

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: SB 1444

SPONSOR: Children and Families Committee

SUBJECT: Sunset Review of Public Records Exemption for Foster Care Licensure

DATE: March 13, 2003 REVISED: 3/26/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1444 re-enacts the public records exemption for certain locating and personal and sensitive information for members of family foster homes. The exemption is expanded to include certain personal and sensitive information; the names of the minor children in the home; the names, telephone numbers, and addresses of neighbor references; applicants for foster care licensure; and foster parents whose licenses have become inactive. In the bill, this exemption no longer applies solely to the foster care licensing file but to the stipulated information held by either the Department of Children and Families, Department of Health, or the fire inspectors. The bill repeals the public records exemption on October 2, 2008, unless reviewed and re-enacted by the Legislature.

This bill substantially amends section 409.175 of the Florida Statutes.

II. Present Situation:

Open Government Sunset Review

Currently, section 24(a) of Article I of the Florida Constitution, provides every person with the right of access to inspect or copy public records. 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.].

Pursuant to s. 24(c) of Article I of the Florida Constitution, exemptions to this right of access to public records may be provided by general law enacted by the Legislature but must be based on

an expressed statement of public necessity justifying the exemption and must be no broader than necessary to accomplish the purpose of the law. Section 119.15, F.S., the Open Government Sunset Review Act of 1995, sets forth the process to create and maintain such exemptions to the public records requirements. Exemptions to the required public records disclosure must serve a public purpose and this public purpose must be sufficiently compelling to prevail over the public policy of open government and must not be accomplishable without the exemption. Further, the public purpose served by the exemption must meet one of the following purposes as set forth in s. 119.15(4)(b), F.S. It:

- “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.”

In determining whether to exempt or to make public certain records, the Legislature is to consider if damage or loss as specified in the latter two public purposes would occur with making the records public [s. 119.15(4)(c), F.S.].

Exemptions granted pursuant to s. 119.15, F.S., are repealed on October 2nd of the fifth year after enactment of the exemption, unless the Legislature reenacts the exemption. Prior to the scheduled repeal, s. 119.15(4)(a), F.S., requires the Legislature to review the exemption and consider the following questions:

- “1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?”

An exemption provided pursuant to s. 119.15, F.S., must allow for the greatest public access to the records as is possible while meeting the purpose of the exemption. The language of the exemption must be uniform and clearly specify the section of the Florida Statutes from which it is exempt. Finally, s. 119.15(4)(e), F.S., provides that neither the state or other public bodies can be made a party to a suit or incur liability as a result of the repeal or reenactment of an exemption.

Family Foster Homes

The Department of Children and Families is directed to establish and administer a program for children found dependent by the court under ch. 39, F.S., and their families

[ss. 409.145 and 409.165, F.S.]. Included in this program are foster homes and other settings that can offer shelter and care to the dependent children when they must be placed away from their families. Foster homes are private residences that provide 24-hour care for children and can be found in the form of emergency shelter family homes, family foster homes, family foster group homes, and specialized foster homes for children with special needs [s. 409.175(2)(e), F.S.].

In order for a child to be placed in a foster home, the home must be licensed [s. 409.175(4), F.S.]. Section 409.175(5), F.S., directs the Department of Children and Families to adopt rules for the licensure of family foster homes and sets forth minimum requirements for licensure which include such aspects as the operation of the foster family home; the provision of food, clothing, supplies, and services to the foster children; the safety and cleanliness of the premises; the ratio and supervision of children; the moral character of the personnel; and the financial ability of the foster parents to provide care. Chapter 65C-13, F.A.C., *Substitute Care of Children*, contains the administrative rules for the licensure of family foster homes.

Section 409.175, F.S., further delineates a number of provisions related to the licensing of foster homes including background screening requirements; inspections of the homes by the local health departments; pre-service and in-service training requirements; the ability of the department to deny, suspend, or revoke a license and grounds for such actions; actions the department may take to ensure compliance with the licensing requirements; and the provision of general liability coverage for family foster homes through the Division of Risk Management.

A number of potentially sensitive documents are being obtained on applicant foster parents as a result of these requirements and the department's need to determine the suitability of individuals to be foster parents. Examples of such documents include medical history, financial information, and neighbor references. While important to the department in determining the suitability of individuals to be foster parents, it is information that is often very personal and private. It has been reported that the availability of this information to the public can discourage potential foster parents from applying for licensure.

One piece of information that is particularly sensitive to the foster child is the location of the foster home. Access to the location of the placement of the children removed from their parents can place the child in danger of being removed from the foster home by the parents, thus placing the child in continued danger of abuse or neglect, and can place the foster family in danger of harm from the parents or caregiver.

