

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1028

SPONSOR: Governmental Oversight and Productivity Committee and Commerce and Consumer Services Committee

SUBJECT: Open Government Sunset Review; School Readiness Records

DATE: April 12, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute is based on an Open Government Sunset Review of an exemption for individual records of children enrolled in school readiness programs under s. 411.011, F.S., as amended by ch. 2004-484, L.O.F. The committee substitute does not expand the current exemption, but clarifies and reenacts it.

This bill amends section 411.011, Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I of the State Constitution provides that:

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.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

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

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”²

Section 119.011(2), F.S., defines an “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.*

This broad definition ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility.³ The Attorney General has issued numerous opinions advising that if a nonprofit entity is created by law, it is subject to the disclosure requirements of ch. 119, F.S.⁴ Under the “totality of factors” test, a test established by the Florida Supreme Court which presents a mixed question of fact and law, there are nine factors to be considered when determining when a private entity is “acting on behalf of” an agency:

- The level of public funding;
- Commingling of funds;
- Whether the activity was conducted on publicly-owned property;
- Whether services contracted for are an integral part of the public agency’s chosen decision-making process;
- Whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- The extent of the public agency’s involvement with, regulation of, or control over the private entity;
- Whether the private entity was created by the public agency;
- Whether the public agency has substantial financial interest in the private entity;
- For whose benefit the private entity is functioning.

¹ Chapter 119, F.S.

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

³ *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

⁴ AGO 94-32; AGO 94-34; Inf. Op. to Ellis, March 4, 1994; AGO-95-17.

As a result, application of this test requires an analysis of the statutes, ordinance or charter provisions which establish the function to be performed by the private entity as well as the contract, lease or other document between the governmental entity and the private organization.

It should be noted that there is a distinction between a party contracting with a public agency to provide services *to* the agency and a contracting party which provides services *in place of* the public body.⁵ Where an entity contracts to relieve the public body from the operation of a public obligation, such as operating a jail or providing fire protection, open government requirements apply.

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995⁶ establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. 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.”⁷

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- 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?

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

⁵ *News-Journal Corporation v. Memorial Hospital West Volusia, Inc.*, 695 So.2d 418 (Fla. 5th DCA 1997).

⁶ Section 119.15, F.S.

⁷ Section 119.15(3)(b), F.S.

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects 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.”
- The exemption “[p]rotects 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.”⁸

State-Funded Early Childhood Education and Child Care Programs

Before 1999, Florida’s state-funded early childhood education and child care programs were delivered through various independent programs, with administration of the programs divided principally between the Department of Education (DOE) and the Department of Children and Family Services (DCF):

- DOE formerly administered early childhood education programs, including the prekindergarten early intervention program; the Florida First Start Program; the migrant education program; and the federal Even Start Family Literacy Programs.
- DCF formerly administered the subsidized child care program, which funded child care services for at-risk and economically disadvantaged children younger than 13 years of age.

School Readiness Programs

In 1999, the Legislature enacted the School Readiness Act,⁹ which consolidated the state’s early childhood education and child care programs into one integrated program of school readiness services.¹⁰ The act directed that school readiness programs would be administered by local school readiness coalitions at the county or multicounty level and would be coordinated by the Florida Partnership for School Readiness at the state level.

School readiness programs must contain, at a minimum, the following elements:

- developmentally appropriate curriculum;
- a character development program;
- an age-appropriate assessment of each child’s development;
- a pretest and posttest administered as children enter and leave the programs;
- an appropriate staff-to-children ratio;
- a healthful and safe environment; and

⁸ Section 119.15(4)(b), F.S.

⁹ Section 411.01, F.S.

¹⁰ Chapter 99-357, L.O.F.

- a resource and referral network that assists parents in making an informed choice of child care providers.¹¹

School readiness programs are funded through a mixture of state and federal funds. The combined budget of the system is approximately \$672.2 million, comprised of \$379.7 million from the federal Child Care and Development Fund (CCDF) block grant; \$112.5 million from the federal Temporary Assistance for Needy Families (TANF) block grant; \$177.9 million from the state's General Revenue Fund; and \$2.2 million from other funds, including \$500,000 from the federal Social Services Block Grant.¹²

Voluntary Prekindergarten Education Program

In November 2002 the electors of Florida approved Amendment No. 8 to the State Constitution, which required the Legislature to establish, by the 2005 school year, a prekindergarten (Pre-K) program which is voluntary, high quality, free, and delivered according to professionally accepted standards for every four-year-old child in the state.

