

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB GAP 10-09 OGSR/State Child Abuse Death Review Committee

SPONSOR(S): Governmental Affairs Policy Committee and McBurney

TIED BILLS: IDEN./SIM. BILLS: SB 920

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, 13 Y, 0 N, Williamson, Williamson. Rows 2-6 are empty.

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health. The committees must review the facts and circumstances of all deaths of children from birth through age 18 that occurred in Florida as the result of verified child abuse or neglect. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
• Any other recommended preventive action.

Current law provides a public record and public meeting exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.

The bill reenacts the public record and public meeting exemptions for the state and local committees. It requires a recording to be made of any closed portion of a meeting. The recording must be maintained by the state committee or a local committee. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

The bill could create a minimal fiscal impact on the state and local committees as a result of costs associated with recording closed portions of meetings.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for final passage.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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 on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health.<sup>4</sup> The committees must review the facts and

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 383.402, F.S.

circumstances of all deaths of children from birth through age 18 that occurred in Florida as the result of verified child abuse or neglect. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.<sup>5</sup>

### Exemptions under Review

Current law provides a public record and public meeting exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.<sup>6</sup>

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 review by the state or a local committee is confidential and exempt<sup>7</sup> from public records requirements.<sup>8</sup> In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.<sup>9</sup> The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.<sup>10</sup> Any person who knowingly or willfully violates the public record exemption commits a misdemeanor of the first degree.<sup>11, 12</sup>

Portions of meetings of the State Child Abuse Death Review Committee or a local committee wherein confidential and exempt information is discussed is exempt from public meetings requirements.<sup>13</sup> Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the state or local committees actually discuss confidential or exempt information during those closed sessions.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.<sup>14</sup>

### **Effect of Bill**

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and maintained by the state committee or a local committee. No portion of the closed meeting may be off the record.

The bill creates a public record exemption for the recording of a closed portion of a meeting. As such, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.<sup>15</sup>

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<sup>5</sup> Section 383.402(3)(c), F.S.

<sup>6</sup> Section 383.412, F.S.

<sup>7</sup> 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. (*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) 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. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>8</sup> Section 383.412(1)(a), F.S.

<sup>9</sup> Section 383.412(1)(b), F.S.

<sup>10</sup> Section 383.412(3), F.S.

<sup>11</sup> Section 383.412(4), F.S.

<sup>12</sup> A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See ss. 775.082(4)(a) and 775.083(1)(d)*, F.S.

<sup>13</sup> Section 383.412(2), F.S.

<sup>14</sup> Section 383.412(5), F.S.

<sup>15</sup> Section 24(c), Art. I of the State Constitution.

Finally, for purposes of the exemptions, the bill defines "local committee" to mean a local child abuse death review committee or a panel or committee assembled by the State Child Abuse Death Review Committee or a local child abuse death review committee.

**B. SECTION DIRECTORY:**

Section 1 amends s. 383.412, F.S., to reenact and expand the public record and public meeting exemptions for the State Child Abuse Death Review Committee and local committees.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The State Child Abuse Death Review Committee and local committees could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemptions under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.