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# **Government Efficiency & Accountability Council**

REVISED

**Wednesday, March 12, 2008  
2:10 PM – 3:30 PM  
Morris Hall (17 HOB)**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Government Efficiency & Accountability Council

**Start Date and Time:** Wednesday, March 12, 2008 02:10 pm

**End Date and Time:** Wednesday, March 12, 2008 03:30 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 1.33 hrs

**Consideration of the following bill(s):**

HB 37 Contracting for Efficiency or Conservation Measures by State Agencies by McKeel

**Consideration of the following proposed council bill(s):**

PCB GEAC 08-05 -- Eligibility Requirements for Property Owners in Obtaining Homestead Exemptions

PCB GEAC 08-06 -- OGSR Florida Putative Father Registry

PCB GEAC 08-08 -- OGSR Paratransit Services

PCB GEAC 08-09 -- OGSR Foster Parents

PCB GEAC 08-10 -- OGSR Florida Kidcare Program

PCB GEAC 08-11 -- OGSR Food Safety and Food Illness Investigations

PCB GEAC 08-14 -- Welfare Transition Trust Fund

PCB GEAC 08-18 -- Public Record Exemption/Complaint of Discrimination

PCB GEAC 08-19 -- Construction Management

**NOTICE FINALIZED on 03/10/2008 16:19 by MXE**




### HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 37 Contracting for Efficiency or Conservation Measures by State Agencies

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

**TIED BILLS:** \_\_\_\_\_ **IDEN./SIM. BILLS:** \_\_\_\_\_

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Audit & Performance	6 Y, 0 N	Barnum <i>RS</i>	De La Paz 
2) Government Efficiency & Accountability Council	_____	_____	_____
3) Policy & Budget Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

#### SUMMARY ANALYSIS

HB 37 amends the Guaranteed Energy Performance Savings Contracting Act by expanding the authority of state agencies, municipalities, or political subdivisions to contract for water and wastewater efficiency and conservation measures. The Act currently permits agencies to enter into a guaranteed energy performance savings contracts merely based upon energy savings, under specified circumstances. Specifically, the bill makes the following changes to current statutory law:

- Adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act
- Adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies.
- Expands the express list of conservation measures that may be contemplated.
- Adds water and wastewater efficiency and conservation measures to the law relating to consolidated financing of deferred-payment purchases, to conform to the changes in the bill.

The bill may have a positive fiscal impact on state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,<sup>1</sup> later amended to become the Guaranteed Energy Performance Savings Contracting Act.<sup>2</sup> The program permits agencies, defined as "the state, a municipality, or a political subdivision,"<sup>3</sup> to enter into a guaranteed energy performance savings contract, under specified circumstances.<sup>4</sup>

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An "energy conservation measure" is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.<sup>5</sup> Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.<sup>6</sup> The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.

<sup>1</sup> Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

<sup>2</sup> Ch. 2001-81, L.O.F.

<sup>3</sup> Section 489.145(3)(a), F.S.

<sup>4</sup> See Section 489.145(4), F.S.

<sup>5</sup> Section 489.145(3)(b), F.S.

<sup>6</sup> Section 489.145(4), F.S.

- Provisions for an allocation of any excess savings among the parties.
- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.

The Department of Management Services and The Office of the Chief Financial Officer have developed model contracts and related documents for use by state agencies and require the agencies to submit them to the Office of the Chief Financial Officer for its approval under the authority granted under s.489.145, F.S. These model documents are the audit agreement between the agency and the qualified provider, the financing agreement, and the performance contract.<sup>7</sup>

### Water and Wastewater Conservation and Efficiency

The Florida Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, water efficiency continues to play an important role not only in protecting water sources and improving water quality, but also in reducing the amount of energy used to treat, pump and heat water – which currently accounts for approximately eight percent of U.S. energy demand.<sup>8</sup> Further, the EPA reports that water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources.<sup>9</sup> According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.<sup>10</sup>

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.<sup>11</sup>

### Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following measures to the list of measures within the current definition of an "energy conservation measure:"

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- Cool roof coating.<sup>12</sup>

<sup>7</sup> Interview of Clint Sibille of Department of Management Services, February 23, 2007

<sup>8</sup> EPA Promotes Water Efficiency in the Home ([http://www.epa.gov/water/water\\_efficiency.html](http://www.epa.gov/water/water_efficiency.html))

<sup>9</sup> Frequently Asked Questions About Wastewater Management (<http://www.epa.gov/owm/faqall.htm>)

<sup>10</sup> Using Water Efficiently: Ideas for Communities (<http://www.epa.gov/watersense/pubs/comm.htm>)

<sup>11</sup> Domestic Wastewater (<http://www.dep.state.fl.us/water/wastewater/dom/index.htm>)

<sup>12</sup> According to the EPA a "cool roof" is a roofing material that has high solar reflectance, typically resulting in a release of a large percentage of absorbed heat. This keeps the material cooler and helps to reduce the heat island effect. Heat Island Effect (<http://www.epa.gov/heatisland/strategies/index.html>)

The bill provides that the report that is currently required to be submitted to the agency from the performance savings contractor prior to the design and installation of conservation measures, must include a summary of the costs associated with "operational improvements" if such improvements are the basis for the proposed cost savings.

The bill removes the word "energy" from the section heading of s. 489.145, F.S., and changes the short title to the "Guaranteed Performance Savings Contracting Act," in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. "Water and wastewater" are added to "energy" as the objects of the contracting process, and "efficiency" is added to "conservation" for the types of measures contemplated:

The bill revises definitions to include the qualifying activity and tasks of "retrofitting or adding to existing facilities or infrastructure," which was previously identified to include only "new construction" or "additions" to existing facilities. This would extend the range of impact of s. 489.145, F.S. from only new construction or additions, to all existing facilities owned by the state.

The bill amends s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) to conform with the changes proposed by this bill by adding "water and wastewater efficiency" to the section within a reference to s. 489.145, F.S. Currently, s. 287.064, F.S. includes the cost of energy conservation measures, and not that of water or wastewater efficiency, as a cost that may be financed pursuant to a master equipment financing agreement.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 489.145, F.S., adding "water and wastewater efficiency" to the scope of the re-titled "Guaranteed Performance Savings Contracting Act," and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

**Section 2.** Amends s. 287.064, F.S., adding "water and wastewater efficiency" to the statute addressing consolidated financing of deferred payment purchases.

**Section 3.** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor's initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute. The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The 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:

A concern has been raised relating to the numerous deletions of the word "energy" in s. 489.145, F.S., making the statute's title a nonspecific reference as to the type of contract the statute addresses.

D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES



1                                   A bill to be entitled  
 2           An act relating to contracting for efficiency or  
 3           conservation measures by state agencies; amending s.  
 4           489.145, F.S.; including water and wastewater efficiency  
 5           and conservation in the measures encouraged by the  
 6           Legislature; revising definitions; providing for inclusion  
 7           of water and wastewater efficiency and conservation  
 8           measures in guaranteed performance savings contracts  
 9           entered into by state agencies, municipalities, or  
 10          political subdivisions; amending s. 287.064, F.S.,  
 11          relating to consolidated financing of deferred-payment  
 12          purchases, to conform; providing an effective date.

14   Be It Enacted by the Legislature of the State of Florida:

16           Section 1.   Section 489.145, Florida Statutes, is amended  
 17   to read:

18           489.145   Guaranteed ~~energy~~ performance savings  
 19   contracting.--

20           (1)   SHORT TITLE.--This section may be cited as the  
 21   "Guaranteed ~~Energy~~ Performance Savings Contracting Act."

22           (2)   LEGISLATIVE FINDINGS.--The Legislature finds that  
 23   investment in energy, water, and wastewater efficiency or  
 24   conservation measures in agency facilities can reduce the amount  
 25   of energy and water consumed and wastewater to be treated and  
 26   produce immediate and long-term savings. It is the policy of  
 27   this state to encourage each agency ~~agencies~~ to invest in  
 28   energy, water, and wastewater efficiency or conservation

29 measures that provide such reductions ~~reduce energy consumption,~~  
 30 produce a cost savings for the agency, and, for energy measures,  
 31 improve the quality of indoor air in public facilities and to  
 32 operate, maintain, and, when economically feasible, build or  
 33 renovate existing agency facilities in such a manner as to  
 34 minimize energy and water consumption and wastewater production  
 35 and maximize energy, water, and wastewater savings. It is  
 36 further the policy of this state to encourage each agency  
 37 ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,  
 38 water, and wastewater efficiency or conservation measures in  
 39 additional energy, water, and wastewater efficiency or  
 40 conservation measures efforts.

41 (3) DEFINITIONS.--As used in this section, the term:

42 (a) "Agency" means the state, a municipality, or a  
 43 political subdivision.

44 (b) "Energy, water, or wastewater efficiency or  
 45 conservation measure" means a training program, facility  
 46 alteration, or equipment purchase to be used in new facilities  
 47 or in retrofitting or adding to existing facilities or  
 48 infrastructure that ~~construction, including an addition to an~~  
 49 ~~existing facility, which~~ reduces energy, water, wastewater, or  
 50 operating costs and includes, but is not limited to:

51 1. Insulation of the facility structure and systems within  
 52 the facility.

53 2. Storm windows and doors, caulking or weatherstripping,  
 54 multiglazed windows and doors, heat-absorbing, or heat-  
 55 reflective, glazed and coated window and door systems,  
 56 additional glazing, reductions in glass area, and other window

57 and door system modifications that reduce energy consumption.

58 3. Automatic energy control systems.

59 4. Heating, ventilating, or air-conditioning system  
60 modifications or replacements.

61 5. Replacement or modifications of lighting fixtures to  
62 increase the energy efficiency of the lighting system, which, at  
63 a minimum, must conform to the applicable state or local  
64 building code.

65 6. Energy recovery systems.

66 7. Cogeneration systems that produce steam or forms of  
67 energy such as heat, as well as electricity, for use primarily  
68 within a facility or complex of facilities.

69 8. Energy conservation measures that provide long-term  
70 operating cost reductions or significantly reduce Btu consumed.

71 9. Renewable energy systems, such as solar, biomass, or  
72 wind systems.

73 10. Devices that reduce water consumption or wastewater  
74 ~~sewer~~ charges.

75 11. Energy storage systems, such as fuel cells and thermal  
76 storage.

77 12. Energy-generating ~~generating~~ technologies, such as  
78 microturbines.

79 13. Cool roof coating.

80 14. Automated electronic or remotely controlled systems or  
81 measures that reduce direct personnel costs.

82 15. Equipment upgrades that improve the accuracy of  
83 billable revenue-generating systems.

84 16.13- Any other repair, replacement, or upgrade of

85 existing equipment.

86 17. Any other conservation measures that provide  
 87 measurable operating cost reductions or billable revenue  
 88 increases.

89 (c) "Energy, water, or wastewater cost savings" means a  
 90 measured reduction in the cost of fuel, energy or water  
 91 consumption, or wastewater production and stipulated improvement  
 92 in the operation and maintenance created from the implementation  
 93 of one or more energy, water, or wastewater efficiency or  
 94 conservation measures when compared with an established baseline  
 95 for the previous cost of fuel, energy or water consumption, or  
 96 wastewater production and stipulated operation and maintenance.

97 (d) "Guaranteed energy performance savings contract" means  
 98 a contract for the evaluation, recommendation, and  
 99 implementation of energy, water, or wastewater efficiency or  
 100 conservation measures, which, at a minimum, shall include:

101 1. The design and installation of equipment to implement  
 102 one or more of such measures and, if applicable, operation and  
 103 maintenance of such measures.

104 2. The amount of any actual annual savings that meet or  
 105 exceed total annual contract payments made by the agency for the  
 106 contract.

107 3. The finance charges incurred by the agency over the  
 108 life of the contract.

109 (e) "Guaranteed energy performance savings contractor"  
 110 means a person or business that is licensed under chapter 471,  
 111 chapter 481, or this chapter, and is experienced in the  
 112 analysis, design, implementation, or installation of energy,

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113 water, or wastewater efficiency or conservation measures through  
 114 energy performance contracts.

115 (4) PROCEDURES.--

116 (a) An agency may enter into a guaranteed energy  
 117 performance savings contract with a guaranteed energy  
 118 performance savings contractor to significantly reduce energy,  
 119 water, or wastewater or operating costs of an agency facility  
 120 through one or more energy, water, or wastewater efficiency or  
 121 conservation measures.

122 (b) Before design and installation of energy, water, or  
 123 wastewater efficiency and conservation measures, the agency must  
 124 obtain from a guaranteed energy performance savings contractor a  
 125 report that summarizes the costs associated with the energy  
 126 ~~conservation~~ measures and provides an estimate of the amount of  
 127 the associated energy cost savings or operational improvements.  
 128 The agency and the guaranteed energy performance savings  
 129 contractor may enter into a separate agreement to pay for costs  
 130 associated with the preparation and delivery of the report;  
 131 however, payment to the contractor shall be contingent upon the  
 132 report's projection of energy cost savings being equal to or  
 133 greater than the total projected costs of the design and  
 134 installation of the report's energy conservation or efficiency  
 135 measures.

136 (c) The agency may enter into a guaranteed energy  
 137 performance savings contract with a guaranteed energy  
 138 performance savings contractor if the agency finds that the  
 139 amount the agency would spend on the energy conservation or  
 140 efficiency measures will not likely exceed the amount of the

141 associated energy cost savings for up to 20 years from the date  
 142 of installation, based on the life cycle cost calculations  
 143 provided in s. 255.255, if the recommendations in the report  
 144 were followed and if the qualified provider or providers give a  
 145 written guarantee that such ~~the energy~~ cost savings will meet or  
 146 exceed the costs of the system. The contract may provide for  
 147 installment payments for a period not to exceed 20 years.

148 (d) A guaranteed ~~energy~~ performance savings contractor  
 149 must be selected in compliance with s. 287.055<sup>17</sup> except that if  
 150 fewer than three firms are qualified to perform the required  
 151 services, the requirement for agency selection of three firms,  
 152 as provided in s. 287.055(4)(b), and the bid requirements of s.  
 153 287.057 do not apply.

154 (e) Before entering into a guaranteed ~~energy~~ performance  
 155 savings contract, an agency must provide published notice of the  
 156 meeting in which it proposes to award the contract, the names of  
 157 the parties to the proposed contract, and the contract's  
 158 purpose.

159 (f) A guaranteed ~~energy~~ performance savings contract may  
 160 provide for financing, including tax-exempt ~~tax-exempt~~  
 161 financing, by a third party. The contract for third-party ~~third~~  
 162 ~~party~~ financing may be separate from the guaranteed energy  
 163 performance savings contract. A separate contract for third-  
 164 party ~~third-party~~ financing must include a provision that the  
 165 third-party ~~third-party~~ financier must not be granted rights or  
 166 privileges that exceed the rights and privileges available to  
 167 the guaranteed ~~energy~~ performance savings contractor.

168 (g) In determining the amount the agency will finance to

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169 | acquire the efficiency or energy conservation measures, the  
 170 | agency may reduce such amount by the application of any grant  
 171 | moneys, rebates, or capital funding available to the agency for  
 172 | the purpose of buying down the cost of the guaranteed ~~energy~~  
 173 | performance savings contract. However, in calculating the life  
 174 | cycle cost as required in paragraph (c), the agency shall not  
 175 | apply any grants, rebates, or capital funding.

176 | (5) CONTRACT PROVISIONS.--

177 | (a) A guaranteed ~~energy~~ performance savings contract must  
 178 | include a written guarantee that may include, but is not limited  
 179 | to the form of, a letter of credit, insurance policy, or  
 180 | corporate guarantee by the guaranteed ~~energy~~ performance savings  
 181 | contractor that annual associated energy cost savings will meet  
 182 | or exceed the amortized cost of the efficiency or energy  
 183 | conservation measures.

184 | (b) The guaranteed ~~energy~~ performance savings contract  
 185 | must provide that all payments, except obligations on  
 186 | termination of the contract before its expiration, may be made  
 187 | over time, but not to exceed 20 years from the date of complete  
 188 | installation and acceptance by the agency, and that the annual  
 189 | savings are guaranteed to the extent necessary to make annual  
 190 | payments to satisfy the guaranteed ~~energy~~ performance savings  
 191 | contract.

192 | (c) The guaranteed ~~energy~~ performance savings contract  
 193 | must require that the guaranteed ~~energy~~ performance savings  
 194 | contractor to whom the contract is awarded provide a 100-percent  
 195 | public construction bond to the agency for its faithful  
 196 | performance, as required by s. 255.05.

197 (d) The guaranteed ~~energy~~ performance savings contract may  
 198 contain a provision allocating to the parties to the contract  
 199 any annual associated ~~energy~~ cost savings that exceed the amount  
 200 of the associated ~~energy~~ cost savings guaranteed in the  
 201 contract.

202 (e) The guaranteed ~~energy~~ performance savings contract  
 203 shall require the guaranteed ~~energy~~ performance savings  
 204 contractor to provide to the agency an annual reconciliation of  
 205 the guaranteed associated ~~energy~~ cost savings. If the  
 206 reconciliation reveals a shortfall in such annual ~~energy~~ cost  
 207 savings, the guaranteed ~~energy~~ performance savings contractor is  
 208 liable for such shortfall. If the reconciliation reveals an  
 209 excess in such annual ~~energy~~ cost savings, the excess savings  
 210 may be allocated under paragraph (d) but may not be used to  
 211 cover potential ~~energy~~ cost savings shortages in subsequent  
 212 contract years.

213 (f) The guaranteed ~~energy~~ performance savings contract  
 214 must provide for payments of not less than one-twentieth of the  
 215 price to be paid within 2 years from the date of the complete  
 216 installation and acceptance by the agency, and the remaining  
 217 costs to be paid at least quarterly, not to exceed a 20-year  
 218 term, based on life cycle cost calculations.

219 (g) The guaranteed ~~energy~~ performance savings contract may  
 220 extend beyond the fiscal year in which it becomes effective;  
 221 however, the term of any contract expires at the end of each  
 222 fiscal year and may be automatically renewed annually for up to  
 223 20 years, subject to the agency making sufficient annual  
 224 appropriations based upon continued realized energy, water, or



225 wastewater savings.

226 (h) The guaranteed ~~energy~~ performance savings contract  
 227 must stipulate that it does not constitute a debt, liability, or  
 228 obligation of the state.

229 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The  
 230 Department of Management Services, with the assistance of the  
 231 Office of the Chief Financial Officer, may, within available  
 232 resources, provide technical assistance to state agencies  
 233 contracting for energy, water, or wastewater efficiency or  
 234 conservation measures and engage in other activities considered  
 235 appropriate by the department for promoting and facilitating  
 236 guaranteed ~~energy~~ performance savings contracting by state  
 237 agencies. The Office of the Chief Financial Officer, with the  
 238 assistance of the Department of Management Services, may, within  
 239 available resources, develop model contractual and related  
 240 documents for use by state agencies. Prior to entering into a  
 241 guaranteed ~~energy~~ performance savings contract, any contract or  
 242 lease for third-party financing, or any combination of such  
 243 contracts, a state agency shall submit such proposed contract or  
 244 lease to the Office of the Chief Financial Officer for review  
 245 and approval.

246 Section 2. Subsection (10) of section 287.064, Florida  
 247 Statutes, is amended to read:

248 287.064 Consolidated financing of deferred-payment  
 249 purchases.--

250 (10) Costs incurred pursuant to a guaranteed ~~energy~~  
 251 performance savings contract, including the cost of energy,  
 252 water, or wastewater efficiency and conservation measures, ~~each~~

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253 | as defined in s. 489.145, may be financed pursuant to a master  
 254 | equipment financing agreement; however, the costs of training,  
 255 | operation, and maintenance may not be financed. The period of  
 256 | time for repayment of the funds drawn pursuant to the master  
 257 | equipment financing agreement under this subsection may exceed 5  
 258 | years but may not exceed 10 years.

259 |       Section 3. This act shall take effect July 1, 2008.



PCB GEAC 08-05

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to property appraisers; amending s.145.10,  
 3 F.S.; revising the requirements for designation as a  
 4 certified Florida property appraiser; amending s. 195.022,  
 5 F.S.; revising requirements concerning forms prescribed by  
 6 the Department of Revenue; amending s. 196.015, F.S.;  
 7 revising factors for consideration by property appraisers  
 8 in determining permanent residency for homestead  
 9 exemption purposes; providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Paragraph (a) of subsection (2) of section  
 14 145.10, Florida Statutes, is amended to read:

15 145.10 Property appraiser.--

16 (2) (a) There shall be an additional \$2,000 per year  
 17 special qualification salary for each property appraiser who has  
 18 met the requirements of the Department of Revenue and has been  
 19 designated a certified Florida property appraiser. The  
 20 requirements for designation shall include an annual  
 21 certification by the property appraiser that the current forms  
 22 used by the property appraiser are those prescribed by the  
 23 Department. Any property appraiser who is certified during a  
 24 calendar year shall receive in that year a pro rata share of the  
 25 special qualification salary based on the remaining period of  
 26 the year. The department shall establish and maintain a  
 27 certified Florida property appraiser program.

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28 Section 2. Section 195.022, Florida Statutes, is amended  
 29 to read:

30 195.022 Forms to be prescribed by Department of Revenue.—

31 (1) The Department of Revenue shall prescribe all forms to  
 32 be used by property appraisers, tax collectors, clerks of the  
 33 circuit court, and value adjustment boards in administering and  
 34 collecting ad valorem taxes. The department shall prescribe a  
 35 form for each purpose. For counties with a population of 100,000  
 36 or fewer, the Department of Revenue shall furnish the forms. For  
 37 counties with a population greater than 100,000, the county  
 38 officer shall reproduce forms for distribution at the expense of  
 39 his or her office. A county officer may use a form other than  
 40 the form prescribed by the department upon obtaining written  
 41 permission from the executive director of the department;  
 42 however, no county officer shall use a form the substantive  
 43 content of which is at variance with the form prescribed by the  
 44 department for the same or a similar purpose. If the executive  
 45 director finds good cause to grant such permission he or she may  
 46 do so. The county officer may continue to use such approved form  
 47 until the law which specifies the form is amended or repealed,  
 48 the department amends or repeals the form it has prescribed, or  
 49 until the officer receives written disapproval from the  
 50 executive director. Otherwise, all such officers and their  
 51 employees shall use the forms, and follow the instructions  
 52 applicable to the forms, which are prescribed by the department.

53 (2) The form prescribed for determination of permanent  
 54 residency required by s. 196.015 shall state the penalty for the  
 55 giving of false information for the purpose of claiming

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56 homestead exemption and shall further be executed under  
 57 penalties of perjury. For each factor to be considered, the  
 58 Department shall require the applicant to furnish appropriate  
 59 documentation to the property appraiser.

60 (3) The department, upon request of any property appraiser  
 61 or, in any event, at least once every 3 years, shall prescribe  
 62 and furnish such aerial photographs and nonproperty ownership  
 63 maps to the property appraisers as are necessary to ensure that  
 64 all real property within the state is properly listed on the  
 65 roll. All forms and maps furnished by the department shall be  
 66 paid for by the department as provided by law. All forms and  
 67 maps and instructions relating to their use shall be  
 68 substantially uniform throughout the state. An officer may  
 69 employ supplemental forms and maps, at the expense of his or her  
 70 office, which he or she deems expedient for the purpose of  
 71 administering and collecting ad valorem taxes. The forms  
 72 required in ss. 193.461(3)(a) and 196.011(1) for renewal  
 73 purposes shall require sufficient information for the property  
 74 appraiser to evaluate the changes in use since the prior year.  
 75 If the property appraiser determines, in the case of a taxpayer,  
 76 that he or she has insufficient current information upon which  
 77 to approve the exemption, or if the information on the renewal  
 78 form is inadequate for him or her to evaluate the taxable status  
 79 of the property, he or she may require the resubmission of an  
 80 original application.

81 Section 3. Section 196.015, Florida Statutes, is amended  
 82 to read:

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83 196.015 Permanent residency; factual determination by  
 84 property appraiser.--Intention to establish a permanent  
 85 residence in this state is a factual determination to be made,  
 86 in the first instance, by the property appraiser. Although any  
 87 one factor is not conclusive of the establishment or  
 88 nonestablishment of permanent residence, the following are  
 89 relevant factors that shall ~~may~~ be considered by the property  
 90 appraiser in making his or her determination as to the intent of  
 91 a person claiming a homestead exemption to establish a permanent  
 92 residence in this state:

- 93 (1) Formal declarations of the applicant.
- 94 (2) Informal statements of the applicant.
- 95 (3) The place of employment of the applicant.
- 96 (4) The previous permanent residency by the applicant in a  
 97 state other than Florida or in another country and the date non-  
 98 Florida residency was terminated.
- 99 (5) The place where the applicant is registered to vote.
- 100 (6) The place of issuance of a driver's license to the  
 101 applicant.
- 102 (7) The place of issuance of a license tag on any motor  
 103 vehicle, boat, or aircraft owned or operated by the applicant.
- 104 (8) The address as listed on federal income tax returns  
 105 filed by the applicant.

106  
 107 The property appraiser shall inspect all documentation furnished  
 108 by the applicant and make appropriate entries on the application  
 109 for ad valorem tax exemption.  
 110

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111 If the applicant cannot furnish a driver license or registration  
 112 for motor vehicle, boat or aircraft, then the applicant shall  
 113 execute an additional affidavit. The driver license portion of  
 114 the affidavit shall state that the applicant either does not  
 115 have any driver license or that they have a Florida driver  
 116 license. The registration portion shall state that the  
 117 applicant does not own or operate any motor vehicle, boat or  
 118 aircraft within this state. If the applicant has a driver  
 119 license or owns or operates a motor vehicle, boat or aircraft  
 120 within this state, then the property appraiser may not grant the  
 121 homestead exemption until the driver license and registration  
 122 for motor vehicle, boat or aircraft have been issued or reissued  
 123 by the state of Florida.

124 Section 4. This act shall take effect July 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-06 **OGSR Florida Putative Father Registry**  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS: SB 1042**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>haw</i> Williamson/Dykes	Cooper <i>JMC</i>
1)			
2)			
3)			
4)			
5)			

**SUMMARY ANALYSIS**

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

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, 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.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It authorizes additional access to the Registry by the birth mother, upon receipt of a notarized request for a copy of any entry in which she is identified as the birth mother. In addition, the bill removes superfluous language and reorganizes the section.

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

## 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

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act regarding the Florida Putative Father  
 4 Registry; reenacting s. 63.0541, F.S., which provides a  
 5 public record exemption for all information contained in  
 6 the Florida Putative Father Registry; adding an exception  
 7 to the exemption for a birth mother identified in a  
 8 registry entry; removing superfluous language; repealing  
 9 s. 2 of Chapter 2003-56, Laws of Florida, which provides  
 10 for repeal of the exemption; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Section 63.0541, Florida Statutes, is amended  
 15 to read:

16 63.0541 Public records exemption for the Florida Putative  
 17 Father Registry.--

18 (1) All information contained in the Florida Putative  
 19 Father Registry ~~and maintained by the Office of Vital Statistics~~  
 20 ~~within the Department of Health~~ is confidential and exempt from  
 21 ~~public disclosure pursuant to s. 119.07(1) and s. 24(a), Art. I~~  
 22 ~~of the State Constitution, except as otherwise provided in this~~  
 23 ~~section.~~

24 (2) Information made confidential and exempt by this  
 25 section shall be disclosed to:

26 (a) An adoption entity, upon the filing of a request for a  
 27 diligent search of the Florida Putative Father Registry in  
 28 connection with the planned adoption of a child.

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29 (b) The registrant unmarried biological father, upon  
 30 receipt of a notarized request for a copy of his registry entry  
 31 only.

32 (c) The birth mother, upon receipt of a notarized request.  
 33 for a copy of any registry entry in which she is identified as  
 34 the birth mother.

35 (d) The court, upon issuance of a court order concerning a  
 36 petitioner acting pro se in an action under this chapter.

37 ~~(3)(2) Except as set forth in subsection (1),~~ The database  
 38 comprising the Florida Putative Father Registry shall remain  
 39 ~~confidential and exempt and separate from all other databases in~~  
 40 ~~this state, including any local or federal database. Such~~  
 41 ~~database may not be accessed by any other state or federal~~  
 42 ~~agency or entity.~~

43 Section 2. Section 2. of Chapter 2003-56, Laws of Florida,  
 44 is repealed.

45 Section 3. This act shall take effect October 1, 2008.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 08-08 OGSR Paratransit Services
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: IDEN./SIM. BILLS: SB 2224

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Efficiency & Accountability Council, [blank], Williamson/Dykes, Cooper. Rows 2-5: 1), 2), 3), 4), 5) with blank cells.

SUMMARY ANALYSIS

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 Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit and other special transportation services to individuals who are unable to use the fixed route system. The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility.

Current law provides a public record exemption for all personal identifying information contained in records relating to a person's health for determining eligibility for paratransit services under Title II of the ADA or the transportation disadvantaged program. This exemption applies to such information contained in records held by local governmental entities.

The bill reenacts and expands the public record exemption by making it applicable to any agency that is the custodian of such information in lieu of local governmental entities only. As such, the repeal date is extended to October 2, 2013, and a public necessity statement is included. It also reorganizes the exemption, provides a definition, removes unnecessary language, and conforms cross-references.

The bill requires a two-thirds vote of the members present and voting for passage.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

#### 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.

##### Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit<sup>4</sup> and other special transportation services to individuals who are unable to use the fixed route system.<sup>5</sup> The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining

---

<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> Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." (49 C.F.R. part 37.3) Section 427.011(9), F.S., defines "paratransit" to mean "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride,' buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature."

<sup>5</sup> 49 CFR 37, Subpart F.

eligibility.

Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance.
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed.
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.<sup>6</sup>

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency<sup>7</sup> “will ensure necessary transportation to and from providers for recipients; and describe the methods that the agency will use to meet this requirement.”<sup>8</sup> Florida law requires the Agency for Health Care Administration (AHCA) to purchase Medicaid transportation services through the community transportation coordinator (CTC) for the Transportation Disadvantaged program unless a more cost-effective method exists or if the CTC does not coordinate such services.<sup>9</sup>

These services are Medicaid Non-Emergency Transportation Services. The Commission for the Transportation Disadvantaged (CTD) manages such services. The CTD contracts with a CTC and a planning agency in each county to provide transportation services.

The local coordinating board develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services. Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

#### Public Record Exemption

Current law provides a public record exemption for all personal identifying information contained in records relating to a person’s health for determining eligibility for paratransit services under Title II of the ADA or the transportation disadvantaged program.<sup>10</sup> This exemption applies to such information contained in records held by local governmental entities.

The confidential and exempt information must be disclosed:

- With the express written consent of the individual or the individual’s legally authorized representative;
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual;
- By court order upon a showing of good cause; or
- For the purpose of determining eligibility for paratransit services if the individual or the individual’s legally authorized representative has filed an appeal or petition before an administrative body of a local government or a court.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>11</sup>

#### 2007 Interim Study

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<sup>6</sup> 49 C.F.R. part 37.123.

<sup>7</sup> In Florida, the Medicaid agency is the Agency for Health Care Administration.

<sup>8</sup> 42 C.F.R. part 431.53.

<sup>9</sup> Section 427.0135, F.S.

<sup>10</sup> Section 119.0713(2), F.S.

<sup>11</sup> Section 2., chapter 2003-110, L.O.F.

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

- Allows local governments to effectively and efficiently administer the program for the transportation disadvantaged, 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.

