

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-19 OGSR Voluntary Prekindergarten

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2144

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state that is voluntary, high-quality, free, and delivered according to professionally accepted standards. As such, the Legislature created the voluntary prekindergarten (VPK) program. The VPK program is administered at the local level by school districts and early learning coalitions. At the state level, the Department of Education administers the educational accountability requirements of the program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.

Current law provides a public record exemption for the VPK program. Individual records of a child enrolled in the VPK program held by an early learning coalition, AWI, or a VPK program provider are confidential and exempt from public records requirements. Current law also authorizes the sharing and release of such records.

The bill reenacts the public record exemption, which will repeal on October 2, 2010, if this bill does not become law. It also reorganizes the exemption.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Voluntary Prekindergarten Education Program

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state that is voluntary, high-quality, free, and delivered

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

according to professionally accepted standards.⁴ As such, the Legislature created the voluntary prekindergarten (VPK) program. It took effect for the 2005 school year and provided the parents of eligible children a choice among three program options: a school-year VPK program delivered by a private prekindergarten provider, a school-year VPK program delivered by a public school, or a summer VPK program delivered by a public school or private prekindergarten provider.⁵

The VPK program is administered at the local level by school districts and early learning coalitions.⁶ At the state level, the Department of Education administers the educational accountability requirements of the program⁷ and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.⁸ AWI's specific operational requirements include determining the eligibility of private providers to deliver the VPK program.

All VPK providers must register with an early learning coalition, comply with federal antidiscrimination requirements, and may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the VPK program in violation of the antidiscrimination requirements.⁹

In 2008-2009, there were 5,660 providers that participated in the VPK program, 657 offered the summer program and 5,472 offered the school year program.¹⁰ Most of the VPK providers (84 percent) were private centers. For 2008-2009, the VPK program enrollment is estimated to be 63.5 percent of the 4-year old population.¹¹

Public Record Exemption under Review

Current law provides a public record exemption for the VPK program.¹² Individual records of a child enrolled in the VPK program held by an early learning coalition, AWI, or a VPK program provider are confidential and exempt¹³ from public records requirements. Such records include assessment data, health data, records of teacher observations, and personal identifying information of an enrolled child and his or her parent. Current law provides for retroactive application of the public record exemption.¹⁴

A parent has the right to inspect and review the VPK program record of his or her child. In addition, a parent may obtain a copy of such record.¹⁵

An early learning coalition, AWI, or a VPK program provider may release the confidential and exempt records to:

- The United States Secretary of Education, the United States Secretary of Health and Human Services, and the Comptroller General of the United States for the purpose of federal audits.
- Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or improve instruction.
- Accrediting organizations in order to carry out their accrediting functions.

⁴ Section 1(b) and (c), Art. IX of the State Constitution.

⁵ Chapter 2004-484, L.O.F.; codified at ss. 1002.55, 1002.61, and 1002.63, F.S.

⁶ Section 1002.51(2), F.S., defines "early learning coalition" or "coalition" to mean an that early learning coalition created under s. 411.01, F.S.

⁷ Section 1002.73(1), F.S.

⁸ Sections 1002.75(1), F.S.

⁹ Sections 1002.53(6)(c) and 1002.75(2), F.S., and 42 U.S.C. s. 2000d.

¹⁰ Senate Bill Analysis and Fiscal Impact Statement for CS/SB 2144, March 19, 2010, at 4.

¹¹ *Id.*

¹² Section 1002.72, F.S.

¹³ 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).

¹⁴ Section 1002.72(1), F.S.

¹⁵ Section 1002.72(2), F.S.

- Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child or other individuals.
- The Auditor General in connection with his or her official functions.
- A court of competent jurisdiction in compliance with an order of that court pursuant to a lawfully issued subpoena.
- Parties to an interagency agreement among early learning coalitions, local governmental agencies, Voluntary Prekindergarten Education Program providers, or state agencies for the purpose of implementing the Voluntary Prekindergarten Education Program.¹⁶

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁷

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 1002.72, F.S., to reenact the public record exemption for the VPK program.

Section 2 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁶ Section 1002.72(3), F.S.

¹⁷ Section 1002.72(4), F.S.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.