

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting 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 purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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,
- Protecting trade or business secrets.

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 and a two-thirds vote for passage are required.² 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,³ then a public necessity statement and a two-thirds vote for passage are not required.

Foster Care

The Department of Children and Family Services (DCFS) must establish and administer a program for dependent children and their families. Included in this program are family foster homes,⁴ residential child-caring agencies,⁵ and child-placing agencies.⁶

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 409.175(2)(e), F.S., defines "family foster home" to mean "a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home."

⁵ Section 409.175(2)(j), F.S., defines "residential child-caring agency" to mean "any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in

All foster homes must be licensed.⁷ DCFS adopts rules for the licensure of family foster homes and establishes 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.⁸

Current law provides specific legislative requirements related to the licensing of foster homes, including:

- Background screening requirements;⁹
- Inspections of the homes by the local health departments;¹⁰
- Pre-service and in-service training requirements;¹¹
- The ability of the department to deny, suspend, or revoke a license and grounds for such actions;¹²
- Actions the department may take to ensure compliance with the licensing requirements;¹³ and
- The provision of general liability coverage for family foster homes through the Division of Risk Management.¹⁴

In order to verify compliance, DCFS is further required to compile and review information collected through application forms, background screenings, inspections of the homes or premises, interviews, and financial records.¹⁵ Therefore, as part of the application process, foster parent applicants are required to provide personal information so DCFS may determine fitness of such applicants to be foster parents.

Public Record Exemption

Current law provides a public record exemption for certain personal information of licensed foster parents and foster parent applicants, and their spouses, minor children, and other adult household members. This information includes their home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; home floor plans; and photographs of such persons.¹⁶

The information remains exempt for five years after the application date for foster parent applicants¹⁷ and for five years after the license expiration date for licensed foster parents,¹⁸ with the exception of

private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.”

⁶ Section 409.175(2)(d), F.S., defines “child-placing agency” to mean “a person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.”

⁷ Section 409.175(4), F.S.

⁸ Section 409.175(5), F.S.

⁹ Section 409.175(6)(b), F.S.

¹⁰ Section 409.175(6)(e), F.S.

¹¹ Section 409.175(14), F.S.

¹² Section 409.175(9), F.S.

¹³ Section 409.175(11), F.S.

¹⁴ Section 409.175(15)(a), F.S.

¹⁵ Section 409.175(6), F.S.

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

¹⁷ Section 409.175(16)(a), F.S.

¹⁸ Section 409.175(16)(b), F.S.

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social security numbers and medical information, which remain protected. Exempt information regarding a licensed foster parent who becomes an adoptive parent also remains protected.¹⁹

Additionally, information pertaining to the names, addresses, and telephone numbers of persons providing character or neighbor references regarding foster parent applicants or licensed foster parents is exempt.²⁰

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.²¹

2007 Interim Study

In 2007, the Division of Statutory Revision of the Office of Legislative Services certified for repeal the public record exemption for licensed foster parents and foster parent applicants. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption:

- Allows DCFS to effectively and efficiently administer the foster care program, which administration would be significantly impaired without the exemption; and
- 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 their safety.²²

Further, current law provides a general public record exemption for social security numbers.²³ As such, the exemption for social security numbers provided in s. 409.175(16)(a) and (b), F.S., is duplicative.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It also repeals the duplicative exemption for social security numbers, reorganizes the exemption, and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 409.175, F.S., to reenact the public record exemption for certain information regarding licensed foster parents and foster parent applicants.

Section 2 repeals s. 2 of chapter 2003-83, L.O.F., which provides for repeal of the exemption.

Section 3 provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁹ *Id.*

²⁰ Section 409.175(16)(c), F.S.

²¹ Section 2., chapter 2003-83, L.O.F.

²² See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 12 – 15 (on file with the Committee on State Affairs).

²³ Section 119.071(5)(a), F.S.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.