



Committee on State Affairs

**Wednesday, March 5, 2008
9:00 AM – 10:00 AM
Morris Hall**

**Marco Rubio
Speaker**

**Andy Gardiner
Chairman**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on State Affairs

Start Date and Time: Wednesday, March 05, 2008 09:00 am

End Date and Time: Wednesday, March 05, 2008 10:00 am

Location: Morris Hall (17 HOB)

Duration: 1.00 hrs

Workshop on the following:

PCB GEAC 08-06 relating to the Open Government Sunset Review of the public record exemption for the Florida Putative Father Registry

PCB GEAC 08-07 relating to the Open Government Sunset Review of the public record exemption for information regarding victims of child abuse or sexual offenses

PCB GEAC 08-08 relating to the Open Government Sunset Review of the public record exemption for paratransit services

PCB GEAC 08-09 relating to the Open Government Sunset Review of the public record exemption for foster parent applicants and licensed foster parents

PCB GEAC 08-10 relating to the Open Government Sunset Review of the public record exemption for the Florida Kidcare program

PCB GEAC 08-11 relating to the Open Government Sunset Review of the public record exemption for food safety and food illness investigations

PCB GEAC 08-18 relating to a public record exemption for complaints and other records in the custody of any agency which relate to a complaint of discrimination

DISCUSSION:

Committee on State Affairs interim project report entitled "Open Government Sunset Reviews"

NOTICE FINALIZED on 03/03/2008 16:08 by TUCK.SHIRLEY

COMMITTEE ON STATE AFFAIRS
WEDNESDAY, MARCH 5, 2008

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OPEN GOVERNMENT SUNSET REVIEW ACT

Summary

The Open Government Sunset Review Act 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 in the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Act provides for creation or expansion of an exemption only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria for consideration are if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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; or
- Protects information of a confidential nature concerning entities, including a formula, pattern, device, combination of devices, or compilation of information used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

The Act also requires consideration of the following:

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

OPEN GOVERNMENT SUNSET REVIEW ACT

119.15 Legislative review of exemptions from public meeting and public records requirements.—

(1) This section may be cited as the “Open Government Sunset Review Act.”

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

(a) Is required by federal law; or

(b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;

2. Exempt from s. 119.07(1) or s. 286.011; and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and

repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)(a) As part of the review process, the Legislature shall consider the following:

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

(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to

persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1.



The Florida House of Representatives

Interim Project Report

January 2008

Committee on State Affairs

Representative Andy Gardiner, Chair

OPEN GOVERNMENT SUNSET REVIEWS

I. SUMMARY

Article I, s. 24 of the State Constitution, establishes a constitutional right for any person to inspect or copy public records. This same provision authorizes the Legislature to create exemptions to this requirement.

The Open Government Sunset Review Act (Act) establishes a process for the review and sunset of exemptions to public record requirements in the fifth year after their enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Division of Statutory Revision certified for repeal seven public record exemptions pursuant to the Act. The exemptions range from the confidentiality of information contained in the Florida Putative Father Registry to trade secrets filed with the Office of Insurance Regulation.

Based upon a review of the exemptions, this report recommends retaining, with modifications, each of the public record exemptions.

II. PUBLIC RECORDS LAW

Florida's policy of open government can be traced back to 1892 when the Legislature enacted the first public records law.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.²

A. ARTICLE I, SECTION 24 OF THE STATE CONSTITUTION

In November 1992, Florida voters approved a constitutional amendment guaranteeing public access to records of local governments and of the legislative, executive, and judicial branches of state government. It states:

¹ Section 1390, 1391, F.S. (Rev. 1892).

² Article I, s. 24, Florida Constitution.

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.³

B. PUBLIC RECORDS ACT

In addition to the State Constitution, the Public Records Act,⁴ which pre-dates the constitutional right of access, specifies conditions under which public access must be provided to records of the executive branch and other agencies.⁵ The Public Records Act states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.⁶

Unless specifically exempted, all agency⁷ records are available for public inspection. The term “public record” is broadly defined to mean:

[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁸

All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁹

³ Article I, s. 24(a), Florida Constitution.

⁴ Chapter 119, F.S.

⁵ In 1909, the Legislature enacted the following provision: “That all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.” (Chapter 5942, 1909, L.O.F., *see also, Public Records Exemptions and Public Meetings Exemptions Staff Guidebook*, House Committee on Governmental Operations, November 1994) Not until 1967 did the Florida Legislature further address access to records. Chapter 67-125, L.O.F., enacted Florida’s “public records” law, which was codified in Chapter 119, F.S.

⁶ Section 119.07(1)(a), F.S.

⁷ 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.”

⁸ Section 119.011(1), F.S.

⁹ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

C. PUBLIC RECORD EXEMPTIONS

Only the Legislature is authorized to create exemptions to public record requirements.¹⁰ Exemptions must be created by general law and must meet the following requirements:

- The Legislature must state with specificity the public necessity justifying the exemption.
- The exemption can be no broader than necessary to accomplish the stated purpose of the law.¹¹
- The general law creating the exemption can contain only exemptions, as well as provisions governing the enforcement of the public record requirements.¹²

D. EXEMPT VERSUS CONFIDENTIAL AND EXEMPT

There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.¹³ If the Legislature designates a record as confidential and exempt from public disclosure, such record may *not* be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.¹⁴

III. OPEN GOVERNMENT SUNSET REVIEW ACT

A. BACKGROUND

The Open Government Sunset Review Act (Act)¹⁵ provides for the systematic review, through a five year cycle ending October 2nd of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.¹⁶ By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷

The Act provides that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the

¹⁰ Article I, s. 24(c), Florida Constitution.

¹¹ See also, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹² Article I, s. 24(c), Florida Constitution.

¹³ See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁴ See Attorney General Opinion 85-62, August 1, 1985.

¹⁵ Section 119.15, F.S.

¹⁶ The Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System. Section 119.15(2), F.S.

¹⁷ Section 119.15(5)(a), F.S.

strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria for consideration are if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁸

The Act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹⁹

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are statutory only, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.²⁰ The Legislature is limited in its review process by constitutional requirements.

B. EXEMPTIONS CERTIFIED FOR REPEAL

The Division of Statutory Revision certified for repeal seven public record exemptions pursuant to the Act. The exemptions range from confidentiality of information contained in the Florida Putative Father Registry to trade secrets filed with the Office of Insurance Regulation.²¹

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(a), F.S.

²⁰ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

²¹ The following sections were certified for repeal: s. 63.0541, F.S. – information contained in the Florida Putative Father Registry; s. 119.071(2)(h)2., F.S. – photos, videotapes, or images of any part of the body of a victim of a sexual offense; s. 119.0713(2), F.S. – personal identifying information regarding eligibility for paratransit services (Title II of the Americans with Disabilities Act) or the transportation disadvantaged program; s. 409.175(16), F.S. – certain information submitted as part of the foster parent application process; s. 409.821, F.S. – information identifying a Florida Kidcare program applicant or enrollee; s. 500.148, F.S. – information deemed confidential by federal law and that is provided to the Department of Agriculture and Consumer Services during a joint food safety or food illness investigation; and s. 626.97411, F.S. – trade secrets filed with the Office of Insurance Regulation.

IV. METHODOLOGY OF REVIEW

Staff reviewed the public record exemptions pursuant to the requirements of the Open Government Sunset Review Act. As part of the review process, staff examined the exemptions certified for repeal, reviewed applicable Florida Statutes and other state and federal laws, reviewed applicable case law, researched the history relating to the creation of the exemptions, surveyed and held meetings with affected custodians of public records, and collected position statements from entities interested in the exemptions.

V. FLORIDA PUTATIVE FATHER REGISTRY

A. BACKGROUND

The Florida Putative Father Registry (Registry) was created²² to permit a man who believes he may have fathered a child to assert his claim of paternity.²³ The Registry is maintained by the Office of Vital Statistics (Office) of the Department of Health.²⁴

In order to claim parental rights, an unmarried biological father²⁵ must file with the Registry a notarized claim of paternity form (form) prior to the birth of the child and before a petition is filed for termination of parental rights.²⁶ 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.²⁷

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. The registrant is required to sign and notarize the form under oath.²⁸

Prior to the birth of the child, a registrant may retract his claim of paternity by filing a notarized written revocation of such claim. Upon receipt of the revocation, the claim of paternity is deemed null and void. Moreover, if a court determines that a registrant is not the father of a child in question, or otherwise has no parental rights over the child, the court must order a registrant's name removed from the Registry.²⁹

²² Chapter 2003-58, s. 11, L.O.F.

²³ Since its creation, 515 persons have registered with the Registry. Department of Health, Office of Vital Statistics, questionnaire response, July 2007, at 2 (on file with the Committee on State Affairs).

²⁴ Section 63.054(1), F.S.

²⁵ 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."

²⁶ Section 63.054(1), F.S.

²⁷ Section 63.054(2), F.S.

²⁸ 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 (last visited December 11, 2007).

²⁹ Section 63.054(5), F.S.

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

In order to “provide safeguards to protect and promote the well-being of persons being adopted and their birth and adoptive parents,”³⁰ the Legislature enacted a public record exemption³¹ to keep all information contained in the Registry confidential and exempt from public record requirements.³² The confidential and exempt information, however, must be disclosed to:

- An adoption entity,³³ 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.³⁴

Furthermore, 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.³⁵

When enacting the public record exemption, the Legislature found that preventing the disclosure of Registry information would encourage putative fathers to register; thus, preserving their right to be notified of and consent to an adoption. Furthermore, protecting the information would prevent the unnecessary and unwanted intrusion into personal information, including the existence of intimate relations, and would ensure due process and privacy rights to the individuals involved.³⁶

C. FINDINGS

Based upon staff’s review, it was determined that the exemption:

- Allows the office 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.

The exemption currently provides limited access to the confidential and exempt information contained in the Registry. One such exception is authorized access to the court upon issuance of a court order concerning a petitioner acting pro sé in an action under chapter 63, F.S. According to the Office, such court access is limited because access is authorized to “[a]ttorneys . . .

³⁰ Chapter 2003-56, s. 3, L.O.F.

³¹ *Id.* at s. 1.

³² Section 63.0541(1), F.S.

³³ 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.

³⁴ Section 63.0541(1), F.S.

³⁵ Section 63.0541(2), F.S.

³⁶ Chapter 2003-56, s. 3, L.O.F.

through representation of a client to receive the information on behalf of their petitioner/clients. Pro se litigants must go through the court to obtain the information to ensure the confidentiality of the information in the registry.”³⁷

This provision, however, is unclear as to whether the petitioner acting pro se actually receives access to the confidential and exempt information since access is granted to the court. This provision should be clarified.

Further, the exemption appears to contain duplicative provisions relating to access to and maintenance of the database.

D. RECOMMENDATION

This report recommends that the Legislature retain the public record exemption for the Florida Putative Father Registry, with clarifications. It also recommends removal of the superfluous language.

VI. VICTIM OF A SEXUAL OFFENSE

A. PUBLIC RECORD EXEMPTION UNDER REVIEW

In 2003, the Legislature enacted, with retroactive application,³⁸ a public record exemption³⁹ for any criminal intelligence information⁴⁰ and criminal investigative information⁴¹ that is a photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether it identifies the victim.⁴² Prior to this act, the law provided a public record exemption for certain information revealing the identity of a victim of a sexual battery, a lewd or lascivious offense, or child abuse.⁴³

The possible catalyst for the Legislature’s decision to expand the existing protection to such victims was the case of *Weeks v. Golden*.⁴⁴ In 1997, James Weeks, an inmate in the Florida correctional system, made three public records requests for documents relating to his sexual battery prosecution. When his requests went unanswered, he filed a petition to compel the state

³⁷ Office of Vital Statistics of the Department of Health, questionnaire response, July 2007, question 5a. (on file with the Committee on State Affairs).

³⁸ Access to public records is a substantive right; thus, a statute affecting that right is presumptively prospective. It is not applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001).

³⁹ Chapter 2003-157, s. 1, L.O.F.

⁴⁰ Section 119.011(3)(a), F.S., defines “criminal intelligence information” to mean “information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.”

⁴¹ Section 119.011(3)(b), F.S., defines “criminal investigative information” to mean “information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.”

⁴² Section 119.071(2)(h)2., F.S.

⁴³ See s. 119.071(2)(h)1., F.S.

⁴⁴ See Staff Analysis of CS/HB 453, Florida House of Representatives (March 27, 2003).

attorney to provide him with the documents requested, which included “close-up shots of the victim’s genital area.”⁴⁵ The First District Court of Appeal eventually determined that because these photographs did not identify the victim, the public was entitled to access these photos, stating “[i]f the legislature had intended to exempt *all* photographs of victims of sexual offenses, it could have easily said so” in statute.⁴⁶

When enacting this exemption, the Legislature declared it a public necessity that such information be made confidential and exempt from public record requirements because:

[S]uch photographs, videotapes, or images often depict the victim in a graphic and disturbing fashion, frequently nude, bruised, or bloodied. Such highly sensitive photographs, videotapes, or images of a victim of a sexual offense, if viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the victim and the victim’s family.⁴⁷

B. OTHER RELEVANT PUBLIC RECORD EXEMPTIONS

Current law provides other public record exemptions and statutes that are relevant to the exemption under review. An assessment of these statutes in relation to the one under review is necessary, as one of the considerations during an open government sunset review is whether a statutory merge would be appropriate when multiple exemptions for the same type of record exist.⁴⁸

Current law provides that all court records, including witness testimonies, revealing the photograph, name, or address of the victim of an alleged offense described in chapters 794 or 800, F.S., or act of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, F.S., are confidential and exempt if the state or the victim demonstrates a need for confidentiality.⁴⁹ If the court declares that all court records or other information that reveal the identity of the victim are confidential and exempt, the defendant charged may apply for an order of disclosure for the purpose of preparing a defense. The defendant, however, is prohibited from disclosing the victim’s identity to anyone other than his or her defense team.⁵⁰

Current law also provides that information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public record requirements as provided in s. 119.071(2)(h), F.S.⁵¹

⁴⁵ *Weeks v. Golden*, 798 So. 2d 848 (Fla 1st DCA 2001).