The review also revealed that the information is not provided to local governmental entities only. For example, the CTD also has access to the eligibility information.<sup>12</sup>

## **EFFECT OF BILL**

The bill reenacts and expands the public record exemption by making it applicable to any agency that is the custodian of such information in lieu of local governmental entities only. As such, the repeal date is extended to October 2, 2013, and a public necessity statement is included.

The bill relocates the exemption to s. 119.071, F.S., which provides the general public record exemptions from inspection and copying. It provides a definition for paratransit.<sup>13</sup> Finally, the bill reorganizes the exemption, removes superfluous language, and conforms cross-references.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 119.011, F.S., to provide a definition of "paratransit."

Section 2 transfers and redesignates s. 119.0713(2), F.S., to s. 119.071(5), F.S., and amends the section to reenact and expand the public record exemption for paratransit services.

Section 3 provides a public necessity statement.

Section 4 repeals s. 2 of chapter 2003-110, L.O.F., which provides for repeal of the exemption.

Section 5 amends s. 257.34, F.S., to conform a cross-reference.

Section 6 amends s. 257.35, F.S., to conform a cross-reference.

Section 7 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:**

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<sup>12</sup> See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 10 – 12 (on file with the Committee on State Affairs).

<sup>13</sup> The bill provides that "paratransit" has the same meaning as provided in s. 427.011, F.S., which means "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature."

See "FISCAL COMMENTS."

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

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS."

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

None.

**D. FISCAL COMMENTS:**

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

Not applicable.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act regarding paratransit services; amending  
 4 s. 119.011, F.S.; creating a definition; amending s.  
 5 119.071, F.S.; transferring the public record exemption  
 6 related to paratransit services under s. 119.0713(2),  
 7 F.S., to said section; expanding the exemption to apply to  
 8 all agencies; clarifying that the exemption applies to an  
 9 applicant for or a recipient of paratransit services;  
 10 reorganizing the exemption; removing superfluous language;  
 11 providing for future legislative review of the exemption;  
 12 providing a statement of public necessity; repealing s. 2  
 13 of Chapter 2003-110, Laws of Florida, which provides for  
 14 repeal of the exemption; amending ss. 257.34 and 257.35,  
 15 F.S.; conforming cross-references; providing an effective  
 16 date.

17  
 18 Be It Enacted by the Legislature of the State of Florida:

19  
 20 Section 1. Subsections (10), (11), (12), and (13) of  
 21 section 119.011, Florida Statutes, are renumbered as subsections  
 22 (11), (12), (13), and (14), respectively, and a subsection (10)  
 23 is added to that section, to read:

24 119.011 Definitions.--As used in this chapter, the term:  
 25 (10) "Paratransit" has the same meaning as provided in s.  
 26 427.011.

27 Section 2. Subsection (2) of section 119.0713, Florida  
 28 Statutes, is transferred and redesignated as paragraph (h) of



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29 subsection (5) of section 119.071, Florida Statutes, and amended  
30 to read:

31 119.071 General exemptions from inspection and copying of  
32 public records.--

33 (5) OTHER PERSONAL INFORMATION.--

34 (h)1. All Personal identifying information of an applicant  
35 for or a recipient of ~~contained in records relating to a~~  
36 ~~person's health held by local governmental entities for the~~  
37 ~~purpose of determining eligibility for paratransit services held~~  
38 ~~by an agency under Title II of the Americans with Disabilities~~  
39 ~~Act or eligibility for the transportation disadvantaged program~~  
40 ~~as provided in part I of chapter 427 is confidential and exempt~~  
41 ~~from s. 119.07(1) and s. 24(a), Art. I of the State~~  
42 ~~Constitution, except as otherwise provided in this subsection.~~

43 2. This exemption applies to personal identifying  
44 information of an applicant for or a recipient of paratransit  
45 services contained in such records held by an agency local  
46 ~~governmental entities~~ before, on, or after the effective date of  
47 this exemption.

48 3. ~~Information made Confidential and exempt personal~~  
49 identifying information by this subsection shall be disclosed:

50 (a) With the express written consent of the individual or  
51 the individual's legally authorized representative;

52 (b) In a medical emergency, but only to the extent  
53 necessary to protect the health or life of the individual;

54 (c) By court order upon a showing of good cause; or

55 (d) To another agency in the performance of its duties and  
56 responsibilities ~~for the purpose of determining eligibility for~~

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57 | ~~paratransit services if the individual or the individual's~~  
 58 | ~~legally authorized representative has filed an appeal or~~  
 59 | ~~petition before an administrative body of a local government or~~  
 60 | ~~a court.~~

61 | 4. This paragraph is subject to the Open Government Sunset  
 62 | Review Act in accordance with s. 119.15, and shall stand  
 63 | repealed on October 2, 2013, unless reviewed and saved from  
 64 | repeal through reenactment by the Legislature.

65 | Section 3. The Legislature finds that it is a public  
 66 | necessity that personal identifying information of an applicant  
 67 | for or recipient of paratransit services held by an agency be  
 68 | made confidential and exempt from public records requirements.  
 69 | Paratransit services includes transportation services for  
 70 | persons who because of physical or mental disability, income  
 71 | status, or age are unable to transport themselves or to purchase  
 72 | transportation and are, therefore, dependent upon others to  
 73 | obtain access to health care, employment, education, shopping,  
 74 | social activities, or other life-sustaining activities. As such,  
 75 | information provided to an agency would be personal sensitive  
 76 | information related to a person's physical or mental health or  
 77 | income status. Matters of personal health are traditionally  
 78 | private and confidential concerns between a patient and a health  
 79 | care provider. The private and confidential nature of personal  
 80 | health matters pervades both the public and private health care  
 81 | sectors. For this reason, an individual's expectation of a right  
 82 | to privacy in all matters regarding his or her personal health  
 83 | necessitates such exemption. Furthermore, the exemption ensures  
 84 | the protection of the identity of an applicant for or recipient

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85 | of paratransit services. If such identifying information was not  
 86 | protected, the administration of paratransit services would be  
 87 | significantly impaired because applicants would be less inclined  
 88 | to apply for those services due to the fact that such  
 89 | identifying information would be made available to the public,  
 90 | which would cause an unwarranted invasion into the life and  
 91 | privacy of applicants for and recipients of such services. Thus,  
 92 | the number of recipients would significantly decrease. As a  
 93 | result, the effective and efficient administration of  
 94 | paratransit services would be impaired.

95 | Section 4. Section 2. of Chapter 2003-110, Laws of Florida  
 96 | is hereby repealed.

97 | Section 5. Subsection (1) of section 257.34, Florida  
 98 | Statutes, is amended to read:

99 | 257.34 Florida International Archive and Repository.--

100 | (1) There is created within the Division of Library and  
 101 | Information Services of the Department of State the Florida  
 102 | International Archive and Repository for the preservation of  
 103 | those public records, as defined in s. 119.011 ~~s. 119.011(11)~~,  
 104 | manuscripts, international judgments involving disputes between  
 105 | domestic and foreign businesses, and all other public matters  
 106 | that the department or the Florida Council of International  
 107 | Development deems relevant to international issues. It is the  
 108 | duty and responsibility of the division to:

109 | (a) Organize and administer the Florida International  
 110 | Archive and Repository.

111 | (b) Preserve and administer records that are transferred  
 112 | to its custody; accept, arrange, and preserve them, according to

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113 approved archival and repository practices; and permit them, at  
 114 reasonable times and under the supervision of the division, to  
 115 be inspected and copied. All public records transferred to the  
 116 custody of the division are subject to the provisions of s.  
 117 119.07(1).

118 (c) Assist the records and information management program  
 119 in the determination of retention values for records.

120 (d) Cooperate with and assist, insofar as practicable,  
 121 state institutions, departments, agencies, counties,  
 122 municipalities, and individuals engaged in internationally  
 123 related activities.

124 (e) Provide a public research room where, under rules  
 125 established by the division, the materials in the international  
 126 archive and repository may be studied.

127 (f) Conduct, promote, and encourage research in  
 128 international trade, government, and culture and maintain a  
 129 program of information, assistance, coordination, and guidance  
 130 for public officials, educational institutions, libraries, the  
 131 scholarly community, and the general public engaged in such  
 132 research.

133 (g) Cooperate with and, insofar as practicable, assist  
 134 agencies, libraries, institutions, and individuals in projects  
 135 concerned with internationally related issues and preserve  
 136 original materials relating to internationally related issues.

137 (h) Assist and cooperate with the records and information  
 138 management program in the training and information program  
 139 described in s. 257.36(1)(g).

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140 Section 6. Subsection (1) of section 257.35, Florida  
 141 Statutes, is amended to read:  
 142 257.35 Florida State Archives.--  
 143 (1) There is created within the Division of Library and  
 144 Information Services of the Department of State the Florida  
 145 State Archives for the preservation of those public records, as  
 146 defined in s. 119.011 ~~s. 119.011(11)~~, manuscripts, and other  
 147 archival material that have been determined by the division to  
 148 have sufficient historical or other value to warrant their  
 149 continued preservation and have been accepted by the division  
 150 for deposit in its custody. It is the duty and responsibility of  
 151 the division to:  
 152 (a) Organize and administer the Florida State Archives.  
 153 (b) Preserve and administer such records as shall be  
 154 transferred to its custody; accept, arrange, and preserve them,  
 155 according to approved archival practices; and permit them, at  
 156 reasonable times and under the supervision of the division, to  
 157 be inspected and copied. All public records transferred to the  
 158 custody of the division shall be subject to the provisions of s.  
 159 119.07(1), except that any public record or other record  
 160 provided by law to be confidential or prohibited from inspection  
 161 by the public shall be made accessible only after a period of 50  
 162 years from the date of the creation of the record. Any nonpublic  
 163 manuscript or other archival material which is placed in the  
 164 keeping of the division under special terms and conditions,  
 165 shall be made accessible only in accordance with such law terms  
 166 and conditions and shall be exempt from the provisions of s.  
 167 119.07(1) to the extent necessary to meet the terms and

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168 conditions for a nonpublic manuscript or other archival  
 169 material.

170 (c) Assist the records and information management program  
 171 in the determination of retention values for records.

172 (d) Cooperate with and assist insofar as practicable state  
 173 institutions, departments, agencies, counties, municipalities,  
 174 and individuals engaged in activities in the field of state  
 175 archives, manuscripts, and history and accept from any person  
 176 any paper, book, record, or similar material which in the  
 177 judgment of the division warrants preservation in the state  
 178 archives.

179 (e) Provide a public research room where, under rules  
 180 established by the division, the materials in the state archives  
 181 may be studied.

182 (f) Conduct, promote, and encourage research in Florida  
 183 history, government, and culture and maintain a program of  
 184 information, assistance, coordination, and guidance for public  
 185 officials, educational institutions, libraries, the scholarly  
 186 community, and the general public engaged in such research.