In December 2004 at its 2004 Special Session "A," the Legislature enacted House Bill 1-A, which created the Voluntary Prekindergarten Education Program.¹³ The bill directed that the Pre-K program be administered at the local level by school districts and school readiness coalitions, which the bill renamed as "early learning coalitions." At the state level, the bill specified that the Department of Education administers the accountability requirements of the Pre-K program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.

In addition to establishing the Pre-K program, the bill enacted several reforms of the school readiness system. The bill abolished the Florida Partnership for School Readiness on January 2, 2005,¹⁴ and transferred the partnership's duties to AWI. The bill created an Office of Early Learning within AWI, directed by a Deputy Director for Learning, to administer the school readiness and Pre-K programs. Consequently, the bill established that, in addition to responsibility for the operational aspects of the Pre-K program, AWI's Office of Early Learning is directly responsible for state-level coordination of school readiness programs and of the early learning coalitions.

School Readiness Records

Administration of the school readiness programs requires the Agency for Workforce Innovation and the early learning coalitions to maintain detailed records about the individual children enrolled in the programs. These records generally include information used to determine the eligibility of children for the school readiness programs, to enroll children with child care providers, to verify the attendance of children, to pay providers based upon the enrollment and attendance of children, and to audit and report those payments.

¹¹ Section 411.01(5)(c)2., F.S.

¹² Specific Appropriations 2122A-2122R, *General Appropriations Act for Fiscal Year 2004-2005*, ch. 2004-268, L.O.F.

¹³ Chapter 2004-484, L.O.F.

¹⁴ House Bill 1-A specified that the Florida Partnership for School Readiness was abolished when the bill became a law (ss. 16(1) and 20, ch. 2004-484, L.O.F.) The Governor approved HB 1-A on January 2, 2005.

School readiness programs are generally provided for children who are economically disadvantaged; who have disabilities; or who are at risk of abuse, neglect, or abandonment.¹⁵ School readiness records necessarily include documentation essential to support each child's eligibility for services, including, for example, the child's age (i.e., birth certificate), family income, the parent's employment information, referrals from other agencies (e.g., Department of Children and Families), and, if the child is disabled, details about the child's disability. Because the facts underlying each child's eligibility for services must correspond to state and federal requirements for the various funding sources that support the school readiness program, payments made to child care providers must be tracked for each child back to one of these funding sources.

Each early learning coalition must operate a "resource and referral network to assist parents in making an informed choice."¹⁶ A resource and referral network typically maintains detailed information about the particular services offered by child care providers. When a parent contacts the network, detailed information is collected from the parent about the child, the child's needs, and the child's potential eligibility for school readiness services. The network matches data collected about the child with data maintained about child care providers to give the parent options about the providers that could meet the child's needs.

School readiness programs are required to contain an "age-appropriate assessment of each child's development," a "pretest administered to children when they enter a program," and a "posttest administered to children when they leave the program."¹⁷ Further, school readiness programs are intended to "prepare at-risk children for school, including health screening."¹⁸ School readiness coalitions routinely arrange for children enrolled in their school readiness programs to be administered various developmental screenings and other assessments. These screenings and assessments are used as diagnostic tools and to evaluate the progress of children receiving school readiness services. When diagnostic screenings reveal that a child has a disability, has other special needs, or has physical or mental health conditions, the child may be referred to other agencies for additional services.

In 2000, the Legislature declared that the "individual records of children enrolled in school readiness programs" are confidential and exempt from disclosure under the Public Records Law when those records are held in the possession of a school readiness coalition or the Florida Partnership for School Readiness.¹⁹ These records include "assessment data, health data, records of teacher observations, and identifying data, including the child's social security number."²⁰ This public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2005, unless the exemption is saved from repeal through reenactment by the Legislature. The exemption was revised at the 2004 Special Session "A," reflecting that the records are confidential when held in the possession of the Agency for

¹⁵ Sections 411.01(6) and (13), F.S.

¹⁶ Sections 411.01(5)(c)2.g. and 402.27, F.S.; *See also* s. 17, ch. 2001-170, L.O.F. (transferred child care and early childhood resource and referral to the Agency for Workforce Innovation from the Department of Children and Families).

¹⁷ Section 411.01(5)(c)2.c. and d., F.S.

¹⁸ Section 411.01(2)(a), F.S.

¹⁹ Section 3, ch. 2000-299, L.O.F.; s. 411.011, F.S.

²⁰ *Id.*

Workforce Innovation and the early learning coalitions in lieu of the Florida Partnership for School Readiness and the school readiness coalitions, respectively.²¹

Central Agencies

In the early 1970s, a movement in the state's child care industry sought the increased regulation of child care providers, which culminated in 1974 with the Legislature's statewide licensure or registration of child care providers.²² As part of this movement, many local communities formed community child care coordinating agencies (commonly cited as "central agencies"). These central agencies collected information about the child care providers operating in their communities and created resource and referral networks to inform parents about the relative quality of the providers.