⁴⁶ *Id.*

⁴⁷ Chapter 2003-157, s. 3, L.O.F.

⁴⁸ Section 119.15(6)(a)6., F.S.

⁴⁹ The state or victim must demonstrate to the court that the: identity of the victim is not already known in the community; victim has not voluntarily called public attention to the offense; identity of the victim has not otherwise become a reasonable subject of public concern; disclosure of the victim’s identity would be offensive to a reasonable person; and disclosure of the victim’s identity would: endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim; endanger the victim because of the likelihood of retaliation, harassment, or intimidation; cause severe emotional or mental harm to the victim; make the victim unwilling to testify as a witness; or be inappropriate for other good cause shown. Section 92.56(1), F.S.

⁵⁰ Section 92.56(2), F.S.

⁵¹ Section 119.0714(1)(h), F.S.

The Public Records Act further provides that active⁵² criminal intelligence information and active criminal investigative information are exempt from public record requirements.⁵³

Finally, current law also prescribes penalties and provides victims legal recourse for the unauthorized disclosure of protected information:

- It is a second degree misdemeanor for a public employee with access to the photographs, names, or addresses of certain sexual offense victims to willfully and knowingly disclose such information to an unauthorized entity.⁵⁴
- Any entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under chapters 794 or 800, F.S., is liable to that victim all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication.⁵⁵

C. FINDINGS

Based upon staff's review, it was determined that the exemption 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.

Staff received from questionnaire respondents⁵⁶ suggested changes to the public record exemption. The clerks of court (clerks) suggested changes to the record redaction⁵⁷ process. Those clerks want to require the state attorney or the parties to the case, who are submitting the confidential and exempt information, to be responsible for redacting or notifying the clerk that redaction of such information is necessary. The clerks also suggested narrowing the application

⁵² Section 119.011(3)(d), F.S., defines "active" to mean:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

⁵³ Section 119.071(2)(c)1., F.S.

⁵⁴ Section 794.024, F.S., prohibits the disclosure of protected information to anyone "not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by s. 119.071(2)(h), or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), who will be offering services to the victim."

⁵⁵ Section 794.026, F.S.

⁵⁶ The clerks of court, public defenders, state attorneys, and the Florida Department of Law Enforcement were sent questionnaires regarding the public record exemption under review (s. 119.071(2)(h)2., F.S.)

⁵⁷ Section 119.011(12), F.S., defines "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information."

of the exemption to criminal cases or criminal actions filed under chapters 794, 800, or 827, F.S. They also suggested expanding the exemption to include sexual violence actions under chapter 784, F.S., and divorce cases in which photos appear to show alleged sexual abuse of a spouse. Finally, it was suggested that the Legislature reconcile sections 92.56, 794.024, and 794.026, F.S., with s. 119.071(2)(h), F.S., to make clear the exceptions to confidential treatment of the information.⁵⁸

The Florida Department of Law Enforcement (FDLE) stated it “has been advised by trainers that the exemption has limited instructors’ ability to utilize photos in training sexual crime investigators and other criminal investigators.”⁵⁹ FDLE suggested that the exemption be amended to allow access to such records for training purposes.⁶⁰

D. RECOMMENDATION

This report recommends that the Legislature retain the public record exemption for photographs, videotapes, or images of victims of a sexual offense, with clarifications and modifications to the exemption and related laws. The exemption and related laws should be collocated, streamlined, and clarified.

VII. PARATRANSIT SERVICES

A. BACKGROUND

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit⁶¹ 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 need to be provided, including requirements on state and local entities to administer a process for determining eligibility.

Eligible recipients for such services include:

- Individuals who are unable to get on or off public transit without assistance.
- Individuals who need to use a wheelchair lift on public transportation but such transportation is not available when needed.

⁵⁸ See questionnaire responses from the clerks of court (2007) (on file with the Committee on State Affairs).

⁵⁹ Florida Department of Law Enforcement (FDLE), response to Senate questionnaire, June 2007, question 11a. (on file with the Committee on State Affairs).

⁶⁰ FDLE, response to House questionnaire, August 2007, question 3. (on file with the Committee on State Affairs); see also, FDLE response to Senate questionnaire, June 2007 (on file with the Committee on State Affairs).

⁶¹ 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.”

- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.⁶²

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency⁶³ “will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement.”⁶⁴ Florida law requires the Agency for Health Care Administration (AHCA) to purchase Medicaid transportation services through the Transportation Disadvantaged program’s designated community transportation coordinator (CTC) unless a more cost-effective method is determined by AHCA or if the CTC does not coordinate Medicaid transportation services.⁶⁵

These services are referred to as the Medicaid Non-Emergency Transportation Services (Medicaid NET Services). In June 2004, AHCA transferred the management of such services to the Commission for the Transportation Disadvantaged (CTD).⁶⁶ The CTD contracts with a CTC and a planning agency in each county to provide transportation services.

Applicant qualifying criteria are developed by the local coordinating board.⁶⁷ The qualifying criteria are used by the CTC to determine eligibility for services. To determine eligibility for paratransit services, applicants must submit an application that requires the disclosure of medical and disability information, among other information.

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

In 2003, the Legislature enacted a public record exemption⁶⁸ for all personal identifying information contained in records relating to a person’s health for the purpose of determining eligibility for paratransit services under Title II of the ADA or the transportation disadvantaged program. This exemption applies, with retroactive application, to such information contained in records held by local governmental entities.⁶⁹

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

⁶² 49 C.F.R. part 37.123.

⁶³ In Florida, the Medicaid agency is the Agency for Health Care Administration.

⁶⁴ 42 C.F.R. part 431.53.

⁶⁵ Section 427.0135, F.S.

⁶⁶ *Annual Performance Report Commission on the Transportation Disadvantaged*, April 2006, at 20, available at <www.dot.state.fl.us/ctd/docs/APR/2006/2006%20layout%20FINAL.pdf> (last visited Dec. 12, 2007).

⁶⁷ The local coordinating board is appointed and staffed by the planning agency and oversees and annually evaluates the CTC.

⁶⁸ Chapter 2003-110, s. 1, L.O.F.

⁶⁹ Section 119.0713(2), F.S.