187 (g) Cooperate with and, insofar as practicable, assist  
 188 agencies, libraries, institutions, and individuals in projects  
 189 designed to preserve original source materials relating to  
 190 Florida history, government, and culture and prepare and publish  
 191 handbooks, guides, indexes, and other literature directed toward  
 192 encouraging the preservation and use of the state's documentary  
 193 resources.

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194 | (h) Encourage and initiate efforts to preserve, collect,  
195 | process, transcribe, index, and research the oral history of  
196 | Florida government.

197 | (i) Assist and cooperate with the records and information  
198 | management program in the training and information program  
199 | described in s. 257.36(1)(g).

200 | Section 7. This act shall take effect October 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-09 **OGSR Foster Parents**  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS: SB 1046**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>haw</i> Williamson/Dykes	Cooper <i>PC</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

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 Department of Children and Family Services (DCFS) must establish and administer a program for dependent children and their families. DCFS adopts rules for the licensure of family foster homes and establishes requirements for licensure.

Current law provides a public record exemption for certain personal information of licensed foster parents and foster parent applicants, and their spouses, minor children, and other adult household members. This information includes their home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; home floor plans; and photographs of such persons.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It removes a duplicative exemption for social security numbers, reorganizes the exemption, and removes superfluous language.

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

## 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.

##### Foster Care

The Department of Children and Family Services (DCFS) must establish and administer a program for dependent children and their families. Included in this program are family foster homes,<sup>4</sup> residential child-caring agencies,<sup>5</sup> and child-placing agencies.<sup>6</sup>

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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> Section 409.175(2)(e), F.S., defines "family foster home" to mean "a 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. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption is not considered a family foster home."

<sup>5</sup> Section 409.175(2)(j), F.S., defines "residential child-caring agency" to mean "any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in

All foster homes must be licensed.<sup>7</sup> DCFS adopts rules for the licensure of family foster homes and establishes requirements for licensure with respect to the following, among other requirements:

- The operation of the foster family home;
- The provision of food, clothing, supplies, and services to the foster children;
- The safety and cleanliness of the premises;
- The ratio and supervision of children;
- The moral character of the personnel; and
- The financial ability of the foster parents to provide care.<sup>8</sup>

Current law provides specific legislative requirements related to the licensing of foster homes, including:

- Background screening requirements;<sup>9</sup>
- Inspections of the homes by the local health departments;<sup>10</sup>
- Pre-service and in-service training requirements;<sup>11</sup>
- The ability of the department to deny, suspend, or revoke a license and grounds for such actions;<sup>12</sup>
- Actions the department may take to ensure compliance with the licensing requirements;<sup>13</sup> and
- The provision of general liability coverage for family foster homes through the Division of Risk Management.<sup>14</sup>

In order to verify compliance, DCFS is further required to compile and review information collected through application forms, background screenings, inspections of the homes or premises, interviews, and financial records.<sup>15</sup> Therefore, as part of the application process, foster parent applicants are required to provide personal information so DCFS may determine fitness of such applicants to be foster parents.

### Public Record Exemption

Current law provides a public record exemption for certain personal information of licensed foster parents and foster parent applicants, and their spouses, minor children, and other adult household members. This information includes their home, business, work, child care, or school addresses and telephone numbers; social security numbers; birth dates; medical records; home floor plans; and photographs of such persons.<sup>16</sup>

The information remains exempt for five years after the application date for foster parent applicants<sup>17</sup> and for five years after the license expiration date for licensed foster parents,<sup>18</sup> with the exception of

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private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.”

<sup>6</sup> Section 409.175(2)(d), F.S., defines “child-placing agency” to mean “a person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.”

<sup>7</sup> Section 409.175(4), F.S.

<sup>8</sup> Section 409.175(5), F.S.

<sup>9</sup> Section 409.175(6)(b), F.S.

<sup>10</sup> Section 409.175(6)(e), F.S.

<sup>11</sup> Section 409.175(14), F.S.

<sup>12</sup> Section 409.175(9), F.S.

<sup>13</sup> Section 409.175(11), F.S.

<sup>14</sup> Section 409.175(15)(a), F.S.

<sup>15</sup> Section 409.175(6), F.S.

<sup>16</sup> Section 409.175(16)(a) and (b), F.S.

<sup>17</sup> Section 409.175(16)(a), F.S.

<sup>18</sup> Section 409.175(16)(b), F.S.

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social security numbers and medical information, which remain protected. Exempt information regarding a licensed foster parent who becomes an adoptive parent also remains protected.<sup>19</sup>

Additionally, information pertaining to the names, addresses, and telephone numbers of persons providing character or neighbor references regarding foster parent applicants or licensed foster parents is exempt.<sup>20</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>21</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 licensed foster parents and foster parent applicants. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption:

- Allows DCFS to effectively and efficiently administer the foster care program, 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, or would jeopardize their safety.<sup>22</sup>

Further, current law provides a general public record exemption for social security numbers.<sup>23</sup> As such, the exemption for social security numbers provided in s. 409.175(16)(a) and (b), F.S., is duplicative.

### **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemption. It also repeals the duplicative exemption for social security numbers, reorganizes the exemption, and removes superfluous language.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 409.175, F.S., to reenact the public record exemption for certain information regarding licensed foster parents and foster parent applicants.

Section 2 repeals s. 2 of chapter 2003-83, 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.

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<sup>19</sup> *Id.*

<sup>20</sup> Section 409.175(16)(c), F.S.

<sup>21</sup> Section 2., chapter 2003-83, L.O.F.

<sup>22</sup> See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 12 – 15 (on file with the Committee on State Affairs).

<sup>23</sup> Section 119.071(5)(a), F.S.

**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**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act regarding foster care; amending s.  
 4 409.175, F.S.; removing a duplicative exemption for social  
 5 security numbers; reorganizing the section; removing  
 6 superfluous language; repealing s. 2, Chapter 2003-83,  
 7 Laws of Florida, which provides for repeal of the  
 8 exemption; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Subsection (16) of section 409.175, Florida  
 13 Statutes, is amended to read:

14 409.175 Licensure of family foster homes, residential  
 15 child-caring agencies, and child-placing agencies; public  
 16 records exemption.--

17 (16) (a) 1. The following information held by the Department  
 18 of Children and Family Services regarding a foster parent  
 19 applicant and such applicant's spouse, minor child, and other  
 20 adult household member is exempt from ~~the provisions of s.~~  
 21 119.07(1) and s. 24(a), Art. I of the State Constitution, ~~unless~~  
 22 ~~otherwise ordered by a court:~~

- 23 a. The home, business, work, child care, or school
- 24 addresses and telephone numbers; ~~social security numbers;~~
- 25 b. Birth dates;
- 26 c. Medical records;
- 27 d. The floor plan of the home; and
- 28 e. Photographs of such persons.

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29           2. If a foster parent applicant does not receive a foster  
 30 parent license, the information made exempt pursuant to this  
 31 paragraph shall become public 5 years after the date of  
 32 application, except that ~~social security numbers and~~ medical  
 33 records shall remain exempt from ~~the provisions of~~ s. 119.07(1)  
 34 and s. 24(a), Art. I of the State Constitution.

35           3. This exemption applies to information made exempt by  
 36 this paragraph before, on, or after the effective date of the  
 37 exemption.

38           (b)1. The following information held by the Department of  
 39 Children and Family Services regarding a licensed foster parent  
 40 and the foster parent's spouse, minor child, and other adult  
 41 household member is exempt from ~~the provisions of~~ s. 119.07(1)  
 42 and s. 24(a), Art. I of the State Constitution, ~~unless otherwise~~  
 43 ~~ordered by a court:~~

44           a. The home, business, work, child care, or school  
 45 addresses and telephone numbers; ~~social security numbers;~~

46           b. Birth dates;

47           c. Medical records;

48           d. The floor plan of the home; and

49           e. Photographs of such persons.

50           2. If a foster parent's license is no longer active, the  
 51 information made exempt pursuant to this paragraph shall become  
 52 public 5 years after the expiration date of such foster parent's  
 53 foster care license, ~~except that:~~ social security numbers and

54           a. Medical records shall remain exempt from ~~the provisions~~  
 55 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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56            b. ~~However,~~ Exempt information regarding a licensed foster  
 57 parent who has become an adoptive parent and exempt information  
 58 regarding such foster parent's spouse, minor child, or other  
 59 adult household member ~~shall not become available to the public~~  
 60 ~~5 years after expiration of such foster parent's license and~~  
 61 shall remain exempt from ~~the provisions of~~ s. 119.07(1) and s.  
 62 24(a), Art. I of the State Constitution.

63            3. This exemption applies to information made exempt by  
 64 this paragraph before, on, or after the effective date of the  
 65 exemption.

66            (c) The name, address, and telephone number of persons  
 67 providing character or neighbor references regarding foster  
 68 parent applicants or licensed foster parents held by the  
 69 Department of Children and Family Services are exempt from ~~the~~  
 70 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 71 Constitution.

72            Section 2. Section 2. of Chapter 2003-83, 2003 Laws of  
 73 Florida is hereby repealed.

74            Section 3. This act shall take effect October 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-10 **OGSR Florida Kidcare Program**  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS: SB 1090**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>Law</i> Williamson/Dykes	Cooper <i>cc</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

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 Florida Kidcare program is an umbrella program composed of four components jointly administered by the Agency for Health Care Administration, Department of Children and Family Services, Department of Health, and Florida Healthy Kids Corporation. Those components include MediKids, Florida Healthy Kids program, Children's Medical Services Network, and Medicaid for children.

Current law provides a public record exemption for information identifying a Kidcare program applicant (parent or legal guardian) or enrollee (child) and provides for exceptions to the exemption. A violation of the exemption is a misdemeanor of the second degree.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It removes unnecessary language and repeals a duplicative public record exemption specific to the Florida Healthy Kids Corporation.

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

## 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 Kidcare Program

In 1998, the Legislature created the Florida Kidcare (Kidcare) program<sup>4</sup> in response to the passage of the State Children's Health Insurance Program<sup>5</sup> by the United States Congress. Criteria used to determine which services a child is eligible to receive include family income level, age of the child, and whether the child has a serious health condition.

Kidcare is an umbrella program composed of four components jointly administered by the Agency for Health Care Administration (AHCA), Department of Children and Family Services (DCFS), Department of Health (DOH), and Florida Healthy Kids Corporation (FHKC). Those components include MediKids, Florida Healthy Kids program, Children's Medical Services Network, and Medicaid for children.<sup>6</sup>

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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> Chapter 98-288, L.O.F.

