

# 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.)

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/SB 2220

SPONSOR: Governmental Oversight and Productivity Committee and Senators King and Lynn

SUBJECT: Public Records/Prekindergarten

DATE: April 21, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<b>Fav/1 amendment</b>
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<b>Fav/CS</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill makes confidential and exempt individual records of children enrolled in Florida's Voluntary Prekindergarten Program (VPK) held by an early learning coalition, the Agency for Workforce Innovation, or a Voluntary Prekindergarten Education Program provider. The exemption is retroactive in effect. The bill authorizes a parent to inspect and review the record of his or her child and to obtain a copy. The bill also authorizes release of these records to specified governmental and other entities. These entities are required to preserve the confidentiality of the identity of the enrolled child or his or her parents in the records.

The exemption is subject to review by the Legislature under the Open Government Sunset Review Act under s. 119.15, F.S. If not reviewed and saved from repeal before October 2, 2010, the exemption will repeal.

This exemption is subject to s. 24, Art. I of the State Constitution, which requires two-thirds of the members present and voting to enact the exemption.

The bill creates the following section of Florida Statutes: 1002.72.

## II. Present Situation:

### Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the

statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law codified as ch. 119, F.S., specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”<sup>1</sup>

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### **State-Funded Early Childhood Education and Child Care Programs**

Before 1999, Florida’s state-funded early childhood education and child care programs were delivered through various independent programs, with administration of the programs divided principally between the Department of Education (DOE) and the Department of Children and Family Services (DCF):

- DOE formerly administered early childhood education programs, including the prekindergarten early intervention program; the Florida First Start Program; the migrant education program; and the federal Even Start Family Literacy Programs.
- DCF formerly administered the subsidized child care program, which funded child care services for at-risk and economically disadvantaged children younger than 13 years of age.

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<sup>1</sup> *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

## **School Readiness Programs**

In 1999, the Legislature enacted the School Readiness Act, s. 411.01, F.S., which consolidated the state's early childhood education and child care programs into one integrated program of school readiness services.<sup>2</sup> The act directed that school readiness programs would be administered by local school readiness coalitions at the county or multicounty level and would be coordinated by the Florida Partnership for School Readiness at the state level.

## **School Readiness Records**

Administration of the school readiness programs requires the Agency for Workforce Innovation and the early learning coalitions to maintain detailed records about the individual children enrolled in the programs. These records generally include information used to determine the eligibility of children for the school readiness programs, to enroll children with child care providers, to verify the attendance of children, to pay providers based upon the enrollment and attendance of children, and to audit and report those payments.

Each early learning coalition must operate a "resource and referral network to assist parents in making an informed choice."<sup>3</sup> A resource and referral network typically maintains detailed information about the particular services offered by child care providers. When a parent contacts the network, detailed information is collected from the parent about the child, the child's needs, and the child's potential eligibility for school readiness services. The network matches data collected about the child with data maintained about child care providers to give the parent options about the providers that could meet the child's needs. When diagnostic screenings reveal that a child has a disability, has other special needs, or has physical or mental health conditions, the child may be referred to other agencies for additional services.

In 2000, the Legislature declared that the "individual records of children enrolled in school readiness programs" are confidential and exempt from disclosure under the Public Records Law when those records are held in the possession of a school readiness coalition or the Florida Partnership for School Readiness.<sup>4</sup> These records include "assessment data, health data, records of teacher observations, and identifying data, including the child's social security number." *Id.*

## **Voluntary Prekindergarten Education Program**

In November 2002, the electors of Florida approved Amendment No. 8 to the State Constitution, which required the Legislature to establish, by the 2005 school year, a prekindergarten (Pre-K) program for every 4-year-old child in the state which is voluntary, high quality, free, and delivered according to professionally accepted standards.

In December 2004, at its 2004 Special Session "A," the Legislature enacted House Bill 1-A, which created the Voluntary Prekindergarten Education (VPK) Program.<sup>5</sup> The bill directed that

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<sup>2</sup> Ch. 99-357, L.O.F.

<sup>3</sup> Sections 411.01(5)(c)2.g. and 402.27, F.S. *See also* s. 17, ch. 2001-170, L.O.F. (transferred child care and early childhood resource and referral to the Agency for Workforce Innovation from the Department of Children and Family Services).

<sup>4</sup> Section 3, ch. 2000-299, L.O.F. and s. 411.011, F.S.

<sup>5</sup> Ch. 2004-484, L.O.F.

the VPK program be administered at the local level by school districts and school readiness coalitions, which the bill renamed as “early learning coalitions.” At the state level, the bill specified that the Department of Education administers the accountability requirements of the VPK program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.

In addition to establishing the VPK program, the bill enacted several reforms of the school readiness system. The bill abolished the Florida Partnership for School Readiness on January 2, 2005,<sup>6</sup> and transferred the partnership’s duties to AWI. The bill created an Office of Early Learning within AWI, directed by a Deputy Director for Learning, to administer the school readiness and VPK programs. Consequently, the bill established that, in addition to responsibility for the operational aspects of the VPK program, AWI’s Office of Early Learning is directly responsible for state-level coordination of school readiness programs, prekindergarten programs and of the early learning coalitions.

Unlike the individual records of children enrolled in school readiness programs, there is no similar exemption for individual records of children enrolled in VPK program.

### **Central Agencies**

Florida began statewide licensure or registration of child care providers in 1974.<sup>7</sup> In response, many local communities formed community child care coordinating agencies (commonly cited as “central agencies”). These central agencies collected information about the child care providers operating in their communities and created resource and referral networks to inform parents about the relative quality of the providers.

