

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.)

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

BILL: SB 0870

INTRODUCER: Senator Fasano

SUBJECT: Public Records Exemption / Injunction for Protection Against Domestic Violence

DATE: March 7, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Favorable
2.			JU	
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

Senate Bill 870 creates a public records exemption relating to information contained in a petition for an injunction for protection against domestic violence. The bill specifies that the exemption is subject to the Open Government Sunset Review Act and provides that the exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

Because the bill creates a new public records exemption, it is subject to the requirement of art. I, s. 24(c) of the Florida Constitution that two-thirds of the members present and voting in each house pass the bill.

The bill provides for an effective date of July 1, 2008.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 741.30.

II. Present Situation:

Florida Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later,

¹ Sections 1390, 1391 F.S. (Rev. 1892).

Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Consistent with the Constitution, Florida's Public Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.³

Only the Legislature is authorized to create exemptions to open government requirements.⁴ Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption⁷ may not contain other substantive provisions.⁸

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.⁹ If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁰ If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information.¹¹

An exemption from the Public Records Act may be created, revised or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.¹² An identifiable public purpose is served if the exemption meets one of three specified purposes and 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. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature, the disclosure of which would injure the affected entity in the marketplace.¹³

The Act also requires the Legislature to consider six questions that go to the scope, public purpose and necessity for the exemption.¹⁴

² Fla. Const. art. I, s. 24(a).

³ Section 119.07, F.S.

⁴ Fla. Const. art. I, s. 24(c).

⁵ *Id.*

⁶ *Id.*

⁷ Pursuant to s. 119.15 (4)(b), F.S., an existing exemption is considered substantially amended if the exemption is expanded to cover additional records.

⁸ Fla. Const. art. I, s. 24(c).

⁹ *WFTV, Inc. v. School Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA), *review denied*, 892 So.2d 1015 (Fla. 2004).

¹⁰ *Id.*

¹¹ *Id.* at 54.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ Section 119.15(6)(a), F.S.: (1) What specific records or meetings are affected by the exemption? (2) Whom does the exemption uniquely affect, as opposed to the general public? (3) What is the identifiable public purpose or goal of the

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.¹⁵ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁶

Injunction for Protection Against Domestic Violence

Section 741.30, F.S., creates a cause of action for an injunction for protection against domestic violence, allowing an individual who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, to petition the court for an injunction for protection. An injunction pursuant to this section may, *inter alia*:

- Restrain the respondent from committing any acts of domestic violence;
- Award the petitioner the exclusive use and possession of the residence the parties share or exclude the respondent from the petitioner's residence; and
- Award the petitioner temporary custody of the minor children of the parties.¹⁷

A domestic violence injunction is valid and enforceable in all counties in the state, and law enforcement officers are permitted to use their arrest powers to enforce the terms of a domestic violence injunction.¹⁸

Section 741.30(4), F.S., provides that before a hearing on a petition for injunction, the respondent must be personally served with the petition and the notice of hearing.

Risks of Filing a Petition for Injunction for Protection Against Domestic Violence

According to the Florida Coalition Against Domestic Violence (FCADV), the most lethal time for victims of domestic violence and their children is when they are attempting to separate from the batterer. In 62 percent of domestic violence fatalities in Florida in 2006, the victim was attempting to separate or had separated from the abuser.¹⁹

Filing for an injunction for protection against domestic violence is often a victim's first step toward separating from the batterer, but it is also often the time of greatest risk, because it puts the batterer on notice that the victim is serious about the separation. In addition, a petition for an injunction for protection against domestic violence must describe the violence and threats in detail, and seeing the violence described in a document filed with the court sometimes further inflames the batterer and increases the risk of retaliation against the victim. In fact, many

exemption? (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? (5) Is the record or meeting protected by another exemption? (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(5)(a), F.S.

¹⁷ Section 741.30(6)(a), F.S.

¹⁸ Section 741.30(6)(d), F.S.

¹⁹ Memorandum re: SB 870 to Senate Committee on Children and Families from Tiffany Carr, CEO, FCADV (March 3, 2008), *citing* Florida Department of Law Enforcement Domestic Violence Fatality Review Team, 2006 Annual Report.

batterers routinely check on-line or otherwise contact the courthouse to monitor whether the victim has filed for an injunction or a divorce. The fact that such information is immediately available to the batterer prior to service dramatically decreases the amount of time the victim has to protect herself. The batterer may also use this information to attempt to elude service of the petition.²⁰

III. Effect of Proposed Changes:

The bill makes all information contained in a petition for an injunction for protection against domestic violence confidential and exempt from the Public Records Act, and provides that the exemption will be repealed on October 2, 2013, unless saved through reenactment by the Legislature.

The bill states that the Legislature finds that the exemption is a public necessity because release of the information contained in a petition for an injunction for protection against domestic violence before the respondent has been personally served with a copy of the petition could significantly threaten the physical safety and security of persons seeking protection through judicial proceedings. The bill states that the Legislature finds that the harm that would result from the release of the information outweighs any public benefit that might result from disclosure of the information.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill complies with the requirement of art. I, s. 24(c) of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

The bill is subject to the requirement of art. I, s. 24(c) of the Florida Constitution that two-thirds of the members present and voting in each house pass the bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ *Id.*

B. Private Sector Impact:

None.

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.