<sup>5</sup> Title XXI of the Social Security Act.

<sup>6</sup> See ss. 409.814 and 624.91, F.S.

## Public Record Exemption

Current law provides a public record exemption for information identifying a Kidcare program applicant<sup>7</sup> or enrollee,<sup>8</sup> held by AHCA, DCFS, DOH, or FHKC.<sup>9</sup> Such information may be disclosed to:

- Another governmental entity only if disclosure is necessary for the entity to perform its duties and responsibilities under the Kidcare program;
- The Department of Revenue for purposes of administering the state Title IV-D program; and
- Any person with the written consent of the Kidcare program applicant.

A violation of the exemption is a misdemeanor of the second degree.<sup>10</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>11</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 Kidcare program. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption:

- Allows AHCA, DCFS, DOH, and FHKC to effectively and efficiently administer the Kidcare program, which administration would be significantly impaired without the exemption; and
- Protects information of a sensitive personal nature concerning applicants and enrollees, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety.<sup>12</sup>

The exemption provides for the release of confidential and exempt information to another governmental entity only if disclosure is necessary for the entity to perform its duties and responsibilities under the Kidcare program. The receiving entity must maintain the confidential and exempt status of such information and may not release the information to any person.

In *Ragsdale v. State*,<sup>13</sup> the Supreme Court held that:

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.<sup>14</sup>

In *City of Riviera Beach v. Barfield*,<sup>15</sup> the court stated “[h]ad the legislature intended the exemption for

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<sup>7</sup> Section 409.811(3), F.S., defines “applicant” to mean “a parent or guardian of a child or a child whose disability of nonage has been removed under chapter 743, who applies for determination of eligibility for health benefits coverage under ss. 409.810-409.820.”

<sup>8</sup> Section 409.811(10), F.S., defines “enrollee” to mean “a child who has been determined eligible for and is receiving coverage under ss. 409.810-409.820.”

<sup>9</sup> Section 409.821, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 2., chapter 2003-104, L.O.F.

<sup>12</sup> See the Committee on State Affairs interim project report entitled “Open Government Sunset Reviews,” January 2008, at pages 15 – 17 (on file with the Committee on State Affairs).

<sup>13</sup> 720 So.2d 203 (Fla. 1998).

<sup>14</sup> *Id.* at 206, 207.

<sup>15</sup> 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public record exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that

active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”<sup>16</sup> As such, the provision is unnecessary because had the Legislature intended for the confidential and exempt status of such applicant and enrollee information to evaporate then the Legislature would have stated as much.

As part of the review, staff also discovered a duplicative public record exemption for the Florida Healthy Kids Corporation.<sup>17</sup> The additional public record exemption is unnecessary.

## **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemption. It also recognizes that the exemption does not prohibit an enrollee’s legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the enrollee’s health plan, and the amount of premium being paid.

The bill removes the unnecessary language requiring an entity, with authorized access to the confidential and exempt information, to maintain the confidentiality of that information received. It repeals the duplicative public record exemption specific to the Florida Healthy Kids Corporation.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 409.821, F.S., to reenact the public record exemption for the Kidcare program.

Section 2 repeals s. 2 of chapter 2003-104, L.O.F., which provides for repeal of the exemption.

Section 3 repeals s. 624.91(8), F.S., to remove a duplicative public record exemption.

Section 4 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.

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statement has been removed from the *Government-In-The-Sunshine Manual*.

<sup>16</sup> *Id.* at 1137.

<sup>17</sup> Section 624.91(8), F.S.

**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**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to a review under the Open Government  
 Sunset Review Act regarding the Florida Kidcare program;  
 amending s. 409.821, F.S.; reorganizing the exemption;  
 providing that the public record exemption does not  
 prohibit the release of certain information to the legal  
 guardian of an enrollee; removing superfluous language;  
 repealing s. 2 of Chapter 2003-104, Laws of Florida, which  
 provides for repeal of the exemption; repealing s.  
 624.91(8), F.S., which provides a duplicative public  
 record exemption for the Florida Healthy Kids Corporation;  
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.821, Florida Statutes, is amended to  
 read:

409.821 Florida Kidcare program public records exemption.—

(1) Personal identifying information of ~~Notwithstanding any  
 other law to the contrary, any information identifying~~ a Florida  
 Kidcare program applicant or enrollee, as defined in s. 409.811,  
 held by the Agency for Health Care Administration, the Department  
 of Children and Family Services, the Department of Health, or the  
 Florida Healthy Kids Corporation is confidential and exempt from  
 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) (a) Upon request, such information shall ~~may~~ be  
 disclosed to:

1. Another governmental entity only if disclosure is  
 necessary for the entity to perform its duties and

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30 | responsibilities under the Florida Kidcare program; ~~and shall be~~  
 31 | ~~disclosed to~~

32 |       2. The Department of Revenue for purposes of administering  
 33 | the state Title IV-D program; or ~~The receiving governmental~~  
 34 | ~~entity must maintain the confidential and exempt status of such~~  
 35 | ~~information. Furthermore, such information may not be released to~~

36 |       3. Any person who has ~~without~~ the written consent of the  
 37 | program applicant.

38 |       (b) This section does not prohibit an enrollee's legal  
 39 | guardian from obtaining confirmation of coverage, dates of  
 40 | coverage, the name of the enrollee's health plan, and the amount  
 41 | of premium being paid.

42 |       (3) This exemption applies to any information identifying a  
 43 | Florida Kidcare program applicant or enrollee held by the Agency  
 44 | for Health Care Administration, the Department of Children and  
 45 | Family Services, the Department of Health, or the Florida Healthy  
 46 | Kids Corporation before, on, or after the effective date of this  
 47 | exemption.

48 |       (4) A knowing and willful violation of this section is a  
 49 | misdemeanor of the second degree, punishable as provided in s.  
 50 | 775.082 or s. 775.083.

51 |       Section 2. Section 2. of Chapter 2003-104, Laws of Florida  
 52 | is repealed.

53 |       Section 3. Subsection (8) of section 624.91, Florida  
 54 | Statutes, is repealed.

55 |       Section 4. This act shall take effect October 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-11 **OGSR Food Safety and Food Illness Investigations**  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS: SB 1630**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>Law</i> Williamson/Dykes	Cooper <i>[Signature]</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

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.

Investigations of food-borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the basic obligation to maintain a safe and wholesome food supply, the responsibilities of the Department of Agriculture and Consumer Services (DACS) include assisting state and federal governments with food-borne illness outbreaks that involve Florida firms or farms. The information gathered by federal agencies is confidential under federal law.

Current law provides a public record exemption for information deemed confidential under federal law and that is provided to DACS:

- During a joint food safety or food-borne illness investigation, as a requirement for conducting a federal-state contract or partnership activity; or
- For regulatory review.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It also reorganizes the section.

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

## 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.

##### Food Safety and Food-Borne Illness Investigations

Investigations of food-borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the basic obligation to maintain a safe and wholesome food supply, the responsibilities of the Department of Agriculture and Consumer Services (DACS) include assisting state and federal governments with food-borne illness outbreaks that involve Florida firms or farms. The information gathered by federal agencies is confidential under federal law.

##### Public Record Exemption

Current law provides a public record exemption for information deemed confidential under federal law and that is provided to DACS:

- During a joint food safety or food-borne illness investigation, as a requirement for conducting a federal-state contract or partnership activity; or

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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.

- For regulatory review.<sup>4</sup>

The confidential and exempt information may be disclosed only if a final determination has been made by the appropriate federal agencies that such information is no longer entitled to protection, or pursuant to a court order.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>5</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 information related to a food safety or food-borne illness investigation. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption allows DACS to effectively and efficiently conduct such investigations, which would be significantly impaired without the exemption.<sup>6</sup>

### **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the section to relocate the exemption to the beginning of the section, and to collocate the reporting requirements found within the section.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 500.148, F.S., to reenact the public record exemption for information regarding food safety and food-borne illness investigations.

Section 2 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.

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<sup>4</sup> Section 500.148(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 17 – 19 (on file with the Committee on State Affairs).

**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**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act regarding food safety or food-borne  
 4 illness investigations; amending s. 500.148, F.S.;  
 5 reorganizing the exemption; deleting the provision that  
 6 provides for repeal of the exemption under the Open  
 7 Government Sunset Review Act; providing an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. Section 500.148, Florida Statutes, is amended to  
 12 read:

13 500.148 Reports and dissemination of information;  
 14 confidentiality.--

15 (1)(a) Information deemed confidential under 21 C.F.R. part  
 16 20.61, part 20.62, or part 20.88, or 5 U.S.C. s. 552(b), and  
 17 which is provided to the department during a joint food safety or  
 18 food-borne illness investigation, as a requirement for conducting  
 19 a federal-state contract or partnership activity, or for  
 20 regulatory review, is confidential and exempt from s. 119.07(1)  
 21 and s. 24(a), Art. I of the State Constitution.

22 (b) Such confidential and exempt information may not be  
 23 disclosed except under a final determination by the appropriate  
 24 federal agency that the information is no longer entitled to  
 25 protection or pursuant to an order of the court.

26 (c) Nothing in this section shall be construed to prohibit  
 27 the department from collecting, reporting, and illustrating the  
 28 results of these investigations.

29 (2) The department may:

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30 |       (a) Publish ~~from time to time~~ reports summarizing all  
 31 | judgments and court orders that have been rendered under this  
 32 | chapter, including the nature of the charges and the disposition  
 33 | thereof.

34 |       (b)(2) ~~The department may also~~ Disseminate any information  
 35 | regarding food that it considers necessary in the interest of  
 36 | public health and the protection of the consumer against fraud.  
 37 | ~~Nothing in this section shall be construed to prohibit the~~  
 38 | ~~department from collecting, reporting, and illustrating the~~  
 39 | ~~results of these investigations.~~

40 |       (3) ~~Information deemed confidential under 21 C.F.R. part~~  
 41 | ~~20.61, part 20.62, or part 20.88, or 5 U.S.C. s. 552(b), and~~  
 42 | ~~which is provided to the department during a joint food safety or~~  
 43 | ~~food illness investigation, as a requirement for conducting a~~  
 44 | ~~federal-state contract or partnership activity, or for regulatory~~  
 45 | ~~review, is confidential and exempt from s. 119.07(1) and s.~~  
 46 | ~~24(a), Art. I of the State Constitution. Such information may not~~  
 47 | ~~be disclosed except under a final determination by the~~  
 48 | ~~appropriate federal agencies that such records are no longer~~  
 49 | ~~entitled to protection, or pursuant to an order of the court.~~  
 50 | ~~This section is subject to the Open Government Sunset Review Act~~  
 51 | ~~of 1995 in accordance with s. 119.15, and shall stand repealed on~~  
 52 | ~~October 2, 2008, unless reviewed and saved from repeal through~~  
 53 | ~~reenactment by the Legislature.~~

54 |       (a)(4) Upon request of a food establishment, the department  
 55 | may issue a report certifying that the requesting food  
 56 | establishment currently complies with the sanitation and  
 57 | permitting requirements of this chapter and the rules promulgated

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58 | thereunder. Such certification may be requested for the purpose  
 59 | of exporting food to a foreign country.