- 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.⁷⁰

When enacting the exemption, the Legislature found that it was a necessity “in order to protect health-related information that is of a sensitive personal nature . . . The private and confidential nature of personal health matters pervades both the public and private health care sectors.”⁷¹

C. FINDINGS

Based upon staff's review, 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.⁷²

D. RECOMMENDATION

This report recommends that the Legislature retain and expand the public records exemption for personal identifying information of an applicant for paratransit services. It is recommended that the exemption be expanded to apply to any agency, whether it is a state or local agency. This expansion would require relocation of the exemption to the section of law containing general exemptions from inspection and copying of public records.⁷³

VIII. LICENSED FOSTER PARENTS AND FOSTER PARENT APPLICANTS

A. BACKGROUND

The Department of Children and Family Services (DCFS) administers the state's foster care program. It also adopts and amends licensing rules⁷⁴ for family foster homes,⁷⁵ residential child-

⁷⁰ *Id.*

⁷¹ Chapter 2003-110, s. 3, L.O.F.

⁷² Meeting with staff of the Florida Commission for the Transportation Disadvantaged on July 17, 2007.

⁷³ Section 119.071, F.S., provides the general exemptions from inspection and copying of public records.

⁷⁴ Section 409.175(5)(a), F.S.

⁷⁵ 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.”

caring agencies,⁷⁶ and child-placing agencies.⁷⁷ The requirements for licensure and operation of such homes include the:

- Operation, conduct, and maintenance of the foster home;
- Provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the physical, emotional and mental health of the foster children;
- Appropriateness, safety, cleanliness, and general adequacy of the premises;
- Ratio of staff to children required to provide adequate care and supervision, including the maximum number of children in the case of foster homes;
- Good moral character of the personnel based on their screening, education, training, and experience;
- Ability of DCFS to grant exemptions from disqualification from working with children or the developmentally disabled;
- Provision of preservice and inservice training for all foster parents and agency staff;
- Satisfactory evidence of financial ability of the applicant to provide care in compliance with licensing requirements;
- Maintenance of records by the residential child-caring agency or child-placing agency pertaining to admission, progress, health, and discharge of children served, including written case plans and reports to DCFS;
- Provision for parental involvement to encourage preservation and strengthening of a child's relationship with the family;
- Transportation of children served; and
- Provisions to safeguard the legal rights of the children served.⁷⁸

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.⁷⁹ 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.

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

⁷⁶ 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 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."

⁷⁷ 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."

⁷⁸ Section 409.175(5)(a), F.S.

⁷⁹ Section 409.175(6), F.S.

Current law provides, with retroactive application, a public record exemption for certain personal information of 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.⁸⁰

The information remains exempt for five years after the application date for foster parent applicants⁸¹ and for five years after the license expiration date for licensed foster parents,⁸² with the exception of social security numbers and medical information, which remain protected. Exempt information regarding a licensed foster parent who becomes an adoptive parent remains protected.⁸³

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.⁸⁴

Originally enacted in 1998,⁸⁵ this exemption applied only to licensed foster parents, their spouses and children, and other household members. The Legislature expanded this exemption, in 2003, to include the personal information of foster parent applicants and their spouses and children and other household members.⁸⁶ In doing so, the Legislature found that it was a public necessity to avoid public disclosure of records that could “cause harm or embarrassment to an individual,” and “lessen the willingness of prospective caregivers to reveal medical information, thus hindering the department’s ability to assess foster parent applicants and licensed foster parents and hindering the department’s attempts to make appropriate placements for foster children.”⁸⁷ The Legislature further found that it is a public necessity to provide foster parent applicants with the same protections as licensed foster parents in order to “encourage persons to apply to become licensed foster parents. The public availability of such information regarding foster parent applicants could have a negative, chilling effect on the recruitment of such persons.”⁸⁸

C. FINDINGS

Based upon staff’s review, 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.

⁸⁰ Section 409.175(16)(a) and (b), F.S.

⁸¹ Section 409.175(16)(a), F.S.

⁸² Section 409.175(16)(b), F.S.

⁸³ *Id.*

⁸⁴ Section 409.175(16)(c), F.S.

⁸⁵ Chapter 98-29, s. 1, L.O.F.

⁸⁶ Chapter 2003-83, s. 1, L.O.F.

⁸⁷ *Id.* at s. 3.

⁸⁸ *Id.*

Further, current law provides a general public record exemption for social security numbers.⁸⁹ As such, the exemption for social security numbers provided in s. 409.175(16)(a) and (b), F.S., is duplicative.

D. RECOMMENDATION

This report recommends that the Legislature retain the public record exemption for certain personal information regarding licensed foster parents and foster parent applicants. In addition, it recommends the repeal of the duplicative exemption for social security numbers provided in s. 409.175(16)(a) and (b), F.S.

IX. FLORIDA KIDCARE PROGRAM

A. BACKGROUND

In 1998, the Legislature created the Florida Kidcare (Kidcare) program⁹⁰ in response to the passage of the State Children's Health Insurance Program⁹¹ by the United States Congress. Family income level, age of the child, and whether the child has a serious health condition are the criteria used to determine which services a child is eligible to receive.

Kidcare is an umbrella program composed of four components that are 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.⁹²

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

Current law provides, with retroactive application, a public record exemption for information identifying a Kidcare program applicant⁹³ or enrollee,⁹⁴ held by AHCA, DCFS, DOH, or FHKC.⁹⁵ 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, and to the Department of Revenue for purposes of administering the state Title IV-D program. In addition, the confidential and exempt information may not be released to any person without the written consent of the Kidcare program applicant.

⁸⁹ See s. 119.071(5)(a), F.S.

⁹⁰ Chapter 98-288, L.O.F.

⁹¹ Title XXI of the Social Security Act.

⁹² See ss. 409.814 and 624.91, F.S.

⁹³ 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."

⁹⁴ 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."

⁹⁵ Section 409.821, F.S.

A violation of the section is a misdemeanor of the second degree.⁹⁶

Originally enacted in 1998,⁹⁷ this exemption applied only to information contained in an application for determination of eligibility for the Kidcare program. In 2003, the Legislature expanded the exemption,⁹⁸ clarifying that it applied to all identifying information of an applicant or enrollee, irrespective of whether such information was located in an application or other record. The Legislature found that without the expansion, the purpose of the exemption would be defeated. The Legislature further found that if such information were not granted protection, “applicants would be less inclined to apply to the program due to the fact that such identifying information would be made available to the public, which would cause an unwarranted invasion into the life and privacy of program applicants and enrollees, thereby significantly decreasing the number of program enrollees.”⁹⁹ Finally, the Legislature found that the exemption was necessary to comply with Federal requirements.¹⁰⁰

C. FINDINGS

Based upon staff’s review, 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.

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*,¹⁰¹ 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.¹⁰²

⁹⁶ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days (s. 775.082, F.S.), and a fine of \$500 (s. 775.083, F.S.)

⁹⁷ Chapter 98-119, s. 1, L.O.F.

⁹⁸ Chapter 2003-104, s. 1, L.O.F.

⁹⁹ *Id.* at s. 3.

¹⁰⁰ *Id.*

¹⁰¹ 720 So.2d 203 (Fla. 1998).

¹⁰² *Id.* at 206, 207.

In *City of Riviera Beach v. Barfield*,¹⁰³ 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 criminal justice agency, it would have expressly provided so in the statute.”¹⁰⁴ 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.

D. RECOMMENDATION

This report recommends that the Legislature retain the public record exemption for Kidcare program applicant and enrollee identifying information. In addition, it recommends removal of the unnecessary provision requiring an entity, with authorized access to the confidential and exempt information, to maintain the confidentiality of that information received.

X. FOOD SAFETY AND FOOD ILLNESS INVESTIGATIONS

A. BACKGROUND

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 Department of Agriculture and Consumer Services’ (DACS) responsibilities include assisting state and federal governments with food borne illness outbreaks that involve Florida firms or farms.¹⁰⁵ The information gathered by federal agencies is confidential under federal law.

When collaborating in such investigations, DACS and participating federal agencies may share information that is protected by federal law. Federal law protects information falling under the definition of a trade secret or confidential commercial or financial information. Such information may include a “commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort,” or “valuable data or information which is used in one’s business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.”¹⁰⁶

¹⁰³ 642 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 records 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*.

¹⁰⁴ *Id.* at 1137.

¹⁰⁵ Department of Agriculture and Consumer Services, Division of Food Safety, website <www.doacs.state.fl.us/fs/safety.html> (last visited Dec. 14, 2007).

¹⁰⁶ 21 C.F.R. part 20.61.

Written communications within the executive branch of the federal government are protected,¹⁰⁷ as are certain communications between the Food and Drug Administration (FDA) and state and local government entities, provided that any confidential information the FDA shares with state entities as part of a cooperative law enforcement or regulatory effort also is kept confidential by such entities.¹⁰⁸

Other information protected at the federal level includes: information established by an executive order to be kept secret in the interest of national defense or foreign policy, internal agency personnel rules and practices, statutorily exempted information, certain intra-agency or inter-agency memoranda, personnel and medical files, certain law enforcement information, certain financial regulatory information, and geological and geophysical information concerning wells.¹⁰⁹

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

In 2003, the Legislature enacted a public record exemption¹¹⁰ for information deemed confidential under federal law¹¹¹ and that is provided to DACS: during a joint food safety or food illness investigation, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review. 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.¹¹²

When enacting the public record exemption, the Legislature found that it was a public necessity that information concerning investigations of food safety or food illness that is otherwise confidential under federal law should likewise remain confidential and exempt when shared with DACS. The exemption affords DACS with the ability to access confidential information provided by federal agencies for purposes of conducting investigations and carrying out contracts and partnership agreements. The Legislature further found that federal agencies would be less inclined to seek the department's review on important regulatory matters if their confidential information was subject to public disclosure when provided to DACS.¹¹³

C. FINDINGS

Based upon staff's review, it was determined that the exemption allows DACS to effectively and efficiently conduct food safety and food illness investigations, which would be significantly impaired without the exemption.

D. RECOMMENDATION

¹⁰⁷ All communications within the Executive Branch of the federal government that are in written form or that are subsequently reduced to writing may be withheld from public disclosure; however, factual information that is reasonably segregable is available for public disclosure. See 21 C.F.R. part 20.62.

¹⁰⁸ 21 C.F.R. part 20.88.

¹⁰⁹ 5 U.S.C. s. 552(b).

¹¹⁰ Chapter 2003-172, s. 1, L.O.F.

¹¹¹ The information must be deemed confidential under 21 C.F.R. parts 20.61, 20.62, or 20.88, or 5 U.S.C. s. 552(b).

¹¹² Section 500.148(3), F.S.

¹¹³ Chapter 2003-172, s. 2., L.O.F.

This report recommends that the Legislature retain the public records exemption with changes to reorganize the structure of the section. It is recommended that the exemption be relocated to the beginning of s. 500.148, F.S., and that the reporting requirements found therein be collocated.

XI. TRADE SECRETS FILED WITH THE OFFICE OF INSURANCE REGULATION

A. BACKGROUND

Many insurers use credit scores and related credit history information as an underwriting tool. According to a 2007 report by the Federal Trade Commission, “[c]redit-based insurance scores are effective predictors of risk under automobile insurance policies. They are predictive of the number of claims consumers file and the total cost of those claims.”¹¹⁴

In 2003, the Legislature enacted legislation that regulated and limited the use of credit information by insurers.¹¹⁵ The law applies to personal lines motor vehicle insurers and residential property insurers that make an adverse decision¹¹⁶ based on credit information of the policyholder or applicant.¹¹⁷ The law also authorizes the Financial Services Commission to adopt rules to administer the section; however, the rulemaking has remained tied up in litigation.¹¹⁸

B. PUBLIC RECORD EXEMPTION UNDER REVIEW

In 2003, the Legislature enacted a public record exemption¹¹⁹ for credit scoring methodologies and related data and information that are trade secrets¹²⁰ and that are filed with the Office of Insurance Regulation (OIR) pursuant to a rate filing or other filing required by law.¹²¹ The Legislature found that it was a public necessity that credit scoring methodologies and related data and information that are trade secrets be made confidential and exempt from public record requirements, as the release of such information could harm the business of an insurance company if revealed to its competitors or the public. The Legislature further found that the

¹¹⁴ *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance*, July 2007, at 13, available at <www.ftc.gov> (last visited Jan. 9, 2008).

¹¹⁵ Chapter 2003-407, s. 3, L.O.F.

¹¹⁶ Section 626.9741(2)(a), F.S., defines “adverse decision” to mean “a decision to refuse to issue or renew a policy of insurance; to issue a policy with exclusions or restrictions; to increase the rates or premium charged for a policy of insurance; to place an insured or applicant in a rating tier that does not have the lowest available rates for which that insured or applicant is otherwise eligible; or to place an applicant or insured with a company operating under common management, control, or ownership which does not offer the lowest rates available, within the affiliate group of insurance companies, for which that insured or applicant is otherwise eligible.”

¹¹⁷ See s. 626.9741, F.S.

¹¹⁸ Office of Insurance Regulation, questionnaire response, July 2007, question 3. (on file with the Committee on State Affairs).

¹¹⁹ Chapter 2003-408, s. 1, L.O.F.

