

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1249 Pub. Rec./Foster Parent Applicant and Foster Parent Names/Department of Children and Families

**SPONSOR(S):** Overdorf and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N	Christy	Brazzell
2) Oversight, Transparency & Public Management Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

HB 1249 creates a public record exemption for the name of a foster parent applicant, licensed foster parent, and their spouse, minor child, and other adult household members. This information would be confidential and exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution.

The bill subjects the exemptions to review and repeal on October 2, 2024, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act. The bill also includes a public necessity statement as required by the Florida Constitution.

The bill has an effective date of July 1, 2019.

The bill does not have a fiscal impact.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created public record or public meeting exemption. The bill creates public record exemptions; thus, it appears to require a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Child Welfare System**

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children. Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.<sup>1</sup>

As of January 31, 2019, 10,989 children were receiving services in their home, while 23,616 children were in out-of-home care.<sup>2</sup> Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.<sup>3</sup>

#### Foster Care

Foster care is care provided to a child in a foster family or boarding home, group home, agency boarding home, or child care institution.<sup>4</sup> A family foster home means a licensed 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.<sup>5</sup> Foster homes are licensed and inspected regularly.<sup>6</sup>

The Department of Children and Families (DCF) contracts with Community-Based Care (CBC) partner agencies. The CBC's are tasked with recruiting and training families across Florida who are willing to serve as foster parents.<sup>7</sup> As of November 2018, the total number of licensed foster homes was 5,358.<sup>8</sup>

To qualify as a potential foster parent, applicants must go through a rigorous interview process, complete a training program, and participate in a home inspection and background check.<sup>9</sup> Foster parents are expected to:<sup>10</sup>

- Provide parenting that consists of a loving commitment to the child and the child's safety and wellbeing;
- Provide opportunities to develop the child's interests and skills;

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<sup>1</sup> S. 409.175, F.S.

<sup>2</sup> Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, January 2019, p. 31, available at [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_FEB\\_2019.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_FEB_2019.pdf) (last visited March 11, 2019).

<sup>3</sup> S. 409.175, F.S.

<sup>4</sup> S. 39.01(3), F.S.

<sup>5</sup> The Department of Children and Families, *Community-Based Care*, available at <http://www.myflfamilies.com/service-programs/community-based-care> (last visited March 11, 2019).

<sup>6</sup> Id.

<sup>7</sup> Florida Department of Children and Families, *Fostering Definitions*, <http://www.dcf.state.fl.us/service-programs/foster-care/definitions.shtml> (last visited March 11, 2019).

<sup>8</sup> Florida Department of Children and Families, *Placement in Out-of-Home Care Data*, available at <http://www.dcf.state.fl.us/programs/childwelfare/placement.shtml> (last visited March 11, 2019).

<sup>9</sup> Florida Department of Children and Families, *How Do I Become a Foster Parent?*, <http://www.dcf.state.fl.us/service-programs/foster-care/how-do-i.shtml> (last visited March 11, 2019).

<sup>10</sup> Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care*, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf> (last visited March 11, 2019).

- Care for the child in light of the child’s culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child’s wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;
- Participate fully in the child’s medical, psychological, and dental care as they would for their biological child; and
- Support the child’s school success by participating in school activities and meetings.

While foster parents receive a monthly stipend<sup>11</sup> to help cover costs associated with fostering a child, this funding will generally not pay for everything a foster child needs.<sup>12</sup> As of January 1, 2019, foster parents receive the following monthly room and board rates per child:<sup>13</sup>

- \$466.65 for children ages zero to five;
- \$478.60 for children ages six to twelve; and
- \$560.19 for children ages thirteen to twenty-one.

## Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>14</sup> The public also has a right to notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>15</sup> The Legislature’s meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>16</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>17</sup> guarantees every person’s right to inspect and copy any state or local government public record.<sup>18</sup> The Sunshine Law<sup>19</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.<sup>20</sup>

<sup>11</sup> S. 409.145(4), F.S.

<sup>12</sup> *Supra* note 7.

<sup>13</sup> Florida Department of Children and Families, *2019 Foster Parent Cost of Living Allowance Increase*, (January 14, 2019), available at [http://www.centerforchildwelfare.org/kb/policymemos/2019-FP\\_CostOfLivingAllowance.pdf](http://www.centerforchildwelfare.org/kb/policymemos/2019-FP_CostOfLivingAllowance.pdf) (last visited March 11, 2019).

<sup>14</sup> FLA. CONST., art. I, s. 24(a).

<sup>15</sup> FLA. CONST., art. I, s. 24(b).

<sup>16</sup> FLA. CONST., art. I, s. 24(b).

<sup>17</sup> Chapter 119, F.S.

<sup>18</sup> Section 119.011(12), F.S., defines “public record” as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S. defines “agency” as 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 this chapter, 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. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature’s records are public pursuant to section 11.0431, F.S.

<sup>19</sup> S. 286.011, F.S.

<sup>20</sup> S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or

The Legislature may create an exemption to public records or open meetings requirements.<sup>21</sup> An exemption must specifically state the public necessity justifying the exemption<sup>22</sup> and must be tailored to accomplish the stated purpose of the law.<sup>23</sup> There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential.

### Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or Article I, s. 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in s. 119.07(1)(a), F.S.<sup>24</sup>

### Confidential Records

The term "confidential" is not defined in the Public Records Act; however, it is used in Article I, s. 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute.<sup>25</sup>

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

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>26</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>27</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>28</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption; or
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.<sup>29</sup>

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between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>21</sup> FLA. CONST., art. I, s. 24(c).

<sup>22</sup> FLA. CONST., art. I, s. 24(c).