60 |     (b) The department is authorized to recover the cost  
 61 | associated with carrying out the provisions of this subsection,  
 62 | the amount of which shall be set by rule.

63 |     Section 2. This act shall take effect October 1, 2008.





**HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-14                      Welfare Transition Trust Fund  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:**                                      **IDEN./SIM. BILLS:** SB 2140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>SR</i> Rayman/Dykes	Cooper <i>MC</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**I. SUMMARY**

This legislation continues the Welfare Transition Trust Fund, FLAIR number 62-2-401, which is administered by the Department of Military Affairs.

The bill repeals s. 250.175(5)(d), F.S., thereby eliminating the scheduled termination of the Trust Fund.

The bill takes effect July 1, 2008.

## II. SUBSTANTIVE ANALYSIS

### A. PRESENT SITUATION:

#### 1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 250.175(5), F.S., creates the Welfare Transition Trust Fund within the Department of Military Affairs.

#### 2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

The trust fund is used exclusively for the purpose of providing services to individuals eligible for Temporary Assistance for Needy Families (TANF) pursuant to the requirements and limitations of part A of Title IV of the Social Security Act, as amended, or any other applicable federal requirement or limitation.

#### 3. MAJOR SOURCES OF REVENUE FOR THE FUND:

The revenue source for this trust fund is the Temporary Assistance for Needy Families (TANF) funds allocation from the TANF block grant funding for the state.

#### 4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

Projected receipts into the fund are determined in the allocation of the TANF block grant funding on an annual basis. Fiscal Year 2007-08 funding for the About Face Program is \$2,500,000 in recurring TANF and \$750,000 in non-recurring TANF. The Forward March Program funding is \$1,550,000 in recurring TANF and \$500,000 in non-recurring TANF.

### B. EFFECT OF PROPOSED CHANGES:

The bill re-creates the trust fund without modification.

## III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

## IV. COMMENTS

None.

## V. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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1                                    A bill to be entitled  
 2            An act relating to trust funds; re-creating the Welfare  
 3            Transition Trust Fund within the Department of Military  
 4            Affairs without modification; repealing s. 250.175(5)(d),  
 5            F.S.; abrogating provisions relating to the termination of  
 6            the trust fund, to conform; providing an effective date.

7  
 8            WHEREAS, the Legislature wishes to extend the life of the  
 9            Welfare Transition Trust Fund within the Department of Military  
 10           Affairs, which is otherwise scheduled to be terminated pursuant  
 11           to constitutional mandate, and

12           WHEREAS, the Legislature has reviewed the trust fund before  
 13           its scheduled termination date and has found it continues to  
 14           meet an important public purpose, and

15           WHEREAS, the Legislature has found that existing public  
 16           policy concerning the trust fund sets adequate parameters for  
 17           its use, NOW, THEREFORE,

18  
 19           Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. The Welfare Transition Trust Fund within the  
 22           Department of Military Affairs, FLAIR number 62-2-401, which is  
 23           to be terminated pursuant to Section 19(f), Article III of the  
 24           State Constitution on July 1, 2009, is re-created.

25           Section 2. Paragraph (d) of subsection (5) of section  
 26           250.175, Florida Statutes, is repealed.

27           Section 3. This act shall take effect July 1, 2008.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-18 Public Record Exemption/Complaint of Discrimination  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		<i>Law</i> Williamson/Dykes	Cooper <i>BC</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Current law provides a public record exemption for all complaints and other records, in the custody of an executive branch state agency, which relate to a complaint of discrimination in connection with hiring practices. It also provides a public record exemption for all complaints and other records, in the custody of any unit of local government, that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing. A general exemption applicable to all agencies does not exist.

The bill expands the current exemption for discrimination complaints, which is applicable only to executive branch state agencies, by making it applicable to all agencies. The exemption expires when a probable cause finding is made, the investigation becomes inactive, or the complaint is made part of the official record of a hearing or court proceeding. This bill provides for future review and repeal of the exemption, provides a public necessity statement, reorganizes the exemption, and makes a conforming change.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

##### Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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 public 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.

##### Public Record Exemption for Complaints of Discrimination

Current law provides a public record exemption for all complaints and other records, in the custody of an executive branch state agency, which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status, in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities.<sup>3</sup> The exemption is applicable until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

Current law also provides a public record exemption for all complaints and other records in the custody of any unit of local government that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing.<sup>4</sup> The exemption is applicable until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or

<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.0711(1), F.S.

<sup>4</sup> Section 119.0713(1), F.S.

other record is made part of the official record of any hearing or court proceeding.

A general exemption applicable to *all* agencies<sup>5</sup> does not exist.

## **EFFECT OF BILL**

The bill expands the current exemption for discrimination complaints, which is applicable only to executive branch state agencies, by making it applicable to *all* agencies. The exemption expires when a probable cause finding is made, the investigation becomes inactive, or the complaint is made part of the official record of a hearing or court proceeding.

The bill provides for future review and repeal of the exemption on October 2, 2013. It provides a public necessity statement as required by the State Constitution. The bill also reorganizes the exemption and makes a conforming change.

### **C. SECTION DIRECTORY:**

Section 1 transfers and redesignates s. 119.0711(1), F.S., to s. 119.071(2), F.S., and amends the section to reenact and expand the public record exemption for complaints of discrimination.

Section 2 provides a public necessity statement.

Section 3 amends s. 338.223, F.S., to make a conforming change.

Section 4 provides an effective date of upon becoming a law.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See "FISCAL COMMENTS."

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See "FISCAL COMMENTS."

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

None.

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<sup>5</sup> Section 119.011(2), F.S., defines "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 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."



**D. FISCAL COMMENTS:**

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**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:**

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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1                                   A bill to be entitled  
 2           An act relating to public records; renumbering and  
 3           amending s. 119.0711(1), F.S.; transferring provisions  
 4           which provide a public record exemption for complaints and  
 5           other records in the custody of any agency in the  
 6           executive branch of state government which relate to a  
 7           complaint of discrimination; expanding the exemption to  
 8           provide for applicability to any agency rather than any  
 9           agency in the executive branch of state government;  
 10          providing for future legislative review of the exemption;  
 11          providing a statement of public necessity; amending s.  
 12          338.223, F.S.; conforming a cross-reference; providing an  
 13          effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:  
 16

17           Section 1. Subsection (1) of section 119.0711, Florida  
 18 Statutes, is transferred and redesignated as paragraph (g) of  
 19 subsection (2) of section 119.071, Florida Statutes, and amended  
 20 to read:

21           119.071 General exemptions from inspection or copying of  
 22 public records.--

23           (2) AGENCY INVESTIGATIONS.--

24           (g)1.a. All complaints and other records in the custody of  
 25 any agency ~~in the executive branch of state government~~ which  
 26 relate to a complaint of discrimination relating to race, color,  
 27 religion, sex, national origin, age, handicap, or marital status

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28 | in connection with hiring practices, position classifications,  
 29 | salary, benefits, discipline, discharge, employee performance,  
 30 | evaluation, or other related activities are exempt from s.  
 31 | 119.07(1) and s. 24(a), Art. I of the State Constitution until a  
 32 | finding is made relating to probable cause, the investigation of  
 33 | the complaint becomes inactive, or the complaint or other record  
 34 | is made part of the official record of any hearing or court  
 35 | proceeding.

36 |       b. This provision shall not affect any function or  
 37 | activity of the Florida Commission on Human Relations.

38 |       c. Any state or federal agency that is authorized to have  
 39 | access to such complaints or records by any provision of law  
 40 | shall be granted such access in the furtherance of such agency's  
 41 | statutory duties.

42 |       2. When the alleged victim chooses not to file a complaint  
 43 | and requests that records of the complaint remain confidential,  
 44 | all records relating to an allegation of employment  
 45 | discrimination are confidential and exempt from s. 119.07(1) and  
 46 | s. 24(a), Art. I of the State Constitution.

47 |       3. This paragraph is subject to the Open Government Sunset  
 48 | Review Act in accordance with s. 119.15, and shall stand  
 49 | repealed on October 2, 2013, unless reviewed and saved from  
 50 | repeal through reenactment by the Legislature.

51 |       Section 2. The Legislature finds that it is a public  
 52 | necessity that all complaints and other records in the custody  
 53 | of any agency which relate to a complaint of discrimination  
 54 | relating to race, color, religion, sex, national origin, age,

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55 handicap, or marital status in connection with hiring practices,  
 56 position classifications, salary, benefits, discipline,  
 57 discharge, employee performance, evaluation, or other related  
 58 activities be made exempt from public record requirements until  
 59 a finding is made relating to probable cause, the investigation  
 60 of the complaint becomes inactive, or the complaint or other  
 61 record is made part of the official record of any hearing or  
 62 court proceeding. This exemption is necessary because the  
 63 release of such information could potentially be defamatory to  
 64 an individual under investigation or cause unwarranted damage to  
 65 the good name or reputation of such individual. In addition, the  
 66 Legislature finds that it is a public necessity that such  
 67 information be made temporarily exempt from public record  
 68 requirements so that the investigation is not otherwise  
 69 significantly impaired. The exemption creates a secure  
 70 environment in which an agency may conduct its investigation.

71 Section 3. Paragraph (b) of subsection (2) of section  
 72 338.223, Florida Statutes, is amended to read:

73 338.223 Proposed turnpike projects.--

74 (2)

75 (b) In accordance with the legislative intent expressed in  
 76 s. 337.273, and after the requirements of paragraph (1)(c) have  
 77 been met, the department may acquire lands and property before  
 78 making a final determination of the economic feasibility of a  
 79 project. The requirements of paragraph (1)(c) do not apply to  
 80 hardship and protective purchases of advance right-of-way by the  
 81 department. The cost of advance acquisition of right-of-way may

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82 | be paid from bonds issued under s. 337.276 or from turnpike  
 83 | revenues. For purposes of this paragraph, the term "hardship  
 84 | purchase" means purchase from a property owner of a residential  
 85 | dwelling of not more than four units who is at a disadvantage  
 86 | due to health impairment, job loss, or significant loss of  
 87 | rental income. For purposes of this paragraph, the term  
 88 | "protective purchase" means that a purchase to limit  
 89 | development, building, or other intensification of land uses  
 90 | within the area right-of-way is needed for transportation  
 91 | facilities. The department shall give written notice to the  
 92 | Department of Environmental Protection 30 days before final  
 93 | agency acceptance as set forth in s. 119.0711(2), which notice  
 94 | shall allow the Department of Environmental Protection to  
 95 | comment. Hardship and protective purchases of right-of-way shall  
 96 | not influence the environmental feasibility of a project,  
 97 | including the decision relative to the need to construct the  
 98 | project or the selection of a specific location. Costs to  
 99 | acquire and dispose of property acquired as hardship and  
 100 | protective purchases are considered costs of doing business for  
 101 | the department and are not to be considered in the determination  
 102 | of environmental feasibility for the project.

