

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-02 OGSR Victim of Domestic or Sexual Violence

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson	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 requires an employer to permit an employee to request and take up to three working days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence. This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months. An employee must provide sufficient documentation of the act of domestic violence or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, the employee must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.

Current law provides a public record exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public record requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

The bill does not appear to have a fiscal impact on 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.

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:

- 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.

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Employee Leave for Domestic Violence or Sexual Violence

Current law requires an employer to permit an employee to request and take up to three working days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence.⁴ This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.⁵

An employee may use the leave from work to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
- Obtain services from a victim services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence or sexual violence;
- Make the employee's home secure from the perpetrator of the domestic violence or sexual violence or to seek new housing to escape the perpetrator; or

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ The leave may be with or without pay, at the discretion of the employer. Section 741.313(2)(a), F.S.

⁵ Section 741.313(3), F.S.

- Seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.⁶

An employee must provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family.⁷ Additionally, the employee must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.⁸

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for certain information documenting an act of domestic violence submitted to an agency⁹ by an agency employee.¹⁰ Specifically, personal identifying information that is contained in records documenting an act of domestic violence and that is submitted to an agency by an agency employee is confidential and exempt¹¹ from public record requirements.¹² In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.¹³

In 2008, the public record exemption was amended to include victims of sexual violence.¹⁴

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. In addition, those organizations representing victims of domestic violence or sexual violence were contacted for input regarding the public record exemption under review. Those contacted indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information contained in agency records documenting an act of domestic violence or sexual violence, and reenacting the public record exemption for a written request for leave and any agency time sheet reflecting such a request. The bill also makes editorial changes.

B. SECTION DIRECTORY:

⁶ Section 741.313(2)(b), F.S.

⁷ Section 741.313(4)(a), F.S.

⁸ Section 741.313(4)(b), F.S.

⁹ For purposes of the public record exemption, "agency" means an agency as defined in chapter 119, F.S. 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."

¹⁰ Chapter 2007-108, L.O.F.; codified as s. 741.313(7), F.S.

¹¹ There is a difference between records the Legislature designates as 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. The School Board 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 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).

¹² Section 741.313(7)(a), F.S.

¹³ Section 741.313(7)(b), F.S.

¹⁴ Chapter 2008-254, L.O.F.

Section 1 amends s. 741.313, F.S., to save from repeal the public record exemption for certain information submitted to an agency by an agency employee that documents an act of domestic violence or sexual violence.

Section 2 provides an effective date of October 1, 2013.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES