

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

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

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**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 active criminal investigative information to evaporate upon the sharing of that information with another

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

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.

### **D. FISCAL COMMENTS:**

None.

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

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

### 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.