

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 Governmental Operations Committee

BILL: SB 1046

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Foster Parents/DCFS

DATE: March 4, 2008

REVISED: 03/13/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ray</u>	<u>Jameson</u>	<u>CF</u>	Favorable
2.	<u>Cary</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	Favorable
4.	<u> </u>	<u> </u>	<u>RC</u>	
5.	<u> </u>	<u> </u>		
6.	<u> </u>	<u> </u>		

I. Summary:

This bill is the result of an Open Government Sunset Review by the Children, Families and Elder Affairs Committee. Section 409.175, F.S., makes exempt certain information regarding a foster parent applicant and licensed foster parent and his or her spouse, minor child, or other household member. The names of such persons are not exempt as that information is available elsewhere, such as in court records. The protected information includes the home, business, work, child care, or school addresses and telephone numbers, social security numbers, birth dates, medical records, home floor plans and photographs of these persons. Except for social security numbers and medical records, the exempt information may become public 5 years after the date of the application if the applicant does not receive a license or 5 years after the expiration of a license. If, however, a foster parent has become an adoptive parent, then the protected information remains exempt. This exemption will sunset on October 2, 2008, unless saved from repeal through reenactment by the Legislature.

Based upon the review, the bill deletes social security numbers from the exemption because a more stringent uniform exemption for social security numbers applies under s. 119.071(5), F.S. The bill reorganizes the exemption for clarity. Further, the bill strikes language related to release of the records by courts as other provisions of law govern such release.

The bill amends section 409.175, Florida Statutes.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment to the State Constitution that created Article I, s. 24 and raised the statutory right of access to public records to a constitutional level.

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³ records are available for public inspection. Section 119.011(11), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sounds recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁴

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

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.⁸ 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.⁹

Under the Open Government Sunset Review Act, an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and it is no broader than necessary to

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

³ Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. 1, § 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Section 119.15(3), F.S.

⁹ Section 119.15(5)(a), F.S.

meet the public purpose it serves.¹⁰ 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:

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.¹¹

Foster Care

The Department of Children and Families (DCF or 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.¹²

All foster homes must be licensed.¹³ Section 409.175(5), F.S., directs DCF to adopt rules for the licensure of family foster homes and establish requirements for licensure with respect to the following, among other requirements:

- 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 standards for licensure of a foster parent applicant.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ *Id.*

¹² Sections 409.145 and 409.165, F.S.

¹³ 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;¹⁴
- Inspections of the homes by the local health departments;¹⁵
- Pre-service and in-service training requirements;¹⁶
- The ability of the department to deny, suspend, or revoke a license and grounds for such actions;¹⁷
- Actions the department may take to ensure compliance with the licensing requirements;¹⁸ and
- The provision of general liability coverage for family foster homes through the Division of Risk Management.¹⁹

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.²⁰

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.²¹

In 2003, the Legislature expanded 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.²²

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.²³

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

¹⁴ Section 409.175(6)(b), F.S.

¹⁵ Section 409.175(6)(e), F.S.

¹⁶ Section 409.175(14), F.S.

¹⁷ Section 409.175(9), F.S.

¹⁸ Section 409.175(11)(a)-(e), F.S.

¹⁹ Section 409.175(15)(a), F.S.

²⁰ 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).

²¹ Chapter 98-29, L.O.F.

²² Chapter 2003-83, L.O.F.

²³ *Id.*

and avoid a potential chilling effect on the recruitment of such persons.²⁴ According to the department, this finding is still valid.²⁵

Today, s. 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:

- Home, business, work, child care, and school addresses and telephone numbers;
- Social security numbers;
- Birth dates;
- Medical records;
- Floor plan of the home; and
- Photographs.²⁶

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(16)(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.²⁷ 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.²⁸ However, in either case, 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.²⁹

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.³⁰

Court records

The courts have consistently held that the judiciary is not an "agency" for purposes of ch. 119, F.S.³¹ Further, s. 119.0714, F.S., provides the standard for how exempt records are to be treated in court files. That section states:

Nothing in this chapter shall be construed to exempt from s. 119.071(1) a public record that was made a part of a court file and that is not specifically closed by order of court . . .

²⁴ *Id.*

²⁵ The Florida Senate, Committee on Children, Families, and Elder Affairs, *supra* note 13.

²⁶ Section 409.175(16)(a) and (b), F.S.

²⁷ Section 409.175(16)(a), F.S.

²⁸ Section 409.175(16)(b), F.S.

²⁹ Section 409.175(16)(a) and (b), F.S.

³⁰ Section 409.175(16)(b), F.S.

³¹ *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995); *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

The section lists ten types of records that the Legislature has declared do not require a specific order of closure by the court in order to maintain their exempt status. The exemption under review is not one of the ten listed provisions that do not require a court order for closure.

III. Effect of Proposed Changes:

The bill repeals the public records exemption specific to social security numbers and retains the remainder of the exemption for the specific information held by the Department of Children and Families 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 implements the recommendations of the Open Government Sunset Review of this public records exemption. That review recommended reenactment of the exemption but noted that the Legislature may wish to repeal the portion related to social security numbers because this particular information is already rendered confidential and exempt under s. 119.071(5)(a)5., F.S.³²

Further, the bill strikes language related to release of the records by courts as other provisions of law govern such release.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill is the subject of the Open Government Sunset Review of s. 409.175(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 for certain personal information regarding a licensed foster parent or foster parent applicant and his or her spouse, minor children, and other adult household member.

The bill strikes language related to release of the records by courts as other provisions of law govern such release. The courts have consistently held that the judiciary is not an “agency” for purposes of ch. 119, F.S.³³ Further, s. 119.0714, F.S., provides the standard for how exempt records are to be treated in court files. That section states:

Nothing in this chapter shall be construed to exempt from s. 119.071(1) a public record that was made a part of a court file and that is not specifically closed by order of court . . .

³² The Florida Senate, Committee on Children, Families, and Elder Affairs, *supra* note 13, at 5.

³³ *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995); *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

The section lists ten types of records that the Legislature has declared do not require a specific order of closure by the court in order to maintain their exempt status. The exemption under review is not one of the ten listed provisions that do not require a court order for closure. As such, reiterating the court may release the records, without stating upon petition by whom and under what standards, is unnecessary to reiterate and potentially confusing.

C. Trust Funds Restrictions:

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.