



## 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 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, 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.<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.

##### Florida Putative Father Registry

The Florida Putative Father Registry (Registry) permits a man who believes he may have fathered a child to assert his claim of paternity.<sup>4</sup> The Office of Vital Statistics of the Department of Health maintains the Registry.<sup>5</sup>

In order to claim parental rights, an unmarried biological father<sup>6</sup> must file with the Registry a notarized claim of paternity form (form), signed and notarized under oath, prior to the birth of the child and before

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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 or exempt records.

<sup>4</sup> Since its creation, 515 persons have registered with the Registry. Department of Health, Office of Vital Statistics, questionnaire response, July 2007, at question 2 (on file with the Committee on State Affairs).

<sup>5</sup> Section 63.054(1), F.S.

<sup>6</sup> Section 63.032(19), F.S., defines "unmarried biological father" to mean "the child's biological father who is not married to the child's mother at the time of conception or birth of the child and who has not been declared by a court of competent jurisdiction to be the legal father of the child."

a petition is filed for termination of parental rights.<sup>7</sup> By filing the form, the registrant consents to submit to DNA testing upon the request of any party with respect to the child referenced in the paternity claim.<sup>8</sup>

The form includes the registrant's name, address, date of birth, and physical description. The registrant also must provide, if known, the:

- Name, address, date of birth, and physical description of the mother;
- Name, date, and place of birth of the child or estimated date of birth of the expected minor child; and
- Date, place, and location of conception.<sup>9</sup>

### Public Record Exemption

Current law provides a public record exemption for all information contained in the Registry. The law authorizes release of the information to:

- An adoption entity,<sup>10</sup> upon the filing of a request for a diligent search of the Registry in connection with the planned adoption of a child.
- The registrant unmarried biological father, upon receipt of a notarized request for a copy of his Registry entry only.
- The court, upon issuance of a court order concerning a petitioner acting pro sé in an action under this chapter.<sup>11</sup>

In addition, the database comprising the Registry must be kept separate from all other databases and may not be accessed by any other state or federal entity.<sup>12</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>13</sup>

### 2007 Interim Study

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

- Allows the Office of Vital Statistics to effectively and efficiently administer the Registry, 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.<sup>14</sup>

### **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemption. It authorizes additional access to the Registry by the birth mother, upon receipt of a notarized request for a copy of

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<sup>7</sup> Section 63.054(1), F.S.

<sup>8</sup> Section 63.054(2), F.S.

<sup>9</sup> Section 63.054(3), F.S.; *see also*, Form DH 1965 (Florida Putative Father Registry Claim of Paternity) available at [www.doh.state.fl.us/planning\\_eval/vital\\_statistics/putative.htm](http://www.doh.state.fl.us/planning_eval/vital_statistics/putative.htm) (last visited December 11, 2007).

<sup>10</sup> Section 63.032(3), F.S., defines "adoption entity" to mean the Department of Children and Family Services (DCFS), an agency (any child-placing agency licensed by DCFS to place minors for adoption), a child-caring agency registered under s. 409.176, F.S., an intermediary (an attorney who is placing or intends to place a child for adoption), or a child-placing agency licensed in another state which is qualified by DCFS to place children in Florida.

<sup>11</sup> Section 63.0541(1), F.S.

<sup>12</sup> Section 63.0541(2), F.S.

<sup>13</sup> Section 2., chapter 2003-56, L.O.F.

<sup>14</sup> *See* the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 5 – 7 (on file with the Committee on State Affairs).

any entry in which she is identified as the birth mother. In addition, the bill removes superfluous language and reorganizes the section.

C. SECTION DIRECTORY:

Section 1 amends s. 63.0541, F.S., to reenact the public record exemption for the Florida Putative Father Registry.

Section 2 repeals s. 2 of chapter 2003-56, 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.

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

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.