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To keep you informed of legislative changes resulting from the 2011 Florida Regular Legislative Session, Carlton Fields' **Government Law and Consulting** practice group is pleased to provide you with our latest legislative summary providing a general overview of certain bills concerning Florida's Public Records Law passed by the 2011 Florida Legislature.¹

This summary is not an exhaustive summary of all the bills relating to public records passed by the 2011 Florida Legislature. We recommend that you refer to the actual bills passed by the Legislature and sent to the Governor for his signature available at www.flsenate.gov or at www.MyFloridaHouse.gov

Changes to Florida's Public Record Laws

The Florida Constitution safeguards every Floridian's right to access to government records. Disclosure of records belonging to government agencies is the standard, unless the Legislature concludes that the public necessity compels an exemption from public access. The bills discussed below either create new public records exemptions for certain records or removes a scheduled repeal of an exemption.

CS/HB 579 —Regional Autism Centers

This bill creates a public records exemption for all records that relate to a client of a regional autism center who receives the services of a center or participates in center activities, and for all the records that relate to the client's family. The bill specifies circumstances under which the records may be released. Additionally, the bill creates a public-records exemption for the personal identifying information of a donor or prospective donor to a regional autism center who desires to remain anonymous.

The bill provides a statement of public necessity for the public-records exemptions as required by the Florida Constitution and the bill provides that the exemptions are subject to

¹ This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

the Open Government Sunset Review Act and will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2011.

CS/HB 677 — Office of Financial Regulation

Effective July 1, 2011, information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law and information that is received or developed by the Office of Financial Regulation (OFR) as part of a joint or multiagency investigation or examination confidential and exempt from s. 119.07(1), F.S., and s. 24(1), Art. I of the State Constitution.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation of financial institutions. The bill provides for retroactive application of the exemption.

In accordance with the Open Government Sunset Review Act, the exemption will be repealed on October 2, 2016, unless reviewed and saved from repeal by the Legislature, and a statement of public necessity, as required by the State Constitution, is provided.

CS/HB 1473 — Florida Health Choices Program

The bill creates exemptions from the state's public records requirements for specified types of information relating to enrollment or participation in the Florida Health Choices program.

The Florida Health Choices program is a single, centralized marketplace for the sale and purchase of health care coverage, including, but not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid health services, and flexible spending accounts. Policies sold under the program are exempt from regulation under the Florida Insurance Code and laws governing HMOs. Current law specifies entities eligible to purchase products through, and participate in, the program; vendors eligible to participate in the program; and individuals eligible to enroll in the program.

The bill creates a public record exemption for the following information held by the program:

- Personal identifying information of an enrollee or participant who has applied for or participates in the program;
- Client lists and customer lists of a buyer's representative; and
- Proprietary confidential business information.

The bill provides for retroactive application of the public record exemptions to cover information held by the program before, on, or after the effective date of the exemptions. It provides exceptions to the exemptions and provides criminal penalties for violation of the public record exemptions.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

CS/HB 667 —Local Government Inspector General

This bill creates an exemption from statutory and constitutional public records requirements for information received as part of active investigations of the inspector general on behalf of a unit of local government.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.

CS/HB 913 — Records Held by Public Airports

This bill creates public records exemptions for:

- Proprietary confidential business information held by a public airport. The exemption expires when the confidential and exempt information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.
- Trade secrets held by a public airport.
- A proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. The public records exemption expires upon approval by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public records exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill creates definitions for terms used in the exemptions.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect July 1, 2011.

CS/HB 409 — Intelligence/Investigative Information

The bill amends s. 119.071, F.S., to expand the current public-records exemption in that section for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. Specifically, the bill expands the exemption to include that same information in the case of a victim of the sexual offense of video voyeurism under s. 810.145, F.S.

The bill provides that the exemption stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the expansion of the exemption as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill, thereby ensuring the exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

If approved by the Governor, these provisions take effect July 1, 2011.

CS/HB 411 – Photos and Recordings/Killing of Person

This bill creates an exemption from public records requirements for photographs and video and audio recordings that depict or record the killing of a person. (The exemption is comparable to the public records exemption in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.) The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.

The exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings that depict or record the killing of a person. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain the exempted records.

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order. Knowingly violating these provisions is a third degree felony.

The public records exemption created in the bill is given retroactive application, with exceptions. The public records exemption created in the bill does not apply to any order in effect on July 1, 2011, which was duly entered by a court of this state and which restricts or limits access to any photograph or video or audio recording that depicts or records the killing of a person.

If approved by the Governor, these provisions take effect July 1, 2011.

HB 7075 – Department of Juvenile Justice Employees and Family Members

This bill removes the scheduled repeal under Open Government Sunset Review Act of exemption from public records requirements for identification & location information of certain current & former employees of DJJ & their family members; revises job classifications specified in exemption to reflect those classifications used by DJJ. This

provision will take effect on October 1, 2011.

HB 7077 - Biometric Identification Information

This bill removes the scheduled repeal under Open Government Sunset Review Act of exemption from public records requirements for biometric identification information held by agency. This provision will take effect on October 1, 2011.

HB 7081 - Statewide Public Guardianship Office

This bill removes the scheduled repeal under Open Government Sunset Review Act of exemption from public records requirements for information that identifies certain donors or prospective donors to direct-support organization for Statewide Public Guardianship Office; removes superfluous & duplicative language. This provision will take effect on October 1, 2011.

HB 7085 - Court Monitors in Guardianship Proceedings

This bill removes scheduled repeal under Open Government Sunset Review Act of exemption from public records requirements for court records relating to court monitors in guardianship proceedings; consolidates provisions; provides that orders appointing nonemergency court monitors are exempt rather than confidential & exempt; provides that only court orders finding no probable cause are confidential & exempt. This provision will take effect on October 1, 2011.

CS/SB 1970 - Office of Program Policy Analysis and Government Accountability

Creates an exemption from public records requirements for work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product. Provides for retroactive application. Provides a statement of public necessity. This provision took effect on May 5, 2011.

CS/HB 7223 - Competitive Solicitations

Provides exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to competitive solicitation; expands exemption by extending its duration; provides for future review & repeal; revises provisions that provide exemption from public meetings requirements for meetings at which negotiation with vendor is conducted & which provides exemption from public records requirements for recordings of exempt meetings; expands public meetings exemption to include specified meetings; expands public records exemption to include any records presented at exempt meeting; provides for future review & repeal of exemptions; provides statement of public necessity. This provision takes effect upon becoming law.

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