<sup>23</sup> FLA. CONST., art. I, s. 24(c).

<sup>24</sup> See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S., [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." *Id.* at 686.

<sup>25</sup> *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att'y Gen. (2004) and 86-97 Fla Op. Att'y Gen. (1986).

<sup>26</sup> S. 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>27</sup> S. 119.15(3), F.S.

<sup>28</sup> S. 119.15(6)(b), F.S.

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>30</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>31</sup> In examining an exemption, the OGSR asks the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>32</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.<sup>33</sup>

### Foster Parent Public Record Exemption

Section 409.175, F.S., addresses the licensure of family foster homes. For a foster parent applicant and the applicant's spouse, minor child, and other adult household members, the following information held by DCF is exempt from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution:<sup>34</sup>

- Home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- Floor plans of the home; and
- Photographs of such persons.

If a foster parent applicant does not receive a license, this information becomes public five years after the date of application. However, medical records remain exempt regardless of licensure.<sup>35</sup>

For a licensed foster parent and the foster parent's spouse, minor child, and other adult household member, the same information is exempt.<sup>36</sup> If a foster parent's license is no longer active, this information becomes public five years after the license's expiration date, subject to two exceptions: medical records remain exempt regardless of the license's status and all of this information remains exempt if a licensed foster parent becomes an adoptive parent.<sup>37</sup>

The original public records exemption for foster parents passed in 1998 initially applied only to certain information contained in the licensing file for licensed foster parents. The public necessity statement expressed concern that foster parents and their families may be threatened, harassed, or harmed if personal information were released. It also included findings that potential foster parents might be reluctant to reveal information necessary to evaluate their abilities to make appropriate placements for children and the public availability would have a negative effect on foster parent recruitment and retention.

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> S. 119.15(6)(a), F.S. The questions are: What specific records or meetings are affected by the exemption? Whom does the exemption uniquely affect, as opposed to the public? What is the identifiable public purpose or goal of the exemption? Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? Is the record or meeting protected by another exemption? Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>32</sup> FLA. CONST., art. I, s. 24(c).

<sup>33</sup> S. 119.15(7), F.S.

<sup>34</sup> S. 409.175(16)(a), F.S.

<sup>35</sup> Id.

<sup>36</sup> S. 409.176(16)(b), F.S.

<sup>37</sup> Id.

During the Open Government Sunset Review (OGSR) in 2003, the Legislature expanded the exemption to families who were pending licensure or had been denied, thus protecting their information as well, and to include medical records. The Legislature also removed the requirement that the information be in the licensing file to be protected and instead protected the information as long as it was held by DCF. The public necessity statement cited the private and confidential nature of personal health matters and the potential negative effect on recruitment.

The 2008 OGSR resulted in retaining the exemption with only minor amendments.

### **Violence against Foster Parents**

In August 2018, a biological mother shot a 77-year-old foster parent in Florida during an armed burglary of the foster parent's home where the biological mother's two children had been placed. When the foster parent refused to let the biological mother leave with her two children, a struggle ensued, and biological mother shot the foster mother twice. The biological mother was charged with attempted first-degree murder with a deadly weapon, two counts of conspiracy to kidnap, and armed burglary.<sup>38</sup>

DCF released a statement that no personal information about the 77-year-old foster parent was released by the department. However, in light of the incident, DCF refused a public record request for a list of names of all licensed foster parents and their corresponding counties as DCF was unable to ensure that the release of this information would not jeopardize the safety of foster parents or the children in their care.<sup>39</sup> After this, several foster parents contacted the department with concerns about the potential release of their names, stating that they would no longer choose to be foster parents if that occurred.<sup>40</sup>

### **Effect of Proposed Changes**

HB 1249 expands the information of foster parents and applicants that is confidential and exempt from disclosure under s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution. This bill adds the names of licensed foster parents, foster parent applicants, and their spouse, minor child, and other adult household members as confidential and exempt.

The bill makes these exemptions subject to review and repeal on October 2, 2024, in accordance with s. 119.15, F.S., the Open Government Sunset Review Act.

The bill also includes a public necessity statement as required by the Florida Constitution which states that this exemption will ensure that private and sensitive information regarding foster children remains confidential. If a foster parent applicant, licensed foster parent, or any associated person as described in s. 409.175, F.S., has an unusual name, this information could be used to obtain information on the foster child, such as the child's name or location. Additionally, the public necessity statement states that the disclosure of the names of foster parent applicants, licensed foster parents, or any associated person as described in s. 409.175, F.S., would compromise the family's privacy and stifle DCF's efforts to recruit and retain foster parent applicants and licensed foster parents.

The bill takes effect on July 1, 2019.

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 409.175, F.S., relating to public record exemption for foster parents.

<sup>38</sup> CBS Miami, *Foster Parent Shot, Mother Kidnaps Children*, (August 31, 2018), <https://miami.cbslocal.com/2018/08/31/mother-kidnapped-children-shot-foster-parent/> (last visited March 11, 2019).

<sup>39</sup> Florida Department of Children and Families, *Letter on Foster Parent Records*, (September 11, 2018), <http://floridafapa.org/dcf-issues-letter-on-foster-parent-records/> (last visited March 11, 2019).

<sup>40</sup> Department of Children and Families, *Agency Analysis of 2019 HB 1249*, p. 5 (Feb. 26, 2019).

**Section 2:** Provides a statement of public necessity.

**Section 3:** Provides an effective date.

## 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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

#### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. **The bill creates new exemptions; thus, it requires a two-thirds vote for final passage.**

#### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new exemptions; thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rule-making or rule-making authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**