

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 Committee on Appropriations

BILL: CS/SB 1110

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Flores

SUBJECT: Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

DATE: April 15, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u>Shettle</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1110 makes confidential and exempt from public disclosure the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The exempted location information can be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Since the bill creates two public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has no discernable fiscal impact.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included in the Florida Constitution.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁴ or
- It protects trade or business secrets.¹⁵

The OGSR also requires specified questions to be considered during the review process.¹⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.¹⁸

Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

Human trafficking is defined as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that

¹⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(b)1., F.S.

¹⁴ Section 119.15(6)(b)2., F.S.

¹⁵ Section 119.15(6)(b)3., F.S.

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

person.”¹⁹ The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.²⁰ The statute also expresses legislative intent that the Department of Children and Families (DCF) and other state agencies cooperate with other state and federal agencies to ensure that these victims can access social services and benefits to alleviate their plight.²¹

Section 409.1678, F.S., provides specialized residential options for children who are victims of sexual exploitation²² to include safe foster homes and safe houses. A “safe foster home” is a foster home certified by the DCF to care for sexually exploited children.²³ A “safe house” is a group residential placement certified by the DCF to also care for sexually exploited children.²⁴ To be certified, a safe foster home must hold a license as a family foster home, and a safe house must hold a license as a residential child-caring agency, both defined under s. 409.175, F.S.²⁵

These residential facilities must also do the following to be designated a safe foster home or safe house under the statute: use strength-based and trauma-informed approaches to care; serve exclusively one sex; group sexually exploited children by age or maturity level; care for them in a way that separates them from children with other needs; have awake staff members on duty 24 hours a day; provide appropriate security; and meet all other department criteria.²⁶

There are traditional residential facilities that serve both children and adult victims of sexual exploitation, but if these facilities serve adults, they cannot be designated a safe foster home or safe house under s. 409.1678, F.S.

III. Effect of Proposed Changes:

The bill creates a new public records exemption for facilities that serve children and adults who are victims of sexual exploitation and trafficking. The bill makes confidential and exempt from public records the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also makes confidential and exempt from public disclosure the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity.

The bill allows the exempted location information to be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility. This may be problematic if an agency needs to disclose the location information for any other purpose since confidential and exempt information can only be

¹⁹ Section 787.06(2)(d), F.S.

²⁰ Section 787.06(1)(a), F.S.

²¹ Section 787.06(1)(d), F.S.

²² Defined in part, to include allowing, encouraging, or forcing a child to participate in the trade of human trafficking for commercial sexual activity. Section 39.01(69)(g)3., F.S.

²³ Section 409.1678(1)(a), F.S.

²⁴ Section 409.1678(1)(b), F.S.

²⁵ Section 409.1678(2)(c), F.S.

²⁶ *Id.*

released pursuant to statute or by a court order. However, since this exemption only applies to agencies, the victim may reveal his or her location if the need arose.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature, pursuant to the OGSR.

The bill provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates two public records exemptions and it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates two public records exemptions and it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates two limited public records exemptions: one exempts the location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation and the other exempts the location information of residential facilities for adult victims of human trafficking involving commercial sexual activity. These exemptions are not broader than necessary to accomplish their purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not include a retroactivity clause, therefore the exemption would only apply prospectively. Any location information held by an agency before this bill goes into effect will remain public.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1678 and 787.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 31, 2015:

The CS removes the contingent effective date which linked the bill to the enactment of SB 1106 and adds an effective date.

B. Amendments:

None.