Section 409.175(16), F.S., provides an exemption to the public records law so that much of the information that would identify the location of the foster home would not be disclosed. This exemption applies to the following information contained in the foster parents' licensing file: 1) the foster parents', spouse's, minor children's and adult household members' home, business, work, child care, or school addresses, telephone numbers, social security numbers, and birth dates, as well as any photographs of such persons; 2) the floor plan of the foster home; 3) identifying information about the foster parents and their household members in neighbor references; and 4) any identifying information about the foster family contained in similar sensitive personal information that the foster parents provide to the department. This exemption applies not only to licensed foster parents but also to foster parents who later become adoptive

parents. This public records exemption is subject to the Open Government Sunset Review Act of 1995 and is repealed effective October 2, 2003, unless reenacted by the Legislature.

The intent of this public records exemption based on the original statement of necessity is to protect personal and sensitive information about the foster parents and their families, as well as information that would reveal the location of the foster parents and the child placed in the foster home. While this original intent of and necessity for this public records exemption continues to be valid and form the basis for the exemption, the emphasis of the current wording on the “identifying information” appears to be creating some deficiencies in the ability of the exemption to protect the information intended. Specifically, the current language protects “identifying information” in the neighbor references and in sensitive personal information. Protecting identifying information of the foster family in the neighbor reference may still allow for information relative to the location of the neighbor to be revealed and, in turn, the foster family. In addition, removing identifying information in sensitive personal information may still reveal the personal sensitive information since the requestor of the licensing file documents often already knows the name of the foster parent and, therefore, to whom the personal sensitive information pertains.

In addition, s. 409.175(16), F.S., applies solely to the identified information in the foster parent’s licensing file and to foster homes that have actually been licensed, including families who discontinue their foster home licensure to become adoptive parents. However, some of the information in the licensing file is utilized in other forms, such as in the computer to issue checks to the foster parents, and contained in other files, such as with the Department of Health and fire inspectors who conduct inspections as part of the licensing process. Also, not included in the exemption are those families who have applied to become foster parents and provided the necessary documentation but whose application was denied or is still pending and families who are no longer licensed but have not become adoptive parents. The sensitive information contained in their files is currently fully accessible to the public.

Senate Interim Project Report 2003-206

Staff reviewed the exemption to the public records requirements in s. 409.175(16), F.S., making the identifying and locating information from the foster parent’s licensing file exempt from the Public Records Law. Staff found that the exemption provided for in s. 409.175(16), F.S., protects the safety of the child and the foster family, as well as shields the foster parents and their family from defamation. Staff recommended that the exemption to the public records requirements in s. 409.175(16), F.S., be re-enacted with some modifications.

III. Effect of Proposed Changes:

SB 1444 re-enacts the public records exemption for certain locating and personal and sensitive information for members of family foster homes. The exemption is expanded to include certain personal and sensitive information; the names of the minor children in the home; the names, telephone numbers, and addresses of neighbor references; applicants for foster care licensure; and foster parents whose licenses have become inactive. This exemption no longer applies solely

to the foster care licensing file but to the stipulated information held by either the Department of Children and Families, Department of Health, or the fire inspectors. The bill repeals the public records exemption on October 2, 2008, unless reviewed and re-enacted by the Legislature.

SB 1444, while re-enacting the public records exemption in s. 409.175(16), F.S., for specified information of foster families, expands the exempted information to more clearly protect the locating and personal and sensitive information intended with the original statement of public necessity. Instead of exempting identifying information regarding the foster family in the neighbor references, the bill exempts the names, telephone numbers, and addresses of the neighbors providing a reference, as well as any other information that would identify the location of the neighbor. Also, instead of exempting the identifying information about the foster family in sensitive and personal information, the bill exempts the personal and sensitive information. The personal and sensitive information exempted is specifically defined as the medical records or information, financial records or information, and embarrassing private facts about the foster family. The exemption for the personal and sensitive information is limited to that information which is contained in the following documents that are obtained as part of the licensing process: the family profile, the evaluation materials of the Florida Model Approach to Partnership and Parenting, the report of the home study, personal or neighbor references, the health inquiry letter, and the income questionnaire.

Exempted information regarding foster families whose license becomes inactive and who do not become adoptive parents continues to retain the protection of this public records exemption with this bill. Similarly, information retained on applicants for foster home licensure is exempted by this bill. For both foster parents whose license becomes inactive, with the exception of those who become adoptive parents, and applicants for foster home licensure, the exempted information becomes public after 5 years, with the exception of the foster parent's social security number and the personal and sensitive information.

