

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SPB 7012

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Address Confidentiality/Domestic Violence

DATE: December 4, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

**I. Summary:**

The Address Confidentiality Program for victims of domestic violence (ACP) is established in ss. 741.401 through 741.465, F.S., and administered by the Office of the Attorney General. The ACP allows individuals who are attempting to escape from actual or threatened domestic violence to establish new addresses and prevent their assailants or probable assailants from finding them.

When the Legislature established the ACP, it also enacted a public records exemption for ACP participants. In part, the public records exemption exempts from public disclosure the names, addresses, and telephone numbers of ACP participants contained in voter registration and other voting records held by the Supervisor of Elections or by the Department of State. This exemption is subject to review under the Open Government Sunset Review Act (the Act) and stands repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment.

This bill substantially amends s. 741.465(2), F.S.

**II. Present Situation:**

**Florida Public Records Law**

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>1</sup> In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

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<sup>1</sup> Sections 1390, 1391, F.S. (Rev. 1892).

The Public Records Act<sup>2</sup> specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency<sup>3</sup> records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, . . . tapes, photographs, films, sound recordings, . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>5</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>8</sup> provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>9</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.<sup>10</sup> An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which . . . would be defamatory . . . 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 . . . would injure the affected entity in the marketplace.<sup>11</sup>

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<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> Section 119.011(2), F.S., defines *agency* as “any state, county, . . . or municipal officer, department, . . . or other separate unit of government created or established by law . . . and any other public or private agency, person, . . . acting on behalf of any public agency.”

<sup>4</sup> *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

<sup>5</sup> Art. 1, § 24(c), Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 119.15, F.S.

<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

- The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.<sup>12</sup>

### **Address Confidentiality Program for Victims of Domestic Violence**

The Address Confidentiality Program for victims of domestic violence (ACP) is established in ss. 741.401 through 741.465, F.S., and administered by the Office of the Attorney General.<sup>13</sup> Individuals who are attempting to escape from actual or threatened domestic violence sometimes need to establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the ACP are to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.<sup>14</sup>

Any victim of domestic violence who relocates to an address unknown to her abuser is eligible to participate in the ACP. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city, and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs in the Office of the Attorney General serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.<sup>15</sup>

Section 741.406, F.S., contemplates that ACP participants who wish to participate in the election process will vote by absentee ballot. Although an ACP participant must provide her actual address to the Supervisor of Elections so that the appropriate absentee ballot can be transmitted to her, the statute expressly prohibits the Supervisor of Elections from including the participant's name, address and telephone number in any list of registered voters available to the public.<sup>16</sup> The participant thus can vote in the elections for which she is otherwise qualified, while information that might be used to locate her remains protected.

During 2007-2008, the ACP had 610 active participants and received 165 new applications.<sup>17</sup>

### **Public Records Exemption for the Address Confidentiality Program**

In 1998, when the Legislature established the ACP,<sup>18</sup> it also enacted a public records exemption for the addresses, telephone numbers and social security numbers of ACP participants.<sup>19</sup> The

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<sup>12</sup> Section 119.15(6)(a), F.S.

<sup>13</sup> See also, Rules 2A-7.001 through 2A-7.009, F.A.C.

<sup>14</sup> Section 714.401, F.S.

<sup>15</sup> Address Confidentiality Program – Bureau of Advocacy and Grants Management Office of the Attorney General (Florida), on file with the Senate Committee on Children, Families, and Elder Affairs.

<sup>16</sup> Section 741.406, F.S.

<sup>17</sup> Office of the Attorney General, Division of Victim Services and Criminal Justice Programs, *Annual Report 2007-2008*, available at [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6YEJPG/\\$file/2007-2008AnnualReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6YEJPG/$file/2007-2008AnnualReport.pdf) (last visited December 4, 2009).

<sup>18</sup> Chapter 98-404, L.O.F.

<sup>19</sup> Chapter 98-405, L.O.F. See also, s. 741.465(1), F.S.

Legislature provided an exception to the exemption, allowing the information to be disclosed under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.<sup>20</sup>

The Legislature found that it was necessary that the information be exempted from public disclosure because “[r]elease of this information would significantly threaten the safety and security of program participants.”<sup>21</sup>

The Legislature also provided that the Supervisor of Elections was prohibited from including an ACP participant's name, address, or telephone number in any list of registered voters available to the public or from otherwise making such information available for copying or inspection.<sup>22</sup>

In 2003, the public records exemption relating to the ACP was reviewed, pursuant to the Act,<sup>23</sup> and the public records exemption for the addresses, telephone numbers, and social security numbers of ACP participants was re-enacted with modification.<sup>24</sup> Because it was amended, the exemption was again made subject to the Act and set to repeal on October 2, 2008, unless reviewed and re-enacted by the Legislature.

In July 2003, the Florida Attorney General (the AG) issued an opinion in response to the following question:

Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?<sup>25</sup>

The AG noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the Supervisor of Elections are exempt from public disclosure. The AG refused, however, to “infer” that the exemption extended to the signatures and addresses of witnesses on an absentee ballot.<sup>26</sup> The AG acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.<sup>27</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Chapter 98-405, L.O.F.

<sup>22</sup> Chapter 98-404, L.O.F.

<sup>23</sup> Florida Senate, *Open Government Sunset Review of the Public Records Exemption for Address Confidentiality Program for Victims of Domestic Violence (s. 741.465, F.S.)*, Interim Project Report 2003-206 (December 2002).

<sup>24</sup> The separate statutory provision prohibiting the Office of the Attorney General from disclosing this information was repealed and replaced with the specification that the re-enacted public records exemption applied to the information held by the Office of the Attorney General. Chapter 2003-185, s. 3, L.O.F. The separate statutory provision prohibiting the Supervisor of Elections from disclosing this information was also repealed and replaced with a new subsection that explicitly provided that this information was exempt if contained in voter registration records held by the Supervisor of Elections. Chapter 2003-185, ss. 2 and 3(2), L.O.F.

<sup>25</sup> Florida Attorney General, Advisory Legal Opinion, Number AGO 2003-35 (July 31, 2003).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

In 2005 the Legislature amended s. 741.465(2), F.S., clarifying that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in all “voting records,” held by either the Supervisor of Elections *or* by the Department of State, are exempt from public disclosure.<sup>28</sup> The legislation provided that s. 741.465, F.S., as amended, would be subject to review under the Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment.<sup>29</sup> Because the legislation specified that the statute was subject to review *as amended*, the scope of this review is limited to subsection (2), the portion of s. 741.465, F.S., that was amended in 2005.

### III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 741.465(2), F.S., allowing the names, addresses, and telephone numbers of ACP participants contained in voter registration and other voting records held by the Supervisor of Elections or by the Department of State information to remain confidential and exempt from public disclosure.

### IV. Constitutional Issues:

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

None.

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

The Senate proposed bill would retain the exemption specified in s. 741.465(2), F.S., allowing the names, addresses, and telephone numbers of ACP participants contained in voter registration and other voting records held by the Supervisor of Elections or by the Department of State information to remain confidential and exempt from public disclosure.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

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<sup>28</sup> Chapter 2005-279, s. 2, L.O.F.

<sup>29</sup> *Id.* at s. 3.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.