

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 13-06 OGSR Employment Discrimination Complaints

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	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 prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.

Current law provides a public record exemption for all complaints in the custody of any agency that relate to a complaint of employment discrimination. Specifically, all complaints and other records in the custody of an agency that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from public record requirements. In addition, when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public record requirements.

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 Act<sup>1</sup> 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.<sup>2</sup> 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 created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Florida Commission on Human Relations

The Florida Commission on Human Relations (commission) is an independent commission comprised of 12 members appointed by the Governor, subject to confirmation by the Senate.<sup>4</sup> Members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state. At least one member of the commission must be at least 60 years of age.<sup>5</sup>

The commission is assigned to the Department of Management Services; however, in the performance of its duties pursuant to the Florida Civil Rights Act of 1992, it is not subject to control, supervision, or direction by the department.<sup>6</sup>

The commission is tasked with promoting and encouraging fair treatment and equal opportunity for all persons and mutual understanding and respect among economic, social, racial, religious, and ethnic groups.<sup>7</sup> Current law specifies the duties and responsibilities of the commission, including requiring the commission to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice.<sup>8</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

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

<sup>4</sup> Section 760.03(1), F.S.

<sup>5</sup> Section 760.03(2), F.S.

<sup>6</sup> Section 760.04, F.S.

<sup>7</sup> Section 760.05, F.S.

<sup>8</sup> Section 760.06(5), F.S.

### Employment Discrimination

Current law prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.<sup>9</sup>

### Public Record Exemption under Review

Current law provides a public record exemption for all complaints in the custody of any agency<sup>10</sup> that relate to a complaint of employment discrimination. Specifically, all complaints and other records in the custody of an agency that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt<sup>11</sup> from public record requirements. The exemption expires when a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.<sup>12</sup>

Current law specifies that the exemption does not affect any function or activity of the commission.<sup>13</sup> In addition, any state or federal agency that is authorized to have access to such complaints or records by any provision of law must be granted access in the furtherance of such agency's statutory duties.<sup>14</sup>

Current law also provides that when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public record requirements.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.<sup>16</sup>

During the 2012 interim, subcommittee staff sent questionnaires to all state and local government agencies regarding their use of the public record exemption under review. Those state and local agencies responding to the questionnaire indicated that there is a public necessity to continue the public record exemption under review and recommended reenactment of it.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for employment discrimination complaints and other records relating to the complaint that are in the custody of an agency. The bill also makes clarifying changes.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for employment discrimination complaints and other records relating to the complaint.

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<sup>9</sup> See s. 760.10, F.S.

<sup>10</sup> Section 119.011(2), F.S., defines "agency" to mean as "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."

<sup>11</sup> 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).

<sup>12</sup> Section 119.071(2)(g)1.a., F.S.

<sup>13</sup> Section 119.071(2)(g)1.b., F.S.

<sup>14</sup> Section 119.071(2)(g)1.c., F.S.

<sup>15</sup> Section 119.071(2)(g)2., F.S.

<sup>16</sup> Section 119.071(2)(g)3., F.S.

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

None.