

**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.)

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SB 748

INTRODUCER: Children, Families and Elder Affairs Committee

SUBJECT: Open Government Sunset Review/Children's Services Councils

DATE: February 16, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Walsh	CF	<b>Favorable</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

**I. Summary:**

This bill is the result of an Open Government Sunset Review performed by the Committee on Children, Families, and Elder Affairs.

Section 125.901, F.S., provides a public records exemption for personal identifying information held by a children's services council (CSC) or by a service provider or researcher under contract with a CSC, concerning a child or the child's parent or guardian.<sup>1</sup> This exemption is subject to review under s. 119.15, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2009, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption.

This bill substantially amends the following section of the Florida Statutes: 125.901.

**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.<sup>2</sup> In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>3</sup>

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<sup>1</sup> Section 125.901(11)(a), F.S.

<sup>2</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>3</sup> Art. 1, § 24, Fla. Const.

The Public Records Act<sup>4</sup> specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency<sup>5</sup> records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, . . . tapes, photographs, films, sound 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.<sup>6</sup>

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.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>8</sup> 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.<sup>9</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>10</sup> provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>11</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.<sup>12</sup> 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>13</sup>

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<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> 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.”

<sup>6</sup> *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

<sup>7</sup> Art. 1, § 24(c), Fla. Const.

<sup>8</sup> *Id.*

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

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(6)(b), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.<sup>14</sup>

### **Children's Services Councils**

In 1986, the Legislature empowered Florida counties to create special, countywide districts for the sole purpose of funding children's services.<sup>15</sup> The statute authorizes counties to create (1) independent special districts, for which the county governing body must seek voter approval to levy annual *ad valorem* property taxes;<sup>16</sup> or (2) dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.<sup>17</sup> The governing boards of the special districts are known as CSCs. The membership of the CSCs is prescribed by statute.<sup>18</sup> There are eleven active CSCs in Florida.<sup>19</sup>

Pursuant to statute, the CSCs are authorized to exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies (except the public school system) that operate for the benefit of children;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services;
- Lease or buy necessary real estate, equipment and personal property; and
- Employ necessary personnel.

As funders, service providers, and researchers of children's issues and children's services, CSCs (and the service providers with whom they contract) receive and hold identifying information about individual children and their families, including names, addresses, telephone numbers, Social Security numbers, school records, medical records and photographs.

### **Public Records Exemption for Children's Services Councils**

In 2004, the Legislature amended s. 125.901, F.S., to create a public records exemption for "personal identifying information of a child or the child's parent or guardian, held by a children's service council . . . or other similar entity . . . or held by a service provider under contract with such entity . . ." <sup>20</sup> The Legislature explicitly found that the exemption does not extend to "nonidentifying information regarding services provided to, or research concerning, children." <sup>21</sup>

<sup>14</sup> Section 119.15(6)(a), F.S.

<sup>15</sup> Chapter 86-197, L.O.F.

<sup>16</sup> Section 125.901(1), F.S. Independent special districts are located in Broward, Hillsborough, Martin, Miami-Dade, Okeechobee, Palm Beach, Pinellas and St. Lucie counties. See Florida Children's Services Council (hereinafter, "FCSC"), *About Children's Services Councils*, [http://www.floridacsc.org/about\\_csc/index.php#anatomy](http://www.floridacsc.org/about_csc/index.php#anatomy) (last visited July 21, 2008).

<sup>17</sup> Section 125.901(7), F.S. Dependent special districts are located in Duval, Highlands, and Lake Counties. See FCSC, *About Children's Services Councils*, [http://www.floridacsc.org/about\\_csc/index.php#anatomy](http://www.floridacsc.org/about_csc/index.php#anatomy) (last visited July 21, 2008).

<sup>18</sup> Section 125.901(1), F.S.

<sup>19</sup> CSC of Broward County; Jacksonville Children's Commission (Duval); Children's Services Foundation of Highlands County, Inc.; Children's Board of Hillsborough County; CSC of Lake County; CSC of Martin County; The Children's Trust (Miami-Dade); CSC of Okeechobee County; CSC of Palm Beach County; JWB-CSC of Pinellas County; and CSC of St. Lucie County.

<sup>20</sup> Section 125.901(11)(a), F.S.

<sup>21</sup> Chapter 2004-86, s. 2, L.O.F.

The Legislature's statement of public necessity for this exemption suggests that the purpose for the exemption is to protect sensitive, personal information, the release of which could jeopardize the safety of the individuals involved:

The Legislature finds that public availability of information that directly reveals the identity of a child, or that indirectly identifies the child through the identification of the child's parent or guardian, would be contrary to the state's compelling interest in protecting the public safety. The Legislature finds that it is necessary to exempt such personal identifying information so that such information cannot be used to facilitate stalking, harassment, abduction, or abuse of any child who is the subject of such information. The Legislature finds that this interest outweighs any public benefit derived from releasing such identifying information.<sup>22</sup>

The exemption thus appears to have an identifiable public purpose that meets the goal of protecting sensitive personal information as stated in s. 119.15(6)(b)2, F.S. This public purpose is compelling and cannot be accomplished without making the sensitive information exempt. Because the exemption is limited to personally identifying information, it also appears to be no broader than necessary to meet the public purpose it serves.

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

The bill reenacts and saves from repeal s. 125.901(11), F.S., allowing the information held by CSCs and their contracted providers to remain exempt from public disclosure.

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

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

None.

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

This bill retains an existing public records exemption. This bill complies with the requirement of article I, section 24 of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

#### **C. Trust Funds Restrictions:**

None.

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<sup>22</sup> Chapter 2004-86, s. 2, L.O.F.

**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.