

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records and meetings of the Child Abuse Death Review Committee.

B. EFFECT OF PROPOSED CHANGES:

Background

A portion of the Kayla McKean Child Protection Act¹ established a State Child Abuse Death Review Committee within the Department of Health and, also, established local child abuse death review committees that are responsible for reviewing the facts and circumstances of all deaths of children from birth through 18 years of age that occur as a result of verified child abuse or neglect.² The local committees collect data on deaths that are the result of child abuse and submit records and reports to the state committee relating to their review of deaths resulting from child abuse.³ The state committee prepares an annual statistical report on the incidence and causes of death resulting from child abuse and studies the adequacy of laws, rules, training, and services to determine what changes are needed in order to decrease the number of child abuse deaths.⁴

Former s. 383.410, F.S., provided an exemption from public records and public meetings requirements for:

- Confidential or exempt information obtained by the committees;
- Information in reports or records created by the committees in which specific persons or incidents were discussed; and
- Those portions of meetings and proceedings relating to the discussion of specific persons and incidents associated with child fatalities under review by the committees.

The exemptions, however, repealed on October 2, 2004, as a result of the Open Government Sunset Review Act of 1995.⁵ As a result, the committees have been unable to access necessary information, from the Department of Children and Family Services, as part of their review process of child abuse deaths.

Effect of Bill

The bill creates a public records exemption for the state and local child abuse death review committees. Information that reveals the identity of the:

- Surviving siblings;
- Family members; or
- Others living in the home of a deceased child who is the subject of committee review,

is confidential and exempt from public records requirements. In addition, information that is otherwise confidential or exempt, and that is obtained by the state or local committees, will retain its status. The

¹ Chapter 99-168, L.O.F.

² Section 383.402(1), F.S.

³ Section 383.402(7), F.S.

⁴ Section 383.402(3), F.S.

⁵ The Open Government Sunset Review Act of 1995 sets forth a Legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. Section 119.15, F.S.

bill authorizes the committees to share such confidential and exempt information with each other for purposes of case reviews.

The bill creates an exemption from public meetings requirements for portions of meetings or proceedings of the state or local committees that relate solely to child fatalities and at which the identities of surviving siblings, family members, or others living in the home, are discussed. The public meetings exemption appears overly broad in that it exempts all meetings that relate to child fatalities. In essence, it appears that all meetings could be closed to the public even if the committees are not discussing information made confidential and exempt pursuant to the public records exemption.

The bill provides that all records acquired by the committees are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceedings; however, if the records are available elsewhere, then the other sources are not immune from such prohibition. This is an evidentiary issue, and therefore, cannot be included in an exemption bill.

The bill provides for future review and repeal of the exemptions on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates s. 383.412, F.S., creating a public records and public meetings exemption for the Child Abuse Death Review Committee.

Section 2 provides a statement of public necessity.

Section 3 provides an October 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

The bill could create a fiscal impact on state and local governments, because state and local committee staff would have to be trained with regards to the categories of information that is confidential and exempt from public disclosure versus records that are available for public inspection and copying. The

state and local committees could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

Separate Bill

Article I, s. 24(c) of the State Constitution, requires that all exemption bills be created in a separate bill. The bill appears to raise constitutional concerns, because it contains an evidentiary privilege provision in addition to the public records and public meetings exemptions.

Two-thirds Vote

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995⁶ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would

⁶ Section 119.15, F.S.

jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.