

# 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.)

BILL: SB 462

SPONSOR: Health, Aging, and Long-Term Care Committee

SUBJECT: Review of Public Records and Meetings Exemptions/Child Abuse Death Review Committees

DATE: December 11, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	Rhea	Wilson	GO	Favorable
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill re-enacts and amends s. 383.410, Florida Statutes, to: delete an exemption for records disclosed to hospitals or health care practitioners, which has not been used by the child abuse death review committees; limit the criminal provisions of the section to apply to persons who knowingly or willfully make unauthorized disclosures of information made confidential and exempt by the section; state more clearly the confidential or exempt status of records already confidential or exempt under the Public Records Law; and clarify that records obtained by the committees that are not otherwise confidential are not made confidential.

This bill amends s. 383.410, F.S.

## II. Present Situation:

### Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the state constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need

exists and certain procedural requirements are met. Article I, s. 24, Fla. Const., governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const., provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Under the Open Government Sunset Review Act of 1995, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- 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; 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 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.

### **Child Abuse Death Review Committees**

In 1999, the Florida Legislature authorized the development of independent, multidisciplinary statewide and local child abuse death review committees within the Department of Health to review child abuse and neglect deaths in which the Florida Abuse Hotline had accepted at least one report of abuse or neglect. The statewide child abuse death review committee (state committee) must develop a system for collecting data on child abuse deaths and, among its duties, must complete an annual statistical report on the incidence and causes of death resulting from child abuse and neglect in Florida during the prior calendar year. The state committee must study the adequacy of laws, rules, training and services to determine what changes are needed to decrease the incidence of child abuse deaths and develop strategies and recruit partners to implement these changes. The state committee provides training and technical assistance to local child abuse death review committees. Local committees assist the state committee in collecting

data on deaths that are the result of child abuse, in accordance with the protocol established by the state committee. In 2002, the state committee reviewed 35 deaths.

Notwithstanding any other law, the chairperson of the state committee or local committee, must be provided with access to any information or records that pertain to a child whose death is being reviewed by the committee to carry out its duties, including information or records that pertain to the child's family. Such records include patient records in the possession of a public or private provider of medical, dental, or mental health care; and information or records of any state agency or political subdivision which might assist a committee in reviewing a child's death, including but not limited to, information or records of the Department of Children and Family Services, the Department of Health, the Department of Education, or the Department of Juvenile Justice. Child abuse death review committees must have access to all information of a law enforcement agency which is not the subject of an active investigation and which pertains to the death of a child.

The chairperson of the state committee may require the production of records by requesting a subpoena, through the Department of Legal Affairs, in any county in Florida. A person who has attended a meeting of a child abuse death review committee or who has otherwise participated in authorized activities of a committee may not be permitted or required to testify in any civil, criminal, or administrative proceeding as to any records or information produced or presented to a committee during meetings or authorized activities.

Section 383.410, F.S., makes information that would reveal the name, address, or telephone number of, or information that would identify any of the deceased child's surviving siblings, family members, or others living in the home, which is contained in reports or records created by the state or local committees, or a panel of the state committee or local committees, which relates solely to child fatalities and in which specific persons or incidents are discussed confidential and exempt from the Public Records Law. All information that is confidential or exempt from public records requirements by operation of law and that is obtained by the committees or panels, or that is obtained by a hospital or a health care practitioner from a committee or panel, retains that status.

Section 383.410, F.S., also makes portions of meetings relating solely to child fatalities in which specific persons or incidents are discussed exempt from the Public Meetings Law. All information and records acquired by the state or local committee are confidential and not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceedings, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery or introduction into evidence from those sources solely because they were presented to or reviewed by a committee. Any person who violates s. 383.410, F.S., commits a first degree misdemeanor punishable by up to 1 year in jail and a fine of up to \$1,000.

### **Senate Interim Project Report 2004-203**

Staff reviewed the public records and meetings exemptions in s. 383.410, F.S., pursuant to the Open Government Sunset Review Act of 1995 and recommended that the exemptions to the public records and open meetings requirements in s. 383.410, F.S., be reenacted and amended. Staff recommended that the exemptions be amended to: delete an exemption for records disclosed to hospitals or health care practitioners, which has not been used by the child abuse

death review committees; limit the criminal provisions of the section to apply to persons who knowingly or willfully make unauthorized disclosures of information made confidential and exempt by the section; state more clearly the confidential or exempt status of records already confidential or exempt under the Public Records Law; and clarify that records obtained by the committees that are not otherwise confidential are not made confidential. Staff's findings and recommendations are detailed in *Interim Project Report 2004-203*.

### III. Effect of Proposed Changes:

**Section 1.** Re-enacts and amends s. 383.410, F.S., to: delete an exemption for records disclosed to hospitals or health care practitioners, which has not been used by the child abuse death review committees; limit the criminal provisions of the section to apply to persons who knowingly or willfully make unauthorized disclosures of information made confidential and exempt by the section; state more clearly the confidential or exempt status of records already confidential or exempt under the Public Records Law; and clarify that records obtained by the committees that are not otherwise confidential are not made confidential.

**Section 2.** Provides that the bill will take effect October 1, 2004.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

#### B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act of 1995, this bill re-enacts and amends s. 383.410, F.S. The amendments do not expand the exemptions and should not have an impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

#### C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

### 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. Amendments:**

None.

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

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