

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1593 (PCB SA 03-09) Public Records Exemption/Licensed Foster Parents  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1444

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2<sup>nd</sup> of the fifth year after enactment.

This bill reenacts and expands the public records exemption for certain information regarding licensed foster parents, which will repeal on October 2, 2003, if this bill does not become law. It expands the exemption to include medical records of a licensed foster parent and such parent's spouse, minor children, and other adult household members. This bill further expands the exemption to also apply to a foster parent applicant and such applicant's spouse, minor children, and other adult household members. This bill narrows the public records exemption for personal identifying information contained in neighbor references by only exempting the name, address, and telephone number of persons providing character and neighbor references regarding foster parent applicants and licensed foster parents.

This bill provides an expiration date for the exemptions, provides for retroactive application and future review and repeal of the public records exemption, and provides a finding of public necessity.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1593.sa  
**DATE:** March 7, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law requires the Department of Children and Family Services (DCFS) to conduct, supervise, and administer a program for children found dependent by a court under chapter 39, F.S., and such children's families. Included in the program are foster homes, which offer shelter and care to a dependent child who must be separated from his or her family.

In order for a child to be placed in a family foster home, such home must be licensed by DCFS. Florida law provides a number of provisions relating to licensure of foster parents. Such provisions include background screening, home inspections to be performed by the local health department, and pre-service and in-service training.

DCFS collects large amounts of sensitive, personal information regarding persons applying for foster parent licensure. This information is needed in order to determine whether a person qualifies for such licensure. Such information includes medical history records, financial information, criminal history checks, and foster parent location information. In order to encourage people to apply for a foster parent license, and in order to protect the location of licensed foster parents and the dependant children placed in their homes, current law provides a public records exemption for certain information regarding licensed foster parents.

Florida law provides a public records exemption for the following information contained in a licensing file held by DCFS regarding a licensed foster parent and such parent's spouse, minor children, and other adult household members: the home, business, work, childcare, or school addresses and telephone numbers and social security numbers, birthdates, and photographs of such persons; identifying information about such persons contained in neighbor references; the floor plan of the foster home; and any identifying information about such persons contained in "similar sensitive, personal information".<sup>1</sup>

Current law provides for future review and repeal of the public records exemption regarding licensed foster parents. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 409.175(16), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to DCFS and held meetings with department staff, regarding the public records exemption for licensed foster parents.

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<sup>1</sup> Section 409.175(16), F.S.

## Effect of Bill

As a result of those meetings and the questionnaire response, this bill reenacts and expands the current exemption.

This bill expands the current public records exemption by also including medical records of a licensed foster parent and medical records of such parent's spouse, minor children, and other adult household members. Five years after the expiration date of a licensed foster parent's foster care license, the information made exempt<sup>2</sup> becomes publicly available, except that social security numbers and medical records of a formerly licensed foster parent and such parent's spouse, minor children, and other adult household members, remain exempt from public disclosure. However, exempt information regarding a licensed foster parent who has become an adoptive parent and exempt information regarding such foster parent's spouse, minor child, or other adult household member, will not be made available for public disclosure.

This bill further expands the public records exemption by also applying the exemption to foster parent applicants. However, if a foster parent applicant does not receive a foster parent license, such exempt information will become public five years after the date of application, except that social security numbers and medical records will remain exempt from public disclosure.

This bill also narrows the current public records exemption as it applies to neighbor references. Instead of exempting the personal identifying information contained in such references, this bill only makes the name, address, and telephone number of persons providing character or neighbor references regarding foster parents applicants and licensed foster parents exempt from public disclosure.

Finally, this bill provides for retroactive application of the exemptions,<sup>3</sup> adds clarifying language, makes editorial changes, provides for future review and repeal of exemptions, and provides a statement of public necessity.

### C. SECTION DIRECTORY:

Section 1. Amends s. 409.175(16), F.S., by reenacting and expanding the public records exemption for licensed foster parents.

Section 2. Provides for future review and repeal of exemptions.

Section 3. Provides a statement of public necessity.

Section 4. Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

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<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>3</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

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:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995<sup>4</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

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 is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. 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 created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

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<sup>4</sup> Section 119.15, F.S.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.