

**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 Children, Families, and Elder Affairs Committee

BILL: SB 1046

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Foster Parents/DCFS

DATE: February 4, 2008      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill reenacts the public records exemption provisions for a foster parent applicant and a licensed foster parent found in s. 409.175(16)(a) and (b), F.S. The exemption applies to specific information of a sensitive nature held by the Department of Children and Families (DCF or “the department”) regarding a foster parent applicant and a licensed foster parent and his or her spouse, minor child, and other adult household member.

The bill repeals the exemption specific to Social Security numbers found within s. 409.175(16)(a) and (b), F.S., because it is duplicative of a more stringent exemption found in s. 119.071(5)(a)5, F.S.

The bill provides for an effective date of July 1, 2008.

**II. Present Situation:**

**Open Government Sunset Review Act**

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.<sup>1</sup> Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>2</sup>

<sup>1</sup> Section 119.15(3), F.S.

<sup>2</sup> Section 119.15(5)(a), F.S.

Pursuant to the Open Government Sunset Review Act, an exemption may be created, revised, or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.<sup>3</sup> An identifiable public purpose is served if the exemption meets one of three specified purposes and 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. 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.<sup>4</sup>

### **Foster Care**

The department is directed to establish and administer a program for dependent children and their families. Included in this program are foster homes and other settings that provide shelter and care to dependent children when they must be placed away from their families.<sup>5</sup>

All foster homes must be licensed.<sup>6</sup> Section 409.175(5), F.S., directs DCF to adopt rules for the licensure of family foster homes and establishes the minimum requirements for licensure with respect to:

- 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 licensing of family foster homes. These rules prescribe the minimum standards for licensure of a foster parent applicant.

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<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> Sections 409.145 and 409.165, F.S.

<sup>6</sup> Section 409.175(4), F.S.

Section 409.175, F.S., provides specific legislative requirements 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.

According to DCF, a foster parent applicant must volunteer a number of potentially sensitive documents as a result of these requirements and the department's need to determine the suitability of individuals to be foster parents. These documents include medical history, financial information, and neighbor references. If this information is made available to the public, potential foster parents may be discouraged from applying for licensure.

In 1998, an exemption was created to protect the personal information of a licensed foster parent and his or her spouse, child, and other household members.<sup>7</sup>

In 2003, the Legislature found that it is a public necessity to expand the public records exemption found in s. 409.175(16), F.S., to include the personal information of a foster parent applicant and information regarding a foster parent applicant's spouse, child, and other adult household member.<sup>8</sup>

The Legislature also found that a public records exemption for the medical records of potential applicants and those who were already licensed foster parents was a public necessity because matters of personal health are traditionally private and confidential. According to the Legislature, the public availability of medical records could lessen the willingness of prospective caregivers to reveal medical information, thus hindering the department's ability to assess foster parent applicants and licensed foster parents and hindering the department's attempts to make appropriate placements for foster children.<sup>9</sup>

In addition, the Legislature found that it was a public necessity to provide foster parent applicants with the same public records exemptions afforded licensed foster parents under s. 409.175(16), F.S., in order to encourage persons to apply to become licensed foster parents and avoid a potential chilling effect on the recruitment of such persons.<sup>10</sup> According to the department, this finding is still valid.<sup>11</sup>

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<sup>7</sup> Chapter 98-29, 1998 Laws of Florida.

<sup>8</sup> Chapter 2003-83, 2003 Laws of Florida.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> The Florida Senate, Committee on Children, Families, and Elder Affairs, *Open Government Sunset Review of Section 409.175(16)(a) and (b), F.S., Relating to Licensed Foster Parents and Foster Parent Applicants* (Interim Project Report 2008-205)(October 2007).

Today, Section 409.175(16), F.S., provides an exemption to the public records law for potentially sensitive information pertaining to a foster parent applicant or licensed foster parent and his or her spouse, minor child, and adult household member. The exempt information includes:<sup>12</sup>

- Home, business, work, childcare and school addresses and telephone numbers;
- Social Security numbers;
- Birth dates;
- Medical records;
- Floor plan of the home; and
- Photographs.

Under the provisions of s. 119.071(5)(a)5, F.S., all Social Security numbers held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution. Therefore, the exemption specific to Social Security numbers found in s. 409.175(a) and (b), F.S., is duplicative.

If a foster parent applicant does not receive a license, the exempt information becomes public five years after the date of application.<sup>13</sup> If a foster parent's license becomes inactive, the exempt information becomes public five years after the expiration date of the foster parent's license. In both cases, Social Security numbers and medical records remain exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.<sup>14</sup>

If a licensed foster parent becomes an adoptive parent, the adoptive parent's information remains exempt after the expiration of the adoptive parent's foster license.<sup>15</sup>

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

The bill will repeal the exemption specific to Social Security numbers and retain the remainder of the exemption for the specific information held by DCF regarding a foster parent applicant or a licensed foster parent and his or her spouse, minor child, and other adult household member, found in s. 409.175(16)(a) and (b), F.S.

The bill provides for an effective date of July 1, 2008.

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

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

None.

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<sup>12</sup> Section 409.175(16), F.S.

<sup>13</sup> Section 409.175(16)(a), F.S.

<sup>14</sup> Section 409.175(16)(b), F.S.

<sup>15</sup> *Id.*

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

This bill is the subject of the Open Government Sunset Review of s. 409.17(16)(a) and (b), F.S. and will retain the exemption from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

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:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.