

**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 Committee on Children, Families, and Elder Affairs

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BILL: SB 7048

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Client Records and Donor Information Collected by Regional Autism Centers

DATE: January 15, 2016      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>	_____	<b>CA Submitted as a Committee Bill</b>

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**I. Summary:**

SB 7048 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.

The Legislature has established seven regional autism centers (centers) throughout the state. The centers are tasked with providing nonresidential resources and training services to persons of all ages and all levels of intellectual functioning who have autism, an autistic-like disability, a dual sensory impairment, a sensory impairment with other handicapping conditions, or a pervasive developmental disorder that is not otherwise specified. Each center must provide services within its geographical region of the state, be operationally and fiscally independent, and coordinate services within and between state agencies, local agencies, and school districts.

Current law provides two public record exemptions for the centers. The first exemption provides that all records relating to a client of a center who receives the services of a center or participates in center activities, and all records relating to the client's family, are confidential and exempt from public record requirements. Confidential and exempt client records may be released in certain instances. The second exemption provides that personal identifying information of a donor or prospective donor to the center who desires to remain anonymous is confidential and exempt from public record requirements.

The bill reenacts the public record exemptions, which will repeal on October 2, 2016, if this bill does not become law.

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

## II. Present Situation:

### Open Government Sunset Review Act

The Open Government Sunset Review Act (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.<sup>2</sup>

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.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</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>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

### Regional Autism Centers

In 2002 the Legislature established six regional autism centers<sup>6</sup> (center) throughout the state, adding a seventh in 2005.<sup>7</sup> The seven centers are located at the:

- College of Medicine at Florida State University;<sup>8</sup>
- College of Medicine at the University of Florida;<sup>9</sup>

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

<sup>2</sup> Section 119.15(3), F.S.

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

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>6</sup> Chapter 2002-387, L.O.F.

<sup>7</sup> Chapter 2005-49, L.O.F.

<sup>8</sup> The College of Medicine at Florida State University serves Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties. Section 1004.55(1)(a), F.S.

<sup>9</sup> The College of Medicine at the University of Florida serves Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union Counties. Section 1004.55(1)(b), F.S.

- University of Florida Health Science Center at Jacksonville;<sup>10</sup>
- Louis de la Parte Florida Mental Health Institute at the University of South Florida;<sup>11</sup>
- Mailman Center for Child Development and the Department of Psychology at the University of Miami;<sup>12</sup>
- College of Health and Public Affairs at the University of Central Florida;<sup>13</sup> and
- Department of Exceptional Student Education at Florida Atlantic University.<sup>14</sup>

Current law requires the centers to provide nonresidential resources and training services to persons of all ages and all levels of intellectual functioning who have autism,<sup>15</sup> an autistic-like disability, a dual sensory impairment, a sensory impairment with other handicapping conditions, or a pervasive developmental disorder that is not otherwise specified.<sup>16</sup> Each center must be operationally and fiscally independent and provide services within its geographical region of the state.<sup>17</sup> Additionally, each center must coordinate services within and between state agencies, local agencies, and school districts. However, services offered by the center may not be duplicative of those offered by the agencies or school districts.<sup>18</sup>

Each center must provide expertise in autism, autistic-like behaviors, and sensory impairments; individual and direct family assistance; technical assistance and consultation services; professional training programs; public education programs; coordination and dissemination of local and regional information regarding available resources; and support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.<sup>19</sup>

### **Public Record Exemptions under Review**

In 2011, the Legislature created public record exemptions for the centers.<sup>20</sup> All records that relate to the client of a center who receives the center's services or participates in center

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<sup>10</sup> The University of Florida Health Science Center at Jacksonville serves Baker, Clay, Duval, Flagler, Nassau, and St. Johns Counties. Section 1004.55(1)(c), F.S.

<sup>11</sup> The Louis de la Parte Florida Mental Health Institute at the University of South Florida serves Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. Section 1004.55(1)(d), F.S.

<sup>12</sup> The Mailman Center for Child Development and the Department of Psychology at the University of Miami services Broward, Miami-Dade, and Monroe Counties, Section 1004.55(1)(e), F.S.

<sup>13</sup> The College of Health and Public Affairs at the University of Central Florida services Brevard, Lake, Orange, Osceola, Seminole, Sumter, and Volusia Counties. Section 1004.55(1)(f), F.S.

<sup>14</sup> The Department of Exceptional Student Education at Florida Atlantic University services Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties. Section 1004.55(1)(g), F.S.

<sup>15</sup> Section 393.063(3), F.S., defines "autism" as a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

<sup>16</sup> Section 1004.55(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 1004.55(4), F.S.