103 | Section 4. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-19 Construction Management  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		 Barnum/Dykes	Cooper 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

PCB GEAC 08-19 creates a new section in Chapter 255, Florida Statutes. It provides that Department of Management Services (DMS) may procure the services of a construction management entity pursuant to the process provided in s. 287.055, F.S.

Specifically, the bill:

- Provides definitions applicable to the newly created section.
- Authorizes DMS to select and contract with construction management entities, to include continuing contracts, when the total cost of the project does not exceed \$1 million.
- Provides that DMS may require a guaranteed maximum price and a guaranteed completion date.
- Provides that DMS may require a separate maximum price and guaranteed completion date for each grouping of substantially similar activities included within a project without repeating the competitive selection process throughout the project.
- Provides that DMS shall promulgate rules applicable to state agencies utilizing construction management contracts and continuing contracts established by the Department.

PCB GEAC 08-19 is effective upon becoming law.

There does not appear to be a fiscal impact attached to the bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current situation

Department of Management Services (DMS) is the state agency responsible for managing construction projects in accordance with s. 255.31, F.S. As provided in s. 255.29, F.S., DMS competitively contracts for construction management services. In addition, pursuant to s. 287.055(2)(g), F.S. and s. 287.055(4)(d), F.S., DMS already enters into continuing contracts<sup>1</sup> for professional services.<sup>2</sup>

Section 255.103, F.S. provides that local governments may engage construction management and program management entities in accordance with the process specified in s. 287.055, F.S. After having been selected and after competitive negotiations, the construction management entity may be required to offer a guaranteed maximum price and a guaranteed completion date. The local government may require the construction management entity to provide for a separate guaranteed maximum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project without requiring a new competitive procurement for each activity within the project.<sup>3</sup>

Prior to 2007, Florida Statutes had been interpreted as providing similar authority to DMS. Upon closer analysis in 2007, it was determined that Florida Statutes did not clearly provide DMS the same flexibility now afforded local governments through s. 255.103, F.S. Thus, the process was discontinued and DMS reported a 40% workload increase for its building construction workgroup, and delays of 4-6 months in the completion of new construction projects.

##### Proposed Change

PCB GEAC 08-19 creates s. 255.32, F.S., which provides that DMS may select and contract with a construction management entity pursuant to the process provided in s. 287.055, F.S. This new section would apply for projects in which construction costs do not exceed \$1 million. Under the bill, DMS would be authorized to engage construction management entities previously selected through competitive solicitation, without the requirement to repeat the competitive selection process throughout the project. At the option of DMS, a guaranteed maximum price and a guaranteed completion date

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<sup>1</sup> A "continuing contract" is a contract for professional services entered into by an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$1 million, for study activity when the fee for such professional service does not exceed \$50,000, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

<sup>2</sup> "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

<sup>3</sup> A project may include a grouping of minor construction, rehabilitation, or renovation activities, or a grouping of substantially similar construction, rehabilitation, or renovation activities.



may be required. For each grouping of substantially similar construction, rehabilitation, or renovation activities included within a project, a separate guaranteed maximum price and separate guaranteed completion date may be required.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 255.32, F.S., thereby providing that DMS may procure the services of a construction management entity, to include continuing contracts, under certain circumstances.

Section 2. Provides an effective date upon becoming law.

**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 because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

PCB GEAC 08-19 provides that DMS shall promulgate rules applicable to state agencies for utilizing construction management contracts and continuing contracts established by DMS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to state construction management  
 3           contracting; creating section 255.32; providing  
 4           definitions; authorizing Department of Management Services  
 5           to select and contract with construction management  
 6           entities under certain conditions; providing an effective  
 7           date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1.   Section 255.32, Florida Statutes, is created to  
 12   read:

13           255.32 State construction management contracting. -

14           (1) DEFINITIONS. - For purposes of this section:

15           (a) "Construction Management" means the coordination and  
 16           supervision of the construction process by a licensed general  
 17           contractor, as defined in s. 489.105(3)(a), or a licensed  
 18           building contractor, as defined in s. 489.105(3)(b), within the  
 19           scope of his or her license, from the conceptual development  
 20           stage through final construction, including but not limited to  
 21           scheduling, selection, contracting with and directing of  
 22           specialty trade contractors and value engineering of a project.

23           (b) "Continuing Contract" means a contract for construction  
 24           management services entered into in accordance with all the  
 25           procedures of this section between the department and a  
 26           construction management entity whereby the construction  
 27           management entity provides construction project services in  
 28           which construction costs do not exceed \$1 million or for work of

29 a specified nature as outlined in the contract required by the  
 30 department. The contract must provide a termination clause.  
 31 Firms providing professional services under continuing contracts  
 32 shall not be required to bid against one another during a  
 33 negotiation process.

34 (c) "Department" means the Department of Management  
 35 Services.

36 (d) "Geographic Area" means an area of the state as defined  
 37 by the department to establish continuing contract services.

38 (e) "Project" means a planned or unforeseen fixed capital  
 39 outlay activity described by the department as to its scope and  
 40 specific requirements. A project may include:

41 1. A grouping of minor construction, rehabilitation, or  
 42 renovation activities.

43 2. A grouping of substantially similar construction,  
 44 rehabilitation, or renovation activities.

45 (2) The department, pursuant to the process provided in s.  
 46 287.055, may select and contract with construction management  
 47 entities, to include continuing contracts, for construction  
 48 projects with a total cost not exceeding \$1 million per project  
 49 where the department may negotiate and contract with any  
 50 construction management entity that:

51 (a) Was competitively selected by the department to  
 52 perform specific construction management services within a  
 53 defined time period and geographical area;

54 (b) Has continuously maintained an office within the  
 55 geographic area for the preceding three years;

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56 (c) Agrees to follow the advertising and competitive  
57 bidding process that the department would be required to follow  
58 if the department were hiring the subcontractors directly;

59 (d) Is contracted separately from the design criteria  
60 professional contract, if any, assigned to the project; and

61 (e) Has performed any prior construction management  
62 services to the department's satisfaction.

63 (3) At the option of the department; the construction  
64 management entity, after having been selected for a project and  
65 after competitive negotiations, may be required to offer a  
66 guaranteed maximum price and a guaranteed completion date, in  
67 which case the construction management entity must secure an  
68 appropriate surety bond pursuant to s. 255.05 and must hold  
69 construction subcontracts. If a project solicited by the  
70 department under the process provided in s. 287.055 includes a  
71 grouping of substantially similar construction, rehabilitation,  
72 or renovation projects, the department, after competitive  
73 negotiations, may require the construction management entity to  
74 provide for a separate guaranteed maximum price and a separate  
75 guaranteed completion date for each grouping of substantially  
76 similar construction, rehabilitation, or renovation activities  
77 included within the project.

78 (4) The department shall promulgate rules applicable to  
79 state agencies for utilization of construction management and  
80 continuing contracts established by the department.

81 (5) Nothing in this section shall be construed to prohibit  
82 a continuing contract between the department and a construction  
83 management entity as otherwise authorized by law.

84 | Section 2. This act shall take effect upon becoming law.



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# **Government Efficiency & Accountability Council**

## **ADDENDUM A**

**Wednesday, March 12, 2008  
2:10 PM  
Morris Hall (17 HOB)**

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB GEAC 08-19**

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Representative Attkisson offered the following:

4       **Amendment**

5       Remove everything after the enacting clause and insert:  
6       Section 1. Section 255.32, Florida Statutes, is created to  
7 read:

8       255.32 State construction management contracting. -

9       (1) DEFINITIONS. - For purposes of this section:

10       (a) "Construction management entity" means a licensed  
11 general contractor, as defined in s. 489.105(3)(a), or a  
12 licensed building contractor, as defined in s. 489.105(3)(b),  
13 who coordinates and supervises a construction project from the  
14 conceptual development stage through final construction,  
15 including the scheduling, selection, contracting with and  
16 directing of specialty trade contractors, and the value  
17 engineering of a project.

18       (b) "Construction project" means any planned or unforeseen  
19 fixed capital outlay activity authorized under s. 255.31. A  
20 construction project may include:

21       1. A grouping of minor construction, rehabilitation, or  
22 renovation activities.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 2. A grouping of substantially similar construction,  
24 rehabilitation, or renovation activities.

25 (c) "Continuing contract" means a contract with a  
26 construction management entity for work during a defined time  
27 period on construction projects, described by type, that may or  
28 may not be identified at the time the contract is entered.

29 (d) "Department" means the Department of Management  
30 Services.

31 (2) To assist in the management of construction projects,  
32 the department is authorized to select and contract with  
33 construction management entities that:

34 (a) Are competitively selected by the department pursuant  
35 to the process provided in s. 287.055;

36 (b) Agree to follow the advertising and competitive  
37 bidding processes that the department would be required to  
38 follow if the department was managing the construction project  
39 directly; and,

40 (c) Are contracted separately from the design criteria  
41 professional contract, if any, assigned to the construction  
42 project.

43 (3) The department's authority under subsection (2)  
44 includes the right to enter into continuing contracts so long as  
45 the continuing contract is not used for any construction project  
46 having a total estimated cost exceeding \$1 million.

47 (4) At the option of the department, the construction  
48 management entity, after having been selected for a construction  
49 project and after competitive negotiations, may be required to  
50 offer a guaranteed maximum price and a guaranteed completion  
51 date. In such event, the construction management entity must  
52 secure an appropriate surety bond pursuant to s. 255.05 and must  
53 hold construction subcontracts. If a project solicited by the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 department under the process provided in s. 287.055 includes a  
55 grouping of minor construction, rehabilitation, or renovation  
56 activities, or substantially similar construction,  
57 rehabilitation, or renovation activities, the department may  
58 require the construction management entity to provide for a  
59 separate guaranteed maximum price and a separate guaranteed  
60 completion date for each grouping included within the project.

61 (5) The department shall promulgate rules for state  
62 agencies to utilize construction management entities under  
63 contract with the department.

64 Section 2. This act shall take effect upon becoming law.