

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1622

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Montford

SUBJECT: Public Records/Foster Parent and Foster Parent Applicant Names

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1622 amends s. 409.175, F.S., which contains a public records exemption for foster parents, applicants, their families, and their adult household members. The bill expands the exemptions to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution. Currently, the following information held by the Department of Children and Families (DCF or department) regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt:

- The home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- The floor plan of the home; and
- Photographs of those individuals.

The bill also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

The bill subjects the exemption to review and repeal on October 2, 2024, unless it is reenacted, 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 State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

The bill is not expected to have a fiscal impact on the state and takes effect July 1, 2019.

II. Present Situation:

Family Foster Homes and Foster Parents

The Florida Statutes do not define the term “foster parent,” but foster parents are included in the definition of the term “other person responsible for a child’s welfare.” Included under this definition are specified individuals who are legally responsible for the child’s welfare in a residential setting, as well as an adult sitter or relative entrusted with a child’s care.¹ A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian receive 24-hour care.² Foster homes are classified by levels of licensure and inspected regularly.³

To qualify as a potential foster parent, applicants must complete a 20 to 30 hour training program, undergo a criminal and child abuse background check, participate in a home inspection and participate in a home study.⁴ Foster parents are expected to:

- 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;
- 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;

¹ Section 39.01(54), F.S.

² Section 409.175, F.S.

³ *Id.*

⁴ Florida Department of Children and Families, *How Do I Become a Foster Parent?*, Available at: <http://www.dcf.state.fl.us/service-programs/foster-care/how-do-i.shtml> (Last visited March 27, 2019).

- 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.⁵

Foster parents receive a monthly stipend to help cover costs associated with fostering a child, however, this funding will typically not cover everything a foster child needs. As of January 1, 2019, foster parents receive the following monthly room and board rates per child:⁶

- \$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 Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁷ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.⁸

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁹ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁰ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹¹

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹² The Florida Supreme

⁵ Section 409.145, F.S. Also see 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 27, 2019).

⁶ 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 (Last visited March 28, 2019).

⁷ FLA. CONST., art. I, s. 24(a).

⁸ *Id.*

⁹ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

¹⁰ Public records laws are found throughout the Florida Statutes.

¹¹ Section 119.01(1), F.S.

¹² Section 119.011(12), F.S., defines “public record” to mean “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” to mean 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,

Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹³ A violation of the Public Records Act may result in civil or criminal liability.¹⁴

The Legislature may create an exemption to public records requirements.¹⁵ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁶ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁷ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁸

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁹ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁰

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.²¹ 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.²²

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.²³ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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.”

¹³ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁴ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹⁹ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁰ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is 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.

²² Section 119.15(3), F.S.

²³ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁴
- 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;²⁵ or
- It protects trade or business secrets.²⁶

The OGSR also requires specified questions to be considered during the review process.²⁷ In examining an exemption, the OGSR asks the Legislature to carefully 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.²⁸ 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 remain exempt unless otherwise provided for by law.²⁹

Foster Parent Public Record Exemption

Legislation creating the original public records exemption for foster parents was enacted in 1998 and applied only to certain information contained in the licensing file for licensed foster parents.³⁰ The public necessity statement expressed concern that foster parents and their families may be threatened, harassed, or harmed if personal information were released.³¹ The bill analysis stated that according to the department, foster families report that they are occasionally contacted inappropriately by persons who pose a threat to their safety as a result of the release of information in the licensure file. The department also reported that public access to personal identifying information about foster parents discourages potential foster parents from applying for licensure.³²

During the Open Government Sunset Review in 2003, the legislature expanded the exemption to include families who were pending licensure or had been denied, thus protecting their

²⁴ Section 119.15(6)(b)1., F.S.

²⁵ Section 119.15(6)(b)2., F.S.

²⁶ Section 119.15(6)(b)3., F.S.

²⁷ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁸ FLA. CONST. art. I, s. 24(c).

²⁹ Section 119.15(7), F.S.

³⁰ Ch. 98-29, Laws of Fla. Available at: <http://laws.flrules.org/1998/29> (Last visited March 29, 2019).

³¹ *Id.*

³² Florida House of Representatives, Final Bill Analysis and Economic Impact Statement, CS/CS/HB 1849, May 11, 1998. Available at: <http://archive.flsenate.gov/data/session/1998/House/bills/analysis/pdf/HB1849S2Z.CFE.pdf> (Last visited March 28, 2019).

information as well, and also expanded the exemption to include medical records.³³ 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 the department.³⁴ The public necessity statement cited the private and confidential nature of personal health matters and the potential negative effect on recruitment.³⁵ The expansion of the public records exemption was reviewed in 2008 and resulted in the legislature saving the exemption from repeal with only minor amendments.³⁶

Current law addresses multiple issues related to the licensure of family foster homes, including requirements and protections for foster parents and applicants. The following information held by the department relating to a foster parent applicant and the applicant's spouse, minor child, and other adult household members is exempt from public records:³⁷

- 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.³⁸

For a licensed foster parent and the foster parent's spouse, minor child, and other adult household member, the same information is exempt.³⁹ 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.⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies and public records exemption, to expand the current public record exemption for a foster parent applicant, licensed foster parent, and the spouse, minor children, and other adult household members of the applicant or licensee to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution.

Section 1 also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care

³³ Ch. 03-83, Laws of Fla.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Ch. 08-169, Laws of Fla.

³⁷ Section 409.175(16)(a), F.S.

³⁸ *Id.*

³⁹ Section. 409.175(16)(b), F.S.

⁴⁰ *Id.*

which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

Section 1 also provides the exemptions added are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity, as required by the State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting 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 bill creating or expanding an exemption to the public records requirements. The bill expands an existing exemption. Therefore, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement identifies that protecting the identity of foster parents will encourage more applicants to the foster parent program, and thus better serve children in the foster system. The bill prevents the disclosure of the names of foster parents, foster parent applicants, and their families held by the department to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 s. 409.175, F.S. of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 1, 2019:

- Provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

- Clarifies exactly which individuals will have their names held confidential and exempt.
- Expands the public necessity statement to provide information that foster parents are concerned that their names being released and may not continue to foster as a result.
- Expands the public necessity statement by acknowledging that there is a need to maintain government accountability by balancing the public's right to know with protecting and recruiting foster parents.

B. Amendments:

None.