

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 725

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Harrell

88 Y's

26 N's

**COMPANION (SB 1680)
BILLS:**

GOVERNOR'S ACTION: Vetoed

SUMMARY ANALYSIS

HB 725 passed the House on April 17, 2013, and subsequently passed the Senate on May 1, 2013. Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health. The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect.

Current law provides a public record exemption for any 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 and which information is held by the CADR or a local committee. It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements. The closed portion of a meeting must be recorded, and no portion of a closed meeting may be off the record. The recording, which is exempt from public record requirements, must be maintained by the CADR or local committee.

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee maintain the recording of the closed portion of the meeting.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of this bill was July 1, 2013; however, this bill was vetoed by the Governor on June 12, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Public Records and Open Meetings

State Constitution

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State 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.¹

Florida Statutes: Public Records Law

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Florida Statutes: Public Meetings Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.² The board or commission must provide reasonable notice of all public meetings.³ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.⁴ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act⁶ 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:

¹ Section 24(c), Art. I of the State Constitution.

² Section 286.011(1), F.S.

³ *Id.*

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ See s. 119.15, F.S.

- 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.

Child Abuse Death Review

Current law establishes a statewide multidisciplinary child abuse death assessment and prevention system within the Department of Health (DOH) that consists of state and local review committees.⁷

The State Child Abuse Death Review Committee (state committee) and local child abuse death review committees (local committees) are tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect.⁸

The purpose of the child death reviews performed by both the state and local committees is to:⁹

- Develop a community based approach to address child abuse deaths and contributing factors;
- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identify gaps, deficiencies or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Develop and implement data-driven recommendations for reducing child abuse and neglect deaths.

State Child Abuse Death Review Committee

The state committee is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions who convene every other month to examine the circumstances leading to child deaths.¹⁰

Specific duties of the state committee include:¹¹

- Encouraging and assisting in developing the local committees;
- Developing guidelines, standards, and protocols, including a protocol for data collection, for local committees, and providing training and technical assistance to local committees;
- Developing guidelines for reviewing deaths that are the result of child abuse to be used by law enforcement agencies, prosecutors, medical examiners, health care practitioners, health care facilities, and social service agencies;
- Studying the adequacy of laws, rules, training, and services to determine what changes are needed to decrease the incidence of child abuse deaths and developing strategies and recruiting partners to implement these changes;
- Promoting continuing education for professionals who investigate, treat, or prevent child abuse or neglect;

⁷ Section 383.402(1), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 383.402(2)(a) and (b), F.S.

¹¹ Section 383.402(3), F.S.

- Recommending the review of the death certificate of a child who died as a result of abuse or neglect; and
- Preparing an annual statistical report to be presented to the Governor and the Legislature containing recommendations to reduce preventable child deaths.

Local Child Abuse Death Review Committees

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.¹²

Specific duties of the local committees include:¹³

- Assisting the state committee in collecting data on deaths that are the result of child abuse;
- Submitting written reports as directed by the state committee including non-identifying information on individual cases and the steps taken by the local committee to implement necessary changes and improve the coordination of services and reviews; and
- Submitting all records requested by the state committee at the conclusion of its review of a death.

Public Record and Public Meeting Exemptions for CADR

Current law provides a public record exemption for any 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 and which information is held by the CADR or a local committee.¹⁴ It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.¹⁵

In 2010, the law was amended to require that the closed portion of a meeting of the CADR or local committee be recorded. In addition, a public record exemption was created to protect the release of such recording. No portion of the meeting may be off the record, and the recording must be maintained by the CADR or local committee.¹⁶

The CADR has indicated that the recording requirement is hindering its ability to effectively accomplish its purpose, which necessitates the members being able to speak candidly about the individual cases in order to make prevention recommendations.¹⁷ The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state attorney offices and other agencies to openly discuss confidential information that is being recorded.¹⁸

Effect of Proposed Changes

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee must maintain the recording of the closed portion of the meeting.

¹² Child Abuse Death Review Committee, Annual Report December 2012, available at: www.flcadr.org/reports.html (last viewed March 6, 2013).

¹³ Section 383.402(7), F.S.

¹⁴ Section 383.412(2)(a), F.S.

¹⁵ Section 383.412(3)(a), F.S.

¹⁶ Chapter 2010-40, L.O.F.

¹⁷ E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (March 6, 2013) (On file with subcommittee staff).

¹⁸ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.