

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB OTA 17-06 OGSR/Protective Injunctions for Certain Types of Violence  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington

### 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.

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

Current law provides that specified personal identifying and location information held by the clerk and law enforcement agencies in conjunction with the automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence is confidential and exempt from public record requirements. The clerk of court is required to apprise a petitioner of his or her right to request in writing that such information be made exempt from public record requirements. The exemption provides that such information is exempt for five years after receipt of the written request. The automated process itself has not been created yet; it is estimated to be completed in summer 2017.

The bill extends the repeal dates for the public record exemptions under review by one year to allow for the development, testing, and implementation of the automated system.

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 (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.<sup>2</sup>

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.<sup>3</sup>

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>4</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>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemptions for Victims of Violent and Sexual Crimes

Current law provides several protections from public record requirements for victims of various violent and sexual crimes. The following information is confidential and exempt<sup>6</sup> from public record requirements:

- Any information, including the photograph, name, address, or other fact, that reveals the identity of the victim of child abuse;
- Any information that may reveal the identity of a victim of sexual offense; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.<sup>7</sup>

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

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

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

<sup>6</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>7</sup> Section 119.071(2)(h)1., F.S.

Current law also provides an exemption from public record requirements for any information not otherwise held confidential or exempt from public record requirements that reveals the home or employment telephone number or address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence, upon an officially verified written request by the victim. Such information ceases to be exempt 5 years after receipt of the written request. Any state or federal agency authorized to have access to such documents must be granted access in the furtherance of its duties.<sup>8</sup>

#### Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. In 2011, the Legislature directed the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.<sup>9</sup> This system requires the petitioner to provide the Association with personal identification and location information.

#### Public Record Exemptions under Review

In 2012, the Legislature created public record exemptions for information which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other election means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.<sup>10</sup> The information is confidential and exempt from public record requirements.<sup>11</sup> The petitioner must be informed of his or her right to request, in writing, that such information be made exempt from public record requirements.<sup>12</sup> The exemption expires five years after the request.<sup>13</sup> Any state or federal agency authorized to have access to such information in furtherance of their statutory duties must be given access.<sup>14</sup>

The 2012 public necessity statement for the exemptions provides that:<sup>15</sup>

Such information, if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally, if such information were publicly available, it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.

Pursuant to the Open Government Sunset Review Act the exemptions will repeal on October 2, 2017, unless reenacted by the Legislature.<sup>16</sup>

During the 2016 interim, subcommittee staff consulted with staff from the Association regarding the automated system and discovered that the system was still in the development stage. According to the Association, the system will likely be ready for testing in the spring of 2017 and ready for full implementation in the summer of 2017.

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<sup>8</sup> Section 119.071(2)(j)1., F.S.

<sup>9</sup> Chapter 2011-187, L.O.F.

<sup>10</sup> Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Chapter 2012-154, L.O.F.

<sup>16</sup> Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b, F.S.

## **Effect of the Bill**

The bill extends the repeal date for the public record exemptions under review by one year to allow for the development, testing, and implementation of the system.

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

Section 1 amends s. 741.30, F.S., relating to domestic violence injunctions.

Section 2 amends s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence injunctions.

Section 3 provides an effective date of October 1, 2017.

## **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 affect county or municipal governments.

#### **2. Other:**

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.