

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7023 PCB OTM 20-09 OGSR/Child Abuse Death Review Committees

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Pigman

TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Smith	Smith
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Woodruff	Brazzell
2) State Affairs Committee	23 Y, 0 N	Smith	Williamson

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 (state committee) and local child abuse death review committees (local committees) within the Department of Health. The state and local committees must review the facts and circumstances of all deaths of children, from birth through age 18, that occur in the state and are reported to the central abuse hotline of the Department of Children and Families. The state committee must prepare an annual statistical report containing data, trends, analysis, findings, and recommendations for state and local action to prevent deaths from child abuse.

Current law provides public record and public meeting exemptions for the state and local committees. The public record exemption protects information that reveals the identity of the surviving siblings of a deceased child whose death occurred as a result of a verified report of abuse or neglect. It also protects the identity of a deceased child whose death has been reported to the central abuse hotline but was determined not to be the result of abuse or neglect and the identity of the surviving siblings, family members, or others living in the home of such deceased child. In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status. Portions of meetings held by the state committee or a local committee in which this identifying information is discussed are exempt from public meeting requirements. The closed portion of the meeting must be recorded and the recording of such meeting is exempt from public record requirements.

The bill saves from repeal the public record and public meeting exemptions, which will repeal on October 2, 2020, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.²

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

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.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Child Abuse Death Review Committees

In 1999, the Legislature passed the Kayla McKean Child Protection Act⁶ that established the State Child Abuse Death Review Committee (state committee) and local child abuse death review committees (local committees) within the Department of Health (DOH).⁷ The committees review the facts and circumstances surrounding the deaths of children in the state, which occur as the result of reported child abuse or neglect, and prepare an annual statistical report on the incidence and causes of death resulting from child abuse.⁸ Prior to 2014, the state and local committees reviewed only the deaths of children that were the result of verified child abuse or neglect.⁹ In 2014, the Legislature expanded the jurisdiction of the committees to require the committees to review the deaths of all children, from birth through age 18, that occur in Florida and are reported to the central abuse hotline of the Department of Children and Families (DCF).¹⁰

A local committee's primary function is to conduct individual case reviews of deaths, generate information, make recommendations, and implement improvements at the local level.¹¹ The state

¹ S. 119.15, F.S.

² S. 119.15(3), F.S.

³ S. 119.15(6)(b), F.S.

⁴ S. 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Mireya Navarro, *Florida Will Tighten Child Welfare Policies After Father's Killing of Girl*, 6, N.Y. TIMES, Dec. 5, 1998, available at <https://www.nytimes.com/1998/12/05/us/florida-will-tighten-child-welfare-policies-after-father-s-killing-of-girl-6.html> (last visited Jan. 8, 2020).

⁷ Ch 99-168, L.O.F.

⁸ *Id.*

⁹ See s. 383.402(1), F.S. (2013).

¹⁰ Ch. 2014-224, L.O.F.

¹¹ S. 383.402(7), F.S.

committee's primary function is to provide direction and leadership for the review system and to analyze data and recommendations from local committees to identify statewide issues and trends.¹² The state committee must prepare an annual statistical report containing data, trends, analysis, findings, and recommendations for state and local action to prevent deaths from child abuse.¹³

The state and local committees have broad access to any information related to the deceased child or the child's family that is necessary to carry out their duties, including:¹⁴

- Medical, dental, or mental health care records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement that are not part of an active investigation.

In order to protect the rights of the child and the child's parents or persons responsible for the child's welfare, all records held by DCF concerning reports of child abandonment, abuse, or neglect, are confidential and exempt¹⁵ from public record requirements.¹⁶

Public Record and Public Meeting Exemptions under Review

Current law provides public record and public meeting exemptions for the state and local committees.¹⁷

The public record exemption protects information that reveals the identity of the surviving siblings of a deceased child whose death occurred as a result of a verified report of abuse or neglect. It also protects the identity of a deceased child whose death has been reported to the central abuse hotline but was determined not to be the result of abuse or neglect and the identity of the surviving siblings, family members, or others living in the home of such deceased child.¹⁸ The information is confidential and exempt from public record requirements and may only be disclosed with other local committees, other governmental agencies in furtherance of their duties, and persons or entities authorized by the Department of Health to use such information for bona fide research or statistical purposes.¹⁹ In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.²⁰ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.²¹

Portions of meetings of the state or a local committee at which confidential and exempt information is discussed are exempt from public meeting requirements.²² The closed portion of a meeting must be recorded and no portion may be off the record.²³ The recording of the closed portion of the meeting is exempt from public record requirements.²⁴

The public record and public meeting exemptions were initially enacted by the Legislature in 1999 alongside the substantive bill creating the state and local committees.²⁵ The exemptions were amended and reenacted, thereafter in 2005,²⁶ 2010,²⁷ and 2015.²⁸ In 2015, the public record exemption was

¹² S. 383.402(1), F.S.

¹³ S. 383.402(4), F.S.

¹⁴ S. 383.402(5), F.S.

¹⁵ There is a difference between records the Legislature designates 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. Sch. Bd. 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 683, 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 statute. See Attorney General Opinion 85-62 (Aug. 1, 1985).

¹⁶ S. 39.202(1), F.S.

¹⁷ S. 383.412, F.S.

¹⁸ S. 383.412(2), F.S.

¹⁹ S. 383.412(4), F.S.

²⁰ S. 383.412(2)(c), F.S.

²¹ S. 383.412(5), F.S. A misdemeanor of the first degree is punishable by imprisonment not to exceed one year and a fee not to exceed \$1,000. Ss. 775.082 and 775.083, F.S.

²² S. 383.412(3), F.S.

²³ *Id.*

²⁴ S. 383.412(3)(b), F.S.

²⁵ Ch. 99-210, L.O.F.

²⁶ Ch. 2005-190, L.O.F.

expanded to also protect the identity of a deceased child whose death was determined not to be the result of abuse or neglect and the identity of the deceased child's surviving siblings, family members, or others living in the home.

The Legislature, in its original public necessity statement,²⁹ found that the release of sensitive, personal information could hamper open communication and coordination among parties during the death review and that the harm resulting from the release of such information substantially outweighed any public benefit.³⁰ In addition, allowing the committees to have access to the confidential records "increases the potential for reduced morbidity or mortality of children and reduces the potential for poor outcomes for children, thereby improving the overall quality of life for children."³¹

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2020, unless reenacted by the Legislature.³²

During the 2019 interim, subcommittee staff met with representatives from DOH and DCF and conducted surveys of each of the 23 local review committees. DOH and DCF representatives stated that the exemptions have been effective and recommended making no changes to the statewide exemption. Survey responses were similar with near unanimous support for the public record and public meeting exemptions to be reenacted without changes to ensure continued coordination and open communication between and among the state and local committees.³³

Effect of the Bill

The bill removes the scheduled repeal date of the public record and public meeting exemptions thereby reenacting the exemptions for state and local committees.

B. SECTION DIRECTORY:

Section 1: amending s. 383.412, F.S., to save from repeal the public record and public meeting exemptions for the state committee or a local committee.

Section 2: provides an effective date of October 1, 2020.

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.

²⁷ Ch. 2010-40, L.O.F.

²⁸ Ch. 2015-77, L.O.F.

²⁹ S. 24(c), Art. I of the State Constitution requires each public record and public meeting exemption to "state with specificity the public necessity justifying the exemption."

³⁰ Ch. 99-210, L.O.F.

³¹ *Id.*

³² S. 383.412(6), F.S.

³³ Open Government Sunset Review Questionnaire, responses on file with the Oversight, Transparency & Public Management Subcommittee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority on an agency nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.