<sup>20</sup> Chapter 2011-22, L.O.F.; codified as s. 1004.55(6), F.S.

activities are confidential and exempt<sup>21</sup> from public record requirements. The public record exemption also applies to records that relate to the client's family. In addition, personal identifying information of a donor or prospective donor to a center who desires to remain anonymous is confidential and exempt from public record requirements.<sup>22</sup>

Upon request, the center must provide a copy of the client's individual record to the client, if he or she is competent, or to the client's parent or legal guardian, if he or she is incompetent.<sup>23</sup>

A center may release the confidential and exempt records relating to a client or the client's family as follows:

- To physicians, attorneys, or governmental entities having need of the confidential and exempt information to aid a client, as authorized by the client, if competent, or the client's parent or legal guardian if the client is incompetent.<sup>24</sup>
- In response to a subpoena or to persons authorized by order of the court.<sup>25</sup>
- To the State Board of Education or the Board of Governors of the State University System when the director of the center deems it necessary for the treatment of a client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

The center may release information contained in the confidential and exempt records in the following instances, provided that personal identifying information of the client or the client's family is removed:

- To a person engaged in bona fide research if that person agrees to sign a confidentiality agreement with the center, maintain the confidentiality of the information received, and, to the extent permitted by law and after the research has concluded, destroy any confidential and exempt information obtained.<sup>26</sup>
- By the director of the center or the director's designee for statistical and research purposes provided that any confidential and exempt information is removed in the reporting of such statistical or research data.<sup>27</sup>

The 2011 public necessity statement provides that the public record exemption for records relating to a client or the client's family is a public necessity because:

Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal

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<sup>21</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985). <sup>22</sup> Section 1004.55(6)(a)1., F.S.

<sup>22</sup> Section 1004.55(6)(a)1, F.S.

<sup>23</sup> Section 1004.55( 6)(b), F.S.

<sup>24</sup> Section 1004.55(6)(a)2., F.S.

<sup>25</sup> Section 1004.55(6)(a)3.a., F.S.

<sup>26</sup> Section 1004.55(6)(a)3.b., F.S.

<sup>27</sup> Section 1004.55(6)(a)3.a., F.S.

health matters pervades both the public and private health care sectors. For these reasons, the individual's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption.<sup>28</sup>

The public necessity statement further provides that release of records relating to a client or the client's family could be defamatory or could cause unwarranted damage to the name or reputation of the client or the client's family. It also provides that:

Protecting such records ensures an environment in which the discussion of the condition of autism or related disorders can be conducted in a free and open manner, thus enabling individuals with autism and their families to receive appropriate diagnostic and treatment information and cope more effectively with the enormous challenges posed by neurodevelopmental disorders and sensory impairments.<sup>29</sup>

With regard to the public record exemption for personal identifying information of a donor or prospective donor to the center, the 2011 public necessity statement provides that:

If the identity of a prospective or actual donor who desires to remain anonymous is subject to disclosure, there is a chilling effect on donations because donors are concerned about disclosure of personal information leading to theft and, in particular, identity theft, including personal safety and security.<sup>30</sup>

Pursuant to the Open Government Sunset Review Act, the public record exemptions will repeal on October 2, 2016, unless reenacted by the Legislature.<sup>31</sup>

### **Staff Review of the Exemptions**

During the 2015 interim, subcommittee staff sent questionnaires to each center as part of the Open Government Sunset Review process. All respondents recommended reenactment of the exemption without changes.<sup>32</sup> The centers indicated that the public record exemption for records relating to a client or the client's family provides the clients of the centers with the security of knowing that sensitive information about themselves or their child is protected from a public records request. This ensures the integrity of the relationship between the client and the center.<sup>33</sup> In addition, a center's response provided that the public record exemption for donor information is important because many of the donors are clients or are family member of clients.<sup>34</sup>

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<sup>28</sup> Section 1004.55(6)(a)4.a., F.S.

<sup>29</sup> Section 1004.55(6)(a)4.b., F.S.

<sup>30</sup> Section 2, ch. 2011-221, L.O.F.

<sup>31</sup> *Id.*

<sup>32</sup> Section 1004.55(6)(c), F.S.

<sup>33</sup> *Id.* at question 11.

<sup>34</sup> *Id.* at question 12.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 1004.55, F.S., to save from repeal the public record exemptions for regional autism centers. The bill removes the scheduled repeal of the public records exemptions, thereby reenacting:

- The public record exemption for all records relating to a client of the center or the client's family; and
- The public record exemption for personal identifying information of a donor or prospective donor to the center who desires to remain anonymous.

**Section 2** provides an effective date of October 1, 2016.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**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. Statutes Affected:**

This bill substantially amends section 1004.55(6), of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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