

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	HB 7049	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Government Operations Subcommittee; Ahern	111 Y's	0 N's
<b>COMPANION BILLS:</b>	SB 1108	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

HB 7049 passed the House on April 25, 2014, as SB 1108. The bill saves from repeal the public record exemption for certain information regarding dependent children of agency officers and employees.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for personal identifying information of a dependent child of an agency officer or employee when that child is insured under an agency group insurance plan.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 13, 2014, ch. 2014-94, L.O.F., and will become effective on October 1, 2014.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

#### Enrollees in an Agency Group Insurance Plan

In a case decided in October 2008,<sup>4</sup> the School Board of Polk County was ordered to disclose, in response to a public record request, public records regarding the school district's health insurance policy and the name, address, gender, age, title, and telephone number of both agency employees and dependents covered by the policy. The circuit court found that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was not applicable to the case at hand and that the request sought only non-exempt information under Florida law.

Subsequently, in response to a letter from former State Senator Dockery, the Florida Attorney General's Office issued an informal advisory legal opinion<sup>5</sup> as to whether ss. 112.08(7)<sup>6</sup> and 119.071(4)(b),<sup>7</sup> F.S., preclude the release of information that identifies school district employees, their dependents, and their health insurance plans. The attorney general concluded that while information relating to an insurance program participant's medical condition is clearly protected from disclosure, it is unclear whether the protection from disclosure extends to an enrollee's personal identifying information.

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> *Chandler v. School Board of Polk County*, Case No. 2008CA-004389.

<sup>5</sup> Informal opinion, November 10, 2008.

<sup>6</sup> Section 112.08(7), F.S., provides a public record exemption for all medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan.

<sup>7</sup> Section 119.071(4)(b), F.S., provides a public record exemption for medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee. This exemption is now found in s. 119.071(4)(b)1., F.S.

### Public Record Exemption under Review

In 2009, the Legislature created a public record exemption for certain information regarding dependent children of agency<sup>8</sup> officers and employees.<sup>9</sup> Specifically, personal identifying information of a dependent child of a current or former agency officer or employee, when the child is insured under an agency group insurance plan, is exempt<sup>10</sup> from public record requirements.<sup>11</sup> For purposes of the exemption, “dependent child” means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began prior to the person reaching the age of 18.<sup>12</sup>

Current law provides for retroactive application<sup>13</sup> of the public record exemption under review.<sup>14</sup> Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>15</sup>

During the 2013 interim, subcommittee staff sent questionnaires to agencies as part of the Open Government Sunset Review process.<sup>16</sup> Of the 22 agencies that responded, 17 recommended reenactment.<sup>17</sup> Common reasons agencies provided for recommending reenactment of the exemption include preventing identity theft and insurance fraud, and maintaining the safety and welfare of dependent children.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of a dependent child of a current or former agency officer or employee when the child is insured under an agency group insurance plan.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>8</sup> Section 119.011(2), F.S., defines the term “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>9</sup> Chapter 2009-104, L.O.F.; codified as s. 119.071(4)(b)2., F.S.

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>11</sup> Section 119.071(4)(b)2.a., F.S.

<sup>12</sup> The exemption provides that the term “dependent child” has the same meaning as in s. 409.2554, F.S.

<sup>13</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>14</sup> Section 119.071(4)(b)2.b., F.S.

<sup>15</sup> Section 119.071(4)(b)2.c., F.S.

<sup>16</sup> Agency responses to the questionnaire are on file with the Government Operations Subcommittee.

<sup>17</sup> Four agencies responding indicated no position or recommendation regarding the public record exemption, and one recommended repeal of the exemption. The Florida Parole Commission appears to have recommended repeal of the public record exemption, because it indicated the information is already protected under HIPPA; however, in *Chandler v. School Board of Polk County*, the circuit court found that HIPPA was not applicable. Agency responses to the questionnaire are on file with the Government Operations Subcommittee.

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.