In 1989, the Legislature created a statewide child care resource and referral network, formalizing the efforts of the central agencies throughout the state. The former Department of Health and Rehabilitative Services was directed to give preference to the “already established” central agencies when selecting local child care resource and referral agencies for the statewide network.<sup>8</sup> In addition to the original central agencies formed in the 1970s, new central agencies proliferated to achieve statewide coverage for this statewide child care resource and referral network.

In 1996, the Legislature required the Department of Children and Families to contract with central agencies for monitoring the child care providers delivering the former subsidized child care program.<sup>9</sup> The department also used central agencies for processing payments to child care providers under the former program. In 1999, the School Readiness Act’s consolidation of the state’s early childhood education and child care programs was accompanied by the creation of school readiness coalitions that would locally design, operate, and manage the school readiness programs, in effect replacing the duties of the central agencies under the former subsidized child care program.

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<sup>6</sup> House Bill 1-A specified that the Florida Partnership for School Readiness was abolished when the bill became a law.

<sup>7</sup> Ch. 74-113, L.O.F.

<sup>8</sup> Section 5, ch. 89-379, L.O.F. and s. 402.27, F.S.

<sup>9</sup> Section 73, ch. 96-175, L.O.F.; former s. 402.3015, F.S.

Central agencies remain a part of the current school readiness system, several publicizing that they have operated in the state for more than 30 years. Central agencies exist today as privately organized corporate entities contracting with early learning readiness coalitions. When the early learning coalitions were originally established (as “school readiness coalitions”), the new coalitions initially contracted with the central agencies operating in their communities to provide many of the same services that the agencies had provided under the former subsidized child care program. These services generally included enrollment services, operating the coalition’s single point of entry and unified waiting list, performing eligibility determinations, serving as the coalition’s local resource and referral agency, processing payments to child care providers, conducting training of child care personnel, and carrying out other duties for the coalition. Many early learning coalitions continue to contract with a central agency, although, more recently, several coalitions have expanded their coalition staffs to provide these services directly. Other coalitions have divided these services into multiple contracts and sought alternative vendors for part of or all of these services.

### **Electronic Database of School Readiness Records**

The former Florida Partnership for School Readiness established a statewide electronic database system for tracking information about the state’s school readiness programs.<sup>10</sup> This system, cited as the Statewide Child Care Administration and Reporting System, has been continued by the Agency for Workforce Innovation’s Office of Early Learning and is composed of three integrated modules:

- *Child Care Management System – Enhanced Field System (CCMS-EFS).*—This module comprises data about children and child care providers for purposes of enrollment, eligibility determinations, attendance reporting, and payment of providers. This module serves as each coalition’s single point of entry and unified waiting list.
- *Statewide Reporting System (SRS).*—This module is used to track state and federal funds, produce aggregated statewide data on the school readiness system, and generate federal reports.
- *Child Care Resource and Referral (CCRR).*—This module maintains data about child care providers, including the market rates for their child care services, and about children referred by the resource and referral agency to these providers.

Early learning coalitions have access to this database system in their local communities. In addition, central agencies and other contractors assigned duties on behalf of a coalition are granted access to the system for purposes of performing those duties.

AWI recently began collecting pre-applications for the statewide prekindergarten program from interested parents.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 1002.72, F.S., to provide that individual records of a child enrolled in Florida’s Voluntary Prekindergarten Education Program held by an early learning coalition, the

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<sup>10</sup> Covansys Corporation operates the database system under contract with the Florida Partnership for School Readiness.

Agency for Workforce Innovation, or a Voluntary Prekindergarten Education Program provider are confidential and exempt. The bill specifies certain records in the exemption, including assessment data, health data, records of teacher observations, and personal identifying information of an enrolled child and his or her parent.

The exemption applies to individual records of a child enrolled in the VPK program held by:

- an early learning coalition;
- the Agency for Workforce Innovation; or
- a Voluntary Prekindergarten Education Program provider.

The exemption is made to apply retroactively.

This section permits a parent to inspect, to review and obtain copies of VPK records of his or her own child. Further, records may be released to certain governmental agencies, accrediting organizations, emergency personnel, the Auditor General, courts of competent jurisdiction and parties to an interagency agreement among coalitions, governmental agencies, and AWI. These entities are required to protect the records in a manner that will not permit the personal identification of an enrolled child or his or her parent by persons other than those authorized to receive the records.

This section provides that this public records exemption is repealed on October 2, 2010, unless reenacted after review by the Legislature under the Open Government Sunset Review Act.

**Section 2** provides a legislative statement of public necessity, explaining that the public records exemption for VPK records is necessary to ensure the privacy and safety of children enrolled in VPK programs.

**Section 3** specifies that the bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Section 24(c), Art. I of the State Constitution authorizes the Legislature to create exemptions to public records and meetings requirements by general law. These exemptions must be no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must contain only exemptions from the public records and meetings requirements and provisions governing enforcement and must relate to one subject. This bill appears to relate to one subject and contains only provisions creating exemptions and providing for enforcement.

In 2002, the voters approved a revision to this section of the constitution to provide that general laws granting exemptions from the constitutional open-government requirements must pass by a two-thirds vote of each house of the Legislature.<sup>11</sup>

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may create additional administrative costs associated with maintaining the confidentiality of prekindergarten records since the number of children served by early learning coalitions likely will increase. However, the actual increase is as of yet indeterminable.

C. Government Sector Impact:

The Agency for Workforce Innovation and early learning coalitions are currently responsible for maintaining the security of records generated through their administration of school readiness programs. The creation of this new public records exemption will likely increase the administrative responsibilities of AWI, the readiness coalitions and other entities that maintain records of children enrolled in the VPK program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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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<sup>11</sup> Article I, s. 24(c) Florida Constitution





## **VIII. Summary of Amendments:**

None.

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