs, films, sound recordings, . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁷

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁸ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

³ Section 119.15, F.S.

⁴ Sections 1390, 1391, F.S. (Rev. 1892).

⁵ Chapter 119, F.S.

⁶ Section 119.011(2), F.S., defines *agency* as “any state, county, . . . or municipal officer, department, . . . or other separate unit of government created or established by law . . . and any other public or private agency, person, . . . acting on behalf of any public agency.”

⁷ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁸ Art. 1, § 24(c), Fla. Const.

⁹ *Id.*

¹⁰ *Id.*

Open Government Sunset Review Act

The Open Government Sunset Review Act¹¹ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹² 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.¹³ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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 the safety of such individuals; or
- 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 ... would injure the affected entity in the marketplace.¹⁴

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁵

Insurance Claim Data Exchange

As of July 2009, 468,596 noncustodial parents in Florida owed past-due child support.¹⁶

The Department of Revenue is authorized to levy any credit or personal property of an obligor for any past-due child support.¹⁷ This includes bank accounts, vehicles, and insurance claim payments.

The Legislature directed the department to develop and operate a data match system that would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer.¹⁸ This process allows insurers to voluntarily provide the department with the name, address, and if known, date of birth and social security number or other taxpayer identification

¹¹ Section 119.15, F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 119.15(6)(a), F.S.

¹⁶ Senate Bill Analysis and Fiscal Impact Statement for SB 886 by the Committee on Children, Families, and Elder Affairs, February 8, 2010, at 3.

¹⁷ Section 409.25656, F.S.

¹⁸ Chapter 2004-334, L.O.F.; codified as s. 409.25659, F.S.

number for each noncustodial parent identified as having a claim.¹⁹ The data provided can be used only for purposes of child support enforcement.²⁰

An insurer may provide the department with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to the department electronically so it can conduct a data match;
- An insurer may receive or access data from the department and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to the department; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.²¹

Due to the variety of data submission methods provided within the system, it is possible for the department to receive information on individuals who have a claim with an insurer and who do not owe child support.

Public-Records Exemption Under Review

Current law provides that information obtained by the department pursuant to the insurance claim data exchange is confidential and exempt²² from public records requirements until the department determines if a match exists.²³ If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.²⁴

Pursuant to the Open Government Sunset Review Act (OGSR), the exemption was scheduled to repeal on October 2, 2009; however, as a result of the OGSR review during the 2008 interim, the repeal date was delayed until October 2, 2010.

Implementation of the Insurance Claim Data Exchange

The department did not immediately begin matching data files with insurance companies using the insurance claim data exchange statute. According to the department, it took steps to implement the statute by contacting most of the top 25 insurers in the state. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, the department decided to postpone working on the insurance claim data

¹⁹ Section 409.25659(2), F.S.

²⁰ Section 409.25659(5), F.S.

²¹ Section 409.25659(2)(a) – (c), F.S.

²² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

²³ Section 409.25661(1), F.S.

²⁴ *Id.*

exchange initiative at the request of those insurers. The department did not re-initiate contact with the insurers and attempt to resume implementation activities due to its resources being otherwise dedicated to the statewide implementation of Phase I of the Child Support Enforcement Automated Management System (CAMS).²⁵

In February 2006, the Deficit Reduction Act of 2005 was enacted by Congress. The Act amended federal law to authorize the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allowed HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.²⁶

Rather than re-engage insurers in the implementation of insurance claim data exchange, the department chose to monitor the results of a federal workgroup charged with implementing the nationwide insurance data match program in other states before implementing the federal program in Florida.²⁷ The department submitted the participation form to the Federal Office of Child Support Enforcement on September 8, 2008 and began receiving matches on October 10, 2008.

Between October 10 and December 4, 2008, the department had received 530 matches from the new program. Approximately 47 percent of these matches already had been received by the department through other means.²⁸ For the period of November 2008 through October 2009, the department had received 2,996 data matches from the federal program. Of those matches, the department reports 422 already had been made by the Department through other means.²⁹

The department has requested additional time in order to determine the success of the federal program. As such, it has requested delay of repeal of the exemption until October 2, 2012.³⁰

III. Effect of Proposed Changes:

The bill extends the repeal date from October 2, 2010, to October 2, 2012, thereby reenacting the public-records exemption for information obtained by the department pursuant to the insurance claim data exchange. This extension provides the department with additional time to determine the success of the federal program.

²⁵ Email from Debbie Thomas, Staff, Department of Revenue, (Aug. 25, 2008)(on file with the Governmental Affairs Policy Committee); follow-up telephone call with Debbie Thomas (March 9, 2009).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Senate Bill Analysis and Fiscal Impact Statement for SB 750 by the Committee on Children, Families, and Elder Affairs, February 12, 2009, at 5.

²⁹ Senate Bill Analysis and Fiscal Impact Statement for SB 886 by the Committee on Children, Families, and Elder Affairs, February 8, 2010, at 5.

³⁰ Memorandum from Debra Thomas, Office of Legislative and Cabinet Services for the Department of Revenue, (December 30, 2009) (on file with the Governmental Affairs Policy Committee).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

This bill retains an existing public-records exemption. Because this bill does not expand the existing exemption, it does not require a two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the department, the federal program is still building its partnerships with personal liability insurance companies. Of the 207 companies currently participating in the federal program, none are Florida-based. The department again reports, as it did when this exemption had its initial review, that it cannot determine whether or not the federal program will provide the needed match information for companies based or doing business in Florida until more companies begin actively matching with the federal program.³¹

The department reports that it continues to invite Florida insurers and out of state insurers doing business in Florida to enter into a data matching partnership with DOR. According to the department, this partnership was to benefit the state program described in s. 409.25659, F.S.³²

³¹ Letter from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (July 16, 2009) (on file with the committee).

³² Email from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (November 2, 2009) (on file with the committee).

VIII. Additional Information:

- A. **Proposed Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Proposed Committee Substitute and the prior version of the bill.)

PCS (538548) by Governmental Oversight and Accountability on March 10, 2010:

Instead of merely deleting the repeal date of the public-records exemption, the proposed committee substitute extends the repeal date from October 2, 2010 to October 2, 2012.

- B. **Amendments:**

None.