In 1989, the Legislature created a statewide child care resource and referral network, formalizing the efforts of the central agencies throughout the state. The former Department of Health and Rehabilitative Services was directed to give preference to the "already established" central agencies when selecting local child care resource and referral agencies for the statewide network.²³ In addition to the original central agencies formed in the 1970s, new central agencies proliferated to achieve statewide coverage for this statewide child care resource and referral network.

In 1996, the Legislature required the Department of Children and Families to contract with central agencies for monitoring the child care providers delivering the former subsidized child care program.²⁴ The department also used central agencies for processing payments to child care providers under the former program. In 1999, the School Readiness Act's consolidation of the state's early childhood education and child care programs was accompanied by the creation of school readiness coalitions that would locally design, operate, and manage the school readiness programs, in effect replacing the duties of the central agencies under the former subsidized child care program.

Central agencies remain a part of the current school readiness system, several publicizing that they have operated in the state for more than 30 years. Central agencies exist today as businesses, privately organized corporate entities contracting with early learning readiness coalitions. When the early learning coalitions were originally established (as "school readiness coalitions"), the new coalitions initially contracted with the central agencies operating in their communities to provide many of the same services that the agencies had provided under the former subsidized child care program. These services generally included enrollment services, operating the coalition's single point of entry and unified waiting list, performing eligibility determinations, serving as the coalition's local resource and referral agency, processing payments to child care providers, conducting training of child care personnel, and carrying out other duties for the coalition. Many early learning coalitions continue to contract with a central agency, although, more recently, several coalitions have expanded their coalition staffs to provide these services

²¹ Section 9, ch. 2004-484, L.O.F.

²² Chapter 74-113, L.O.F.

²³ Section 5, ch. 89-379, L.O.F.; s. 402.27, F.S.

²⁴ Section 73, ch. 96-175, L.O.F.; former s. 402.3015, F.S. (2000)

directly. Other coalitions have divided these services into multiple contracts and sought alternative vendors for part of or all of these services.

Electronic Database of School Readiness Records

The former Florida Partnership for School Readiness established a statewide electronic database system for tracking information about the state's school readiness programs.²⁵ This system, cited as the Statewide Child Care Administration and Reporting System, has been continued by the Agency for Workforce Innovation's Office of Early Learning and is composed of three integrated modules:

- *Child Care Management System – Enhanced Field System (CCMS-EFS).*—This module comprises data about children and child care providers for purposes of enrollment, eligibility determinations, attendance reporting, and payment of providers. This module serves as each coalition's single point of entry and unified waiting list.
- *Statewide Reporting System (SRS).*—This module is used to track state and federal funds, produce aggregated statewide data on the school readiness system, and generate federal reports.
- *Child Care Resource and Referral (CCRR).*—This module maintains data about child care providers, including the market rates for their child care services, and about children referred by the resource and referral agency to these providers.

Early learning coalitions have access to this database system in their local communities. In addition, central agencies and other contractors assigned duties on behalf of a coalition are granted access to the system for purposes of performing those duties.

Senate Interim Project

During the 2004-2005 interim, the Senate Committee on Commerce and Consumer Services conducted a review of the school readiness records exemption and issued an interim project report.²⁶ Evaluating the exemption against the criteria prescribed in the Open Government Sunset Review Act, the report found that school readiness records contain sensitive personal information about the children enrolled in school readiness programs and found that the public release of this information would invade the privacy of these children and jeopardize their safety. The report observed, however, that the current exemption is unclear as to whether all or part of these school readiness records are confidential and whether the school readiness records held in the possession of a central agency or other contractor of an early learning coalition are protected.²⁷ The report recommended that the Legislature maintain the exemption, but consider revising it to clarify the exemption's coverage.

²⁵ Covansys Corporation operates the database system under contract with the Florida Partnership for School Readiness.

²⁶ Florida Senate, *Open Government Sunset Review of the Public Records Exemption for the Individual Records of Children Enrolled in School Readiness Programs, s. 411.01, F.S.*, Report No. 2005-204 (Nov. 2004).

²⁷ The report found that "central agencies generally believe that they are not subject to the Public Records Law or that the public records exemption under review protects their school readiness records." *Ibid.*, p. 6.

III. Effect of Proposed Changes:

The committee substitute clarifies and reenacts the exemption for individual records of children enrolled in school readiness programs provided under s. 411.01, F.S., when held by an early learning coalition or the Agency for Workforce Innovation. The confidential and exempt status of these exemptions are retained by the committee substitute.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