¹²⁰ Section 688.002(4), F.S., defines “trade secret” to mean “information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

¹²¹ Section 626.97411, F.S.

exemption was necessary to prevent an insurer from being less inclined to provide OIR with adequate information on which to base a determination as to whether a filing meets the requirements of law, which would result in increased administrative and legal disputes with regard to the filing.¹²²

C. FINDINGS

Based upon staff's review, it was determined that the exemption:

- Allows OIR to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; and
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

OIR, however, recommends repeal of the public record exemption because it “believes that this information should be made transparent and accessible to the public.”¹²³ It should be noted that a general public record exemption for trade secrets, as interpreted by the First District Court of Appeal, is provided by s. 815.045, F.S. The court determined, in *Sepro Corp. v. Florida Department of Environmental Protection*,¹²⁴ that the section provides a public record exemption for all trade secrets.¹²⁵ The court noted that the section reads like a statement of legislative intent rather than a conventionally phrased provision of positive law, but that its intended effect is clear.

OIR reports that it does not have a process to determine whether an insurer's credit scoring data or other related data or information filed with the Office meets the definition of a trade secret. According to OIR:

¹²² Chapter 2003-408, s. 3, L.O.F.

¹²³ Office of Insurance Regulation, questionnaire response, July 2007, question 3. (on file with the Committee on State Affairs).

¹²⁴ 911 So.2d 792 (Fla. 1st DCA, 2003); rev. denied sub nom. *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005).

¹²⁵ This section of law applies to a trade secret as defined in s. 812.081, F.S. That section defines “trade secret” to mean “the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. “Trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.”

Insurance companies submit all documents related to a rate or form filing to the Office through an electronic file transfer program on the internet. This program allows those documents to be viewed online to the general public via the Office's online I-File system. If a company wants to categorize information as trade secret, it must submit the information under a special link and must submit a cover page explaining why it should remain trade secret.

If a public records request is made for the specific information claimed as trade secret, the Office notifies the company that, unless a judge issues an injunction against the release of the information, the information will be released to the requestor. If the company wishes that the information be kept trade secret, the case must be presented to a judge to determine whether the information meets the definition of trade secret.¹²⁶

D. RECOMMENDATION

This report recommends that the Legislature retain the public record exemption, with modifications. The exemption protects credit scoring methodologies and related data and information that is meets the definition of "trade secret." It is recommended that the superfluous language regarding "credit scoring methodologies and related data and information" be removed as it is superfluous because a reference to trade secrets only encompasses all three terms as it is the modifier.

In addition, the report recommends that when a public record request is made for such confidential and exemption information that OIR determine whether the requested information is a trade secret. After all, OIR's current practice of disclosing requested information identified by the insurer as a trade secret, unless the insurer obtains a court injunction, is inconsistent with its duty as a custodian of public records.

¹²⁶OIR, questionnaire response, July 2007, question 1e. (on file with the Committee on State Affairs).

PCB GEAC 08-06 Summary

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. The Office of Vital Statistics of the Department of Health maintains the Registry.

In order to claim parental rights, an unmarried biological father must file with the Registry a notarized claim of paternity form (form) prior to the birth of the child and before a petition is filed for termination of parental rights. 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.

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.

Public Record Exemption under Review

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.

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.

Proposal

This proposal retains the public record exemption for the Florida Putative Father Registry, with clarifications. It also removes superfluous language.

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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 named in a registry
8 entry; removing superfluous language; repealing s. 2 of
9 Chapter 2003-56, Laws of Florida, which provides for
10 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 naming her as the birth mother.

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

36 ~~(3)(2) Except as set forth in subsection (1),~~ The database
 37 comprising the Florida Putative Father Registry shall remain
 38 ~~confidential and exempt and separate from all other databases in~~
 39 ~~this state, including any local or federal database. Such~~
 40 ~~database may not be accessed by any other state or federal~~
 41 ~~agency or entity.~~

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

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

PCB GEAC 08-07
Summary

Public Record Exemption under Review – Victims of Child Abuse or Sex Offenses

Current law provides a public record exemption for any criminal intelligence information and criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether it identifies the victim. Prior to this act, the law provided a public record exemption for certain information revealing the identity of a victim of a sexual battery, a lewd or lascivious offense, or child abuse.

The possible catalyst for the Legislature's decision to expand the existing protection to such victims was the case of *Weeks v. Golden*. In 1997, James Weeks, an inmate in the Florida correctional system, made three public records requests for documents relating to his sexual battery prosecution. When his requests went unanswered, he filed a petition to compel the state attorney to provide him with the documents requested, which included "close-up shots of the victim's genital area." The First District Court of Appeal eventually determined that because these photographs did not identify the victim, the public was entitled to access these photos, stating "[i]f the legislature had intended to exempt all photographs of victims of sexual offenses, it could have easily said so" in statute.

Proposal

This proposal retains the public record exemption for photographs, videotapes, or images of victims of a sexual offense, with clarifications and modifications to the exemption and related laws. It expands the exemption to include such information regarding victims of child pornography. The proposal also reorganizes the exemption for clarity and makes conforming changes to other relevant statutes.

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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 victims of child abuse or sex
 4 crimes; amending s. 119.071, F.S.; expanding the exemption
 5 for certain victim information by making it confidential
 6 and exempt from public record requirements; expanding the
 7 exemption to include crimes involving child pornography;
 8 creating exceptions to the public record exemption;
 9 providing for future legislative review of the exemption;
 10 reorganizing the exemption; providing a statement of
 11 public necessity; repealing s. 2 of Chapter 2003-157, Laws
 12 of Florida, which provides for repeal of the exemption;
 13 amending s. 92.56, F.S.; clarifying that the provisions
 14 apply to court proceedings; conforming the provisions to
 15 changes made in s. 119.071(2)(h), F.S.; amending s.
 16 119.0714, F.S.; conforming the provisions to changes made
 17 in s. 119.071(2)(h), F.S.; amending s. 794.03, F.S.;
 18 conforming the provisions to changes made in s.
 19 119.071(2)(h), F.S.; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (h) of subsection (2) of section
 24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of
 26 public records.--

27 (2) AGENCY INVESTIGATIONS.--

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28 (h)1. The following criminal intelligence information or
 29 criminal investigative information is confidential and exempt
 30 from s. 119.07(1) and s. 24(a), Art. I of the State
 31 Constitution:

32 a. Any ~~criminal intelligence information or criminal~~
 33 ~~investigative information,~~ including the photograph, name,
 34 address, or other fact, ~~or information~~ which reveals the
 35 identity of the victim of the crime of ~~sexual battery as defined~~
 36 ~~in chapter 794; the identity of the victim of a lewd or~~
 37 ~~lascivious offense committed upon or in the presence of a person~~
 38 ~~less than 16 years of age, as defined in chapter 800; or the~~
 39 ~~identity of the victim of the crime of child abuse as defined by~~
 40 ~~chapter 827.~~ and

41 b. Any ~~criminal intelligence information or criminal~~
 42 ~~investigative information or other criminal record,~~ including
 43 ~~those portions of court records and court proceedings,~~ which may
 44 reveal the identity of a person who is a victim of any sexual
 45 offense, including a sexual offense proscribed in chapter 794,
 46 chapter 800, ~~or~~ chapter 827, or chapter 847, ~~is exempt from s.~~
 47 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

48 c.2. ~~In addition to subparagraph 1., any criminal~~
 49 ~~intelligence information or criminal investigative information~~
 50 ~~that is~~ A photograph, videotape, or image of any part of the
 51 body of the victim of a sexual offense prohibited under chapter
 52 794, chapter 800, ~~or~~ chapter 827, or chapter 847, regardless of
 53 whether the photograph, videotape, or image identifies the

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54 victim, ~~is confidential and exempt from s. 119.07(1) and s.~~
 55 ~~24(a), Art. I of the State Constitution.~~

56 2. Criminal investigative information and criminal
 57 intelligence information made confidential and exempt under this
 58 paragraph may be disclosed by a law enforcement agency to:

59 a. Another governmental entity in the furtherance of its
 60 duties and responsibilities.

