

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: HB 7101

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Government Operations
Subcommittee; Narain

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**COMPANION
BILLS:** CS/SB 7034

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 7101 passed the House on April 22, 2015, as CS/SB 7034.

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.

The Office of the Attorney General administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.

Current law provides a public record exemption for the ACP. The address, corresponding telephone number, and social security number of a program participant held by the Office of the Attorney General is exempt from public record requirements. In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections and the Department of State are exempt from public record requirements.

Current law also provides a public record exemption for the name, address, and telephone number of a victim of stalking or aggravated stalking in the same manner as a participant in the ACP provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the requirements of the program.

The bill reenacts the public record exemption for victims of stalking or aggravated stalking, which will repeal on October 2, 2015, if this bill does not become law.

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

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ (Act) 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:³

- 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 and 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.

Address Confidentiality Program for Victims of Domestic Violence⁶

The Office of the Attorney General (office) administers the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The purpose of the program is to:⁷

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.

An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated may apply to the Attorney General to have an address designated by the Attorney General to serve as the person's address or the address of the minor or incapacitated person.⁸ Each participant is assigned a substitute address that is not related to the participant's actual location.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 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 See ss. 741.401-741.409, F.S.

⁷ Section 741.401, F.S.

⁸ Section 741.403(1), F.S.

An ACP participant who is qualified to vote may request an absentee ballot, and will automatically receive absentee ballots for all elections in the jurisdiction in which the participant resides.⁹ Current law prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.¹⁰ Thus, the participant can vote in the elections for which he or she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public Record Exemption for the ACP

Current law provides a public record exemption for the ACP.¹¹ The address, corresponding telephone number, and social security number of a program participant held by the office is exempt¹² from public record requirements. For purposes of the public record exemption, the term "address" means a residential street address, school address, or work address, as specified on the individual's application to be a program participant.¹³

In addition, the name, address, and telephone number of program participants contained in voter registration and voting records held by the supervisor of elections or the Department of State are exempt from public record requirements.¹⁴

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for certain information concerning persons who are victims of stalking or aggravated stalking.¹⁵ Section 97.0585(3), F.S., provides that the name, address, and telephone number of a victim of stalking or aggravated stalking are exempt in the same manner as a participant in the ACP provided the victim files a sworn statement of stalking with the office and otherwise complies with the requirements of the ACP.

Section 2 of chapter 2010-115, L.O.F., which is the public necessity statement for the exemption, provides, in part, that:

The public-records exemption for the name is a public necessity because access to such name narrows the location of a stalking victim to a specific, geographic voting precinct. In addition, access to the address and telephone number provides specific location and contact information for the victim. Therefore, access to the name, address, and telephone number defeats the goal of providing safety and security. Allowing victims of stalking or aggravated stalking to use a substitute mailing address designated by the Office of the Attorney General facilitates the goal of providing safety and security.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁶

⁹ Section 741.406, F.S.

¹⁰ *Id.*

¹¹ Section 741.465, F.S.

¹² 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 741.465(1), F.S.

¹⁴ Section 741.465(2), F.S.

¹⁵ Chapter 2010-115, L.O.F.; codified as s. 97.0585(3), F.S.

¹⁶ Section 97.0585(5), F.S.

During the 2014 interim, subcommittee staff reviewed information provided by the office and the Division of Elections (division) in the Department of State. Subcommittee staff also met with staff from the office and the division. Staff of the office and the division indicated the public record exemption created in 2010 for victims of stalking or aggravated stalking actually expanded the ACP to include such victims. In addition, staff of the office and division recommended reenactment of the public record exemption for victims of stalking or aggravated stalking.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking provided the victim files a sworn statement of stalking with the office and otherwise complies with the ACP. The bill also transfers the public record exemption from the Election Code to s. 741.4651, F.S., in order to co-locate the public record exemption for victims of stalking or aggravated stalking with the public record exemption for the ACP.

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.