In the event of a dispute regarding whether certain information meets the criteria for personal and sensitive information, the bill allows for the court to be petitioned for an in camera review of the information to determine if it meets the exemption criteria. In addition, the court may also be petitioned for an in camera review to determine if a compelling reason exists to release the exempted information.

Since the public records exemption is expanded to include additional information and individuals, s. 409.175(16), F.S., is subject to the Open Government Sunset Review of 1995. As a result, the bill repeals the public records exemption on October 2, 2008, unless reviewed and re-enacted by the Legislature. In addition, a statement of public necessity is set forth. The provision articulates that the personal and sensitive information exempted by this bill may embarrass or damage the character of the family if released and could lessen the willingness of prospective caregivers to reveal information that is necessary for the department to assess the foster family applicants. Access to the names of the minor children in the foster home or the name, address or telephone number of the neighbors providing references could facilitate the location of the foster home which could, in turn, jeopardize the safety of the foster family. Further, the availability of the exempted information for foster parent applicants and foster parents whose license become inactive could have a negative and chilling effect on the recruitment of foster parents.

The effective date of this bill is October 2, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 Families has not identified a fiscal impact for this bill.

VI. Technical Deficiencies:

While the bill exempts from disclosure the social security numbers and personal and sensitive information of all the members of the family foster home, the continued exemption after 5 years for applicant foster families and foster homes no longer licensed only applies to the social security number and personal and sensitive information of the foster parents or applicants.

The term “inactive” is used by the department to indicate a foster home that is currently licensed but not currently serving foster children and, therefore, would not accurately define foster homes that are no longer licensed.

VII. Related Issues:

After reviewing the family foster care exemption, the questions that must be considered pursuant to s. 119.15(4)(a), F.S., can be answered as follows:

1. What specific records or meetings are affected by the exemption? – This exemption currently applies to specific information within the licensing file of foster parents. The exact information that is to be exempted is not completely clear, however. Specific items related to both the location and identity of the foster parents and family members are delineated, as is the floor plan for the home which protects the location of the foster child within the home, and “identifying information” in neighbor references and other personal sensitive information. However, the names of the foster parents and family members are not set forth as exempted information. It is not clear whether the names of the foster parents and family members are to be exempted given the later references to “identifying information.” It is also not evident whether any sensitive personal documents themselves are protected.
2. Whom does the exemption uniquely affect, as opposed to the general public? – This exemption applies to licensed foster parents, their spouses, their minor children and other adult members of the household. Foster parents who later become adoptive parents would continue to receive this exemption.
3. What is the identifiable public purpose or goal of the exemption? – Based on the original statement of public necessity, this exemption is to protect information of a personal, sensitive nature. Specifically, the exemption is intended to protect information that would provide the location of the foster family and their home. Preventing the disclosure of the foster family’s location protects the safety of the foster family and foster children from the biological parents and relatives who could abduct the child or threaten or cause injury to the foster family for their role in the parents’ separation from their child.

In addition, the exemption is intended to protect the sensitive and personal information needed by the department to determine the suitability of applicants for foster home licensure. Foster parents and their families, while willing to expose their personal information to a limited extent for the purpose of licensure, are not always willing to expose such private information to the full public because of the damage it could cause their families and their reputations.

These goals of the exemption remain sufficiently compelling to override the public policy that all the information in these records be available to the public. While, s. 119.15(4)(b), F.S., stipulates that only information that would identify the individuals be exempted, in the situations with these foster families, only exempting the identifying information within the sensitive, personal information may not fully serve the purpose since the identity of the foster parents is often already known, thus revealing the identity of the sensitive information.

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? – The information exempted by s. 409.175(16), F.S., can be obtained through alternative means but not readily. This section of law provides that the information is not exempt from public disclosure if otherwise ordered by the court. In addition, foster parents are identified in s. 39.701(5), F.S., as a party to whom a notice of a judicial review hearing must be served. As such, they can be identified to all the parties to the court proceeding as being noticed.

The department reports that, for the most part, the districts are careful about revealing specific information, referring generically to “the placement through the department.” However, some districts may be actually including the name and address of the foster parent which is made available to all the parties to the case.

VIII. Amendments:

1 by Children and Families:

Corrects the omission that the continued exemption for the social security numbers and personal and sensitive information applies to all the members of the foster family’s household, not just to the foster parents. Changes in terminology relative to foster homes that are no longer licensed and applicants for foster home licensure were made.

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