61 b. Any person in order to facilitate an active
 62 investigation.

63 c. A person for print, publication, or broadcast if the
 64 law enforcement agency determines that such release would assist
 65 in locating or identifying a person that such agency believes to
 66 be a victim of a sexual offense and who is believed by such
 67 agency to be missing or endangered.

68 3. This exemption applies to such confidential and exempt
 69 photographs, videotapes, or images held as criminal intelligence
 70 information or criminal investigative information held by a law
 71 enforcement agency before, on, or after the effective date of
 72 the exemption.

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

77 Section 2. The Legislature finds that it is a public
 78 necessity to make confidential and exempt from public record
 79 requirements certain criminal intelligence information or
 80 criminal investigative information which reveals the identity of

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81 a victim of the crime of child abuse or of any sexual offense.
 82 The Legislature also finds that it is a public necessity to make
 83 confidential and exempt from public record requirements a
 84 photograph, videotape, or image of any part of the body of a
 85 victim of a sexual offense regardless of whether the photograph,
 86 videotape, or image identifies the victim. The identity of
 87 victims of child abuse or sexual offenses is information of a
 88 sensitive personal nature. As such, this exemption serves to
 89 minimize the trauma to victims because the release of such
 90 information would compound the tragedy already visited upon
 91 their lives and would be defamatory to or cause unwarranted
 92 damage to the good name or reputation of the victims. Protecting
 93 the release of identifying information of such victims protects
 94 them from further embarrassment, harassment, or injury. The
 95 Legislature further finds that it is a public necessity that
 96 criminal intelligence information or criminal investigative
 97 information that is a photograph, videotape, or image of any
 98 part of the body of a victim of a sexual offense prohibited
 99 under chapter 794, chapter 800, chapter 827, or chapter 847,
 100 Florida Statutes, be made confidential and exempt from public
 101 record requirements. The Legislature finds that such
 102 photographs, videotapes, or images often depict the victim in a
 103 graphic and disturbing fashion, frequently nude, bruised, or
 104 bloodied. Such highly sensitive photographs, videotapes, or
 105 images of a victim of a sexual offense, if viewed, copied, or
 106 publicized, could result in trauma, sorrow, humiliation, or
 107 emotional injury to the victim and the victim's family.

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108 Section 3. Section 2. of Chapter 2003-157, Laws of
 109 Florida, is repealed.

110 Section 4. Section 92.56, Florida Statutes, is amended to
 111 read:

112 92.56 Judicial proceedings and court records involving
 113 sexual offenses.--

114 (1) Those portions of All court records and court
 115 proceedings, including testimony from witnesses, that reveal
 116 criminal intelligence information or criminal investigative
 117 information that is confidential and exempt pursuant to s.
 118 119.071(2)(h) the photograph, name, or address of the victim of
 119 an alleged offense described in chapter 794 or chapter 800, or
 120 act of child abuse, aggravated child abuse, or sexual
 121 performance by a child as described in chapter 827, are
 122 confidential and exempt from the provisions of s. 24(a), Art. I
 123 of the State Constitution. and may not be made public if, upon a
 124 showing to the trial court with jurisdiction over the alleged
 125 offense, the state or the victim demonstrates that:

126 ~~(a) The identity of the victim is not already known in the~~
 127 ~~community;~~

128 ~~(b) The victim has not voluntarily called public attention~~
 129 ~~to the offense;~~

130 ~~(c) The identity of the victim has not otherwise become a~~
 131 ~~reasonable subject of public concern;~~

132 ~~(d) The disclosure of the victim's identity would be~~
 133 ~~offensive to a reasonable person; and~~

134 ~~(e) The disclosure of the victim's identity would:~~

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- 135 ~~1. Endanger the victim because the assailant has not been~~
- 136 ~~apprehended and is not otherwise known to the victim;~~
- 137 ~~2. Endanger the victim because of the likelihood of~~
- 138 ~~retaliation, harassment, or intimidation;~~
- 139 ~~3. Cause severe emotional or mental harm to the victim;~~
- 140 ~~4. Make the victim unwilling to testify as a witness; or~~
- 141 ~~5. Be inappropriate for other good cause shown.~~

142 (2) ~~If the court, pursuant to subsection (1), declares~~
 143 ~~that all court records or other information that reveals the~~
 144 ~~photograph, name, or address of the victim are confidential and~~
 145 ~~exempt from s. 24(a), Art. I of the State Constitution, The~~
 146 defendant charged with the crime described in chapter 794 or
 147 chapter 800, or with child abuse, aggravated child abuse, or
 148 sexual performance by a child as described in chapter 827, may
 149 apply to the trial court for an order of disclosure of
 150 identifying information concerning the victim in order to
 151 prepare the defense. This paragraph may not be construed to
 152 prevent the disclosure of the victim's identity to the
 153 defendant; however, the defendant may not disclose the victim's
 154 identity to any person other than the defendant's attorney or
 155 any other person directly involved in the preparation of the
 156 defense. A willful and knowing disclosure of the identity of the
 157 victim to any other person by the defendant constitutes
 158 contempt.

159 (3) The state may use a pseudonym instead of the victim's
 160 name to designate the victim of a crime described in chapter 794
 161 or chapter 800, or of child abuse, aggravated child abuse, or

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162 sexual performance by a child as described in chapter 827, in
 163 all court records and records of court proceedings.

164 (4) The protection of this section may be waived by the
 165 victim of the alleged offense in a writing filed with the court,
 166 in which the victim consents to the use or release of
 167 identifying information during court proceedings and in the
 168 records of court proceedings.

169 (5) This section does not prohibit the publication or
 170 broadcast of the substance of trial testimony in a prosecution
 171 for an offense described in chapter 794 or chapter 800, or a
 172 crime of child abuse, aggravated child abuse, or sexual
 173 performance by a child, as described in chapter 827, but the
 174 publication or broadcast may not include an identifying
 175 photograph, an identifiable voice, or the name or address of the
 176 victim, unless the victim has consented in writing to the
 177 publication and filed such consent with the court ~~or unless the~~
 178 ~~court has declared such records not confidential and exempt as~~
 179 ~~provided for in subsection (1).~~

180 (6) A willful and knowing violation of this section or a
 181 willful and knowing failure to obey any court order issued under
 182 this section constitutes contempt.

183 Section 5. Paragraph (h) of subsection (1) of section
 184 119.0714, Florida Statutes, is amended to read:

185 119.0714 Court files; court records; official records.--

186 (1) COURT FILES.--Nothing in this chapter shall be
 187 construed to exempt from s. 119.07(1) a public record that was

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188 made a part of a court file and that is not specifically closed
 189 by order of court, except:

190 (h) Criminal intelligence information or criminal
 191 investigative information that is confidential and exempt
 192 ~~information or records that may reveal the identity of a person~~
 193 ~~who is a victim of a sexual offense~~ as provided in s.
 194 119.071(2) (h).

195 Section 6. Section 794.03, Florida Statutes, is amended to
 196 read:

197 794.03 Unlawful to publish or broadcast information
 198 identifying sexual offense victim.--No person shall print,
 199 publish, or broadcast, or cause or allow to be printed,
 200 published, or broadcast, in any instrument of mass communication
 201 the name, address, or other identifying fact or information of
 202 the victim of any sexual offense within this chapter, except as
 203 provided in s. 119.071(2) (h). ~~Such identifying information is~~
 204 ~~confidential and exempt from the provisions of s. 119.07(1)~~. An
 205 offense under this section shall constitute a misdemeanor of the
 206 second degree, punishable as provided in s. 775.082 or s.
 207 775.083.

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

PCB GEAC 08-08 Summary

Paratransit Services

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.

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.

Federal law also requires that each state plan, to provide Medicaid services, indicate that the Medicaid agency “will ensure necessary transportation to and from providers for recipients; and describe the methods that the agency will use to meet this requirement.” 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.

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 under Review

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, with retroactive application, 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.

Staff review of the exemption revealed that the confidential and exempt information is not provided only to local governmental entities. For example, the Commission for the Transportation Disadvantaged also has access to the eligibility information.

Proposal

This proposal retains and expands the public record exemption for personal identifying information of an applicant for paratransit services. The exemption is expanded to apply to any agency, whether it is a state or local agency.

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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 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.

PCB GEAC 08-09 Summary

Foster Care

The Department of Children and Family Services (DCFS) administers the state's foster care program. It also adopts and amends licensing rules for family foster homes, residential child-caring agencies, and child-placing agencies. The requirements for licensure and operation of such homes include, but are not limited to, the:

- Operation, conduct, and maintenance of the foster home;
- Provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the physical, emotional and mental health of the foster children;
- Appropriateness, safety, cleanliness, and general adequacy of the premises;
- Good moral character of the personnel based on their screening, education, training, and experience; and
- Satisfactory evidence of financial ability of the applicant to provide care in compliance with licensing requirements.

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. 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 under Review

Current law provides, with retroactive application, 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 information remains exempt for five years after the application date for foster parent applicants and for five years after the license expiration date for licensed foster parents, with the exception of social security numbers and medical information, which remain protected. Exempt information regarding a licensed foster parent who becomes an adoptive parent remains protected.

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.

As part of its review, staff determined current law provides a general public record exemption for social security numbers. As such, the exemption for social security numbers provided in the exemption under review is duplicative.

Proposal

The proposal retains the public record exemption for certain personal information regarding licensed foster parents and foster parent applicants. In addition, it repeals the duplicative exemption for social security numbers provided in the exemption under review.

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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.

PCB GEAC 08-10 Summary

Florida Kidcare Program

In 1998, the Legislature created the Florida Kidcare (Kidcare) program in response to the passage of the State Children's Health Insurance Program 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.

Public Record Exemption under Review

Current law provides, with retroactive application, a public record exemption for information identifying a Kidcare program applicant or enrollee, held by AHCA, DCFS, DOH, or FHKC. 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.

Proposal

The proposal retains the public record exemption for Kidcare program applicant and enrollee identifying information. In addition, it removes superfluous language requiring an entity, with authorized access to the confidential and exempt information, to maintain the confidentiality of that information received. Finally, the proposal repeals a duplicative public record exemption for the Florida Healthy Kids Corporation.

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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 Kidcare program;
 4 amending s. 409.821, F.S.; reorganizing the exemption;
 5 providing that the public record exemption does not
 6 prohibit the release of certain information to the legal
 7 guardian of an enrollee; removing superfluous language;
 8 repealing s. 2 of Chapter 2003-104, Laws of Florida, which
 9 provides for repeal of the exemption; repealing s.
 10 624.91(8), F.S., which provides a duplicative public
 11 record exemption for the Florida Healthy Kids Corporation;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 409.821, Florida Statutes, is amended to
 17 read:

18 409.821 Florida Kidcare program public records exemption.—

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

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

28 1. Another governmental entity only if disclosure is
 29 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.

PCB GEAC 08-11 Summary

Food Safety and Food 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.

When collaborating in such investigations, DACS and participating federal agencies may share information protected by federal law. Federal law protects information falling under the definition of a trade secret or confidential commercial or financial information. Written communications within the executive branch of the federal government are protected, as are certain communications between the Food and Drug Administration (FDA) and state and local government entities, provided that any confidential information the FDA shares with state entities as part of a cooperative law enforcement or regulatory effort also is kept confidential by such entities.

Other information protected at the federal level includes: information established by an executive order to be kept secret in the interest of national defense or foreign policy, internal agency personnel rules and practices, statutorily exempted information, certain intra-agency or inter-agency memoranda, personnel and medical files, certain law enforcement information, certain financial regulatory information, and geological and geophysical information concerning wells.

Public Record Exemption under Review

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 illness investigation, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review. 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.

Proposal

The proposal retains the public record exemption with changes to reorganize the structure of the section. It relocates the exemption by moving it to the beginning of the section, and collocates the reporting requirements.

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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 illness
 4 investigations; amending s. 500.148, F.S.; reorganizing
 5 the exemption; deleting the provision that provides for
 6 repeal of the exemption under the Open Government Sunset
 7 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 illness investigation, as a requirement for conducting a
 19 federal-state contract or partnership activity, or for regulatory
 20 review, is confidential and exempt from s. 119.07(1) and s.
 21 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.

PCB GEAC 08-18 Summary

Background

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. 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. 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.

A general exemption applicable to *all* agencies does not exist.

Proposal

The proposal expands the current exemption for discrimination complaints, which is applicable only to 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.

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

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

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

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

(2) AGENCY INVESTIGATIONS.--

(g)1.a. All complaints and other records in the custody of
any agency ~~in the executive branch of state government~~ which
relate to a complaint of discrimination relating